

[2] A. Sandard and J. Sandard and A. Sandard and

Statutory Rules 1993 No. 1

43

Service and Execution of Process Regulations

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council and under section 4 of the Acts Interpretation Act 1901, make the following Regulations under the Service and Execution of Process Act 1992.

Dated / April 1993.

BILL HAYDEN

Governor-General

By His Excellency's Command,

D. KERR Minister for Justice

Citation

1. These Regulations may be cited as the Service and Execution of Process Regulations.

Commencement

2. These Regulations commence on 10 April 1993.

Interpretation

3. (1) In these Regulations, unless the contrary intention appears:

"the Act" means the Service and Execution of Process Act 1992.

(2) In these Regulations, a reference to a form by number is a reference to the form so numbered in Schedule 1.

Notices and forms

- 4. (1) For the purposes of a provision of the Act specified in a paragraph of this subregulation, the prescribed notice is a notice in the form identified by number in that paragraph:
 - (a) section 16—Form 1;
 - (b) paragraph 31 (a)—Form 2;
 - (c) section 41—Form 3;
 - (d) section 51—Form 4;
 - (e) paragraph 59 (a)—Form 5;
 - (f) section 69—Form 6.
- (2) For the purposes of a provision of the Act specified in a paragraph of this subregulation, the prescribed form is the form identified by number in that paragraph:
 - (a) subsection 112 (3)—Form 7;
 - (b) subsection 117 (2)—Form 8.

Persons taken to be in charge of the correction service of a State or Territory (Act, subsection 84 (9))

5. For the purposes of subsection 84 (9) of the Act, the person taken to be in charge of the correction service of the State or Territory mentioned in Column 2 of an item in Schedule 2 is the person holding or performing the duties of the office mentioned in Column 3 of that item.

SCHEDULE 1

Regulation 4

FORMS

FORM 1

Section 16

Service and Execution of Process Act 1992

NOTICE TO DEFENDANT¹

PLEASE READ THIS NOTICE AND THE ATTACHED DOCUMENT VERY CAREFULLY

IF YOU HAVE ANY TROUBLE UNDERSTANDING THEM YOU SHOULD GET LEGAL ADVICE AS SOON AS POSSIBLE

Attached to this notice is a [name of process] ("the attached process") issued out of the [issuing court].

Service of the attached process outside [State or Territory of issue] is authorised by the Service and Execution of Process Act 1992.

YOUR RIGHTS

If a court of a State or Territory other than [State or Territory of issue] is the appropriate court to determine the claim against you set out in the attached process, you may be able to:

²have the proceeding stayed by applying to the [issuing court].

³apply to the Supreme Court in [State or Territory of issue] to have the proceeding transferred to another Supreme Court, or another superior court.

If you think the proceeding should be stayed or transferred you should get legal advice as soon as possible.

CONTESTING THIS CLAIM

If you want to contest this claim, you must take any action set out in the attached process as being necessary to contest the claim.

⁴If you want to contest this claim, you must also file an appearance⁵ in the [issuing court]. You have only 21⁶ days after receiving the attached process to do so.

The appearance⁵ must contain

⁷an address in Australia where documents can be left for you or sent to you.

⁸your address.

 $^1\mathrm{If}$ the person to be served is not described in the process as a "defendant" substitute the correct description.

²Omit if the court of issue is a Supreme Court.

³Omit if court of issue is not a Supreme Court.

⁴If the defendant need not enter an appearance (as defined in section 14 of the Act) in order to contest the claim, omit this paragraph and the remainder of the form.

⁵If the document that must be filed is not called an appearance, substitute the correct name.

⁶If the issuing court has allowed a shorter period, substitute that period.

⁷Omit if appearance is not required to set out an address for service.

⁸Omit if appearance is required to set out an address for service.

FORM 2

Section 31

Service and Execution of Process Act 1992

NOTICE TO WITNESS

THIS NOTICE IS VERY IMPORTANT

PLEASE READ IT AND THE ATTACHED DOCUMENT OR DOCUMENTS VERY CAREFULLY

IF YOU HAVE ANY TROUBLE UNDERSTANDING THEM YOU SHOULD GET LEGAL ADVICE AS SOON AS POSSIBLE

Attached to this notice is a subpoena¹ ("the attached subpoena") that is a subpoena for the purposes of Part 3 of the Service and Execution of Process Act 1992 issued by the [name of the issuing court or authority].

Service of the attached subpoena outside [State or Territory of issue] is authorised by that Act.

YOUR RIGHTS

You may be able to apply to a court or authority to set aside or obtain other relief in respect of the attached subpoena. If you would like to make an application you should get legal advice as soon as possible.

YOUR OBLIGATIONS

You must obey the attached subpoena if:

- (a) at the time of service or at some reasonable time before [date for compliance] you were offered or given either:
 - (i) enough money to meet your reasonable expenses in obeying it, including any travel and accommodation costs; or
 - (ii) a combination of money, travel tickets and vouchers to meet those expenses; and

- (b) either:
 - (i) you received the attached subpoena at least 142 days before [date for compliance]; or
 - (ii) you received the attached subpoena less than 14² days before [date for compliance] and you received with the attached subpoena a copy of an order made by [issuing court or authority] permitting the attached subpoena to be served less than 14² days before [date for compliance].

If the attached subpoena only requires production of documents or things, you may comply with the attached subpoena by delivering the documents or things at least 24 hours before [date for compliance] to the Registrar³ of [issuing court or the court to which the issuing authority belongs].

THIS IS MOST IMPORTANT

If you are subject to a restriction on your movements that you might breach if you comply with the attached subpoena, there are some additional actions you must take for your own protection.

The restriction on you could be imposed as:

- (a) conditions of bail; or
- (b) conditional release from prison; or
- (c) conditions of probation; or
- (d) home or periodic detention; or
- (e) a community service order, community based order, attendance order or work and development order; or
- (f) some other restriction on your movements imposed by law or by order of a court.

If you are under a restriction of this kind, you must, as soon as practicable after you receive the attached subpoena, inform your supervisor of the service of the attached subpoena. If you are on bail,

and your bail is subject to a condition that you report periodically, your supervisor is the police officer or correction service officer you report to. If you are not on bail, or if you are on bail but are not required to report periodically, your supervisor is the person who supervises your compliance with an order or restriction.

Also, you must, as soon as practicable, inform:

the [issuing court or authority]

⁴and [person at whose request the subpoena was issued]; of the restriction to which you are subject.

You must take all reasonable steps to have the restriction varied so that you can comply with the attached subpoena.

If the restriction is not varied, you must inform:

the [issuing court or authority]

⁴and [person at whose request the subpoena was issued] either

- (a) of the steps you took to have the restriction or obligation varied, and that the restriction or obligation has not been varied; or
- (b) that the law does not permit that variation,

whichever is the case.

¹If the process to be served is not called a subpoena, substitute the name of the process for the word "subpoena".

²If the law of the State or Territory requires a longer period than 14 days from the service of a subpoena until the return date, substitute that period.

³Or "Clerk", as appropriate.

⁴Omit if the subpocna was not issued at the request of a person.

FORM 3

Section 41

Service and Execution of Process Act 1992

NOTICE TO WITNESS

THIS NOTICE IS VERY IMPORTANT

PLEASE READ IT AND THE ATTACHED DOCUMENT OR DOCUMENTS VERY CAREFULLY

IF YOU HAVE ANY TROUBLE UNDERSTANDING THEM YOU SHOULD ASK TO RECEIVE LEGAL ADVICE AS SOON AS POSSIBLE

Attached to this notice is a subpoena¹ ("the attached subpoena") that is a subpoena for the purposes of Part 3 of the Service and Execution of Process Act 1992 issued by the [issuing court or authority].

Service of the attached subpoena outside [State or Territory of issue] is authorised by that Act.

An order, called an order for production, based on the attached subpoena has been served on the person in charge of the institution or place in which you are held. Under this order you will be taken to [name and location of the court, authority or person before which compliance is required], unless you are released before [date for compliance]. A copy of the order for production is required to be served on you by the person in charge of the institution or place in which you are held.

YOUR RIGHTS

The person in charge of the institution or place in which you are held must provide any assistance that you reasonably require to:

- (a) apply to set aside or obtain other relief from the attached subpoena; or
- (b) apply to set aside or vary the order for production relating to the attached subpoena; or

(c) obtain legal advice.

You may be able to apply to a court or authority to set aside or obtain other relief in respect of the attached subpoena or the order for production. If you would like to make an application you should ask for assistance to obtain legal advice as soon as possible. If you make an application of this kind, you must, within 24 hours, give a copy to the person in charge of the institution or place in which you are held.

You will only be able to apply for the order for production to be varied or set aside if complying with it would have a substantial detrimental effect on your health or safety.

If the person in charge of the institution or place in which you are held makes an application to set aside or vary the order for production, you must be given a copy of that application within 24 hours of its being made.

YOUR OBLIGATIONS ON RELEASE FROM CUSTODY

If you are released from the institution or place where you are held before [date for compliance], you must obey the attached subpoena yourself if:

- (a) there is sufficient time between when you are released and [date for compliance] for it to be reasonably practicable for you to comply with the attached subpoena; and
- (b) a copy of the order for production was served on you with the attached subpoena; and
- (c) within a reasonable time after you were released you were offered or given:
 - (i) enough money to meet your reasonable expenses in obeying it, including any travel and accommodation costs; or
 - (ii) a combination of money, travel tickets and vouchers to meet those expenses.

THIS IS MOST IMPORTANT

If, after your release, you are subject to a restriction on your movements that you might breach if you comply with the attached subpoena, there are some additional actions you must take for your own protection.

The restriction on you could be imposed as:

- (a) conditions of bail; or
- (b) conditional release from prison; or
- (c) conditions of probation; or
- (d) home or periodic detention; or
- (e) a community service order, community based order, attendance order or work and development order; or
- (f) some other restriction on your movements imposed by law or by order of a court.

If you are under a restriction of that kind, you must, as soon as practicable after you are released, inform your supervisor of the service of the attached subpoena. If you are on bail, and your bail is subject to a condition that you report periodically, your supervisor is the police officer or correction service officer you report to. If you are not on bail, or if you are on bail but are not required to report periodically, your supervisor is the person who supervises your compliance with an order or restriction.

Also, you must, as soon as practicable, inform:

the [issuing court or authority]

²and [person at whose request the subpoena was issued];

of the restriction to which you are subject.

You must take all reasonable steps to have the restriction varied so that you can comply with the attached subpoena.

If the restriction is not varied, you must inform:

the [name of issuing court or authority]

²and [name of the person at whose request the subpoena was issued]; of the restriction to which you are subject, and:

- (a) of the steps you took to have the restriction varied, and that the restriction has not been varied; or
- (b) that the law does not permit that variation;

whichever is the case.

¹If the process to be served is not called a subpoena, substitute the name of the process for the word "subpoena".

²Omit if the subpoena was not issued at the request of a person.

FORM 4

Section 51

Service and Execution of Process Act 1992

NOTICE TO RESPONDENT

YOU SHOULD READ THIS NOTICE AND THE ATTACHED DOCUMENT VERY CAREFULLY

IF YOU HAVE ANY TROUBLE UNDERSTANDING THEM YOU SHOULD GET LEGAL ADVICE AS SOON AS POSSIBLE

Attached to this notice is a [name of process] ("the attached process") issued out of the [issuing tribunal].

Service of the attached process outside [State or Territory of issue] is authorised by the Service and Execution of Process Act 1992 if the claim made against you concerns:

- (a) real property within [State or Territory of issue]; or
- (b) a contract, wherever made, for the supply of goods or the provision of services of any kind (including financial services) within [State or Territory of issue]; or
- (c) an act or omission within [State or Territory of issue]; or
- (d) the carrying on of a profession, trade or occupation within [State or Territory of issue]; or
- (e) a pension or benefit under a law of [State or Territory of issue]; or
- (f) the validity of an act or transaction under a law of [State or Territory of issue].

The attached process is served in reliance on item(s) [letter(s) corresponding to ground(s) relied on].

YOUR RIGHTS

If you think that none of the above items applies in this case, you should get legal advice as soon as possible on what to do to stop the [issuing tribunal] dealing with this claim against you.

CONTESTING THIS CLAIM

If you want to contest this claim, you must take any action set out in the attached process as being necessary to contest the claim.

¹If you want to contest this claim, you also must file an appearance² in the [issuing tribunal]. You have only 21³ days after receiving the attached process to do so.

The appearance² must contain

⁴an address in Australia where documents can be left for you or sent to you.

⁵your address.

¹If the respondent need not enter an appearance (as defined in section 49 of the Act) in order to contest the claim, omit this paragraph and the remainder of the form.

²If the document that must be filed is not called an appearance, substitute the correct name here and in the remainder of the form.

³If the issuing tribunal has allowed a shorter period, substitute that period.

⁴Omit if appearance is not required to set out an address for service.

⁵Omit if appearance is required to set out an address for service.

FORM 5

Section 59

Service and Execution of Process Act 1992

NOTICE TO WITNESS

THIS NOTICE IS VERY IMPORTANT

PLEASE READ IT AND THE ATTACHED DOCUMENTS VERY CAREFULLY

IF YOU HAVE ANY TROUBLE UNDERSTANDING THEM YOU SHOULD GET LEGAL ADVICE AS SOON AS POSSIBLE

Attached to this notice is a subpoena¹ ("the attached subpoena") that is a subpoena for the purposes of the Service and Execution of Process Act 1992 issued by the [issuing tribunal].

Service of the attached subpoena outside [State or Territory of issue] is authorised by [court or person that gave leave to serve the subpoena] under that Act.

YOUR RIGHTS

You may be able to apply to the:

²[issuing tribunal] or to a court

³Supreme Court of [State or Territory of issue]

to set aside or obtain other relief in respect of the attached subpoena. If you would like to make an application you should get legal advice as soon as possible.

YOUR OBLIGATIONS

You must obey the attached subpoena if:

- (a) at the time of service or at some reasonable time before [date for compliance] you were offered or given:
 - (i) enough money to meet your reasonable expenses in obeying it, including any travel and accommodation costs; or
 - (ii) a combination of money, travel tickets and vouchers to meet those expenses; and
- (b) you received with the attached subpoena a copy of an order from a court in [State or Territory of issue] permitting the attached subpoena to be served outside [State or Territory of issue] and specifying the day before which it must be served.

If the attached subpoena only requires production of documents or things you may comply with the attached subpoena by delivering the documents or things at least 24 hours before [date for compliance] to the Secretary⁴ of the [issuing tribunal].

THIS IS MOST IMPORTANT

If you are subject to a restriction on your movements that you might breach if you comply with the attached subpoena, there are some additional actions you must take for your own protection.

The restriction on you could be imposed as:

- (a) conditions of bail; or
- (b) conditional release from prison; or
- (c) conditions of probation; or
- (d) home or periodic detention; or
- (e) a community service order, community based order, attendance order or work and development order; or

(f) some other restriction on your movements imposed by law or by order of a court.

If you are under a restriction of that kind, you must, as soon as practicable after you are released, inform your supervisor of the service of the attached subpoena. If you are on bail, and your bail is subject to a condition that you report periodically, your supervisor is the police officer or correction service officer that you report to. If you are not on bail, or if you are on bail but are not required to report periodically, your supervisor is the person who supervises your compliance with an order or restriction.

Also you must, as soon as practicable, inform:

the [issuing tribunal]

⁵and [person at whose request the subpoena was issued]; of the restriction to which you are subject.

You must take all reasonable steps to have the restriction varied so that you can comply with the attached subpoena.

If the restriction is not varied you must inform:

the [name of issuing tribunal]

⁵and [name of the person at whose request the subpoena was issued]; either:

- (a) of the steps you took to have the restriction or obligation varied, and that the restriction or obligation has not been varied; or
- (b) that the law does not permit that variation;

whichever is the case.

¹If the process to be served is not called a subpoena, substitute the name of the process for the word "subpoena".

²Omit if the subpoena is issued in the performance of an investigative function.

³Omit if the subpoena is issued in the performance of an adjudicative function.

⁴If the proper officer is not called the Secretary, substitute the correct title.

⁵Omit if the subpoena was not issued at the request of a person.

FORM 6

Section 69

Service and Execution of Process Act 1992

NOTICE TO WITNESS

THIS NOTICE IS VERY IMPORTANT

PLEASE READ IT AND THE ATTACHED DOCUMENT OR DOCUMENTS VERY CAREFULLY

IF YOU HAVE ANY TROUBLE UNDERSTANDING THEM YOU SHOULD ASK TO RECEIVE LEGAL ADVICE AS SOON AS POSSIBLE

Attached to this notice is a subpoena¹ ("the attached subpoena") that is a subpoena for the purposes of the Service and Execution of Process Act 1992 issued by the [issuing tribunal].

Service of the attached subpoena outside [State or Territory of issue] is authorised by that Act.

An order, called an order for production, based on the attached subpoena has been served on the person in charge of the institution or place in which you are held. Under this order you will be taken to [name and location of the tribunal before which compliance is required], unless you are released before [date for compliance]. A copy of the order for production is required to be served on you by the person in charge of the institution or place in which you are held.

YOUR RIGHTS

The person in charge of the institution or place in which you are held must provide any assistance that you reasonably require to:

- (a) apply to set aside or obtain other relief from the attached subpoena; or
- (b) apply to set aside or vary the order for production relating to the attached subpoena; or

(c) obtain legal advice.

You may be able to apply to the:

²[issuing tribunal] or to a court

³Supreme Court of [State or Territory of issue]

to set aside or obtain other relief in respect of the attached subpoena or the order for production. If you would like to make an application you should ask for assistance to obtain legal advice as soon as possible. If you make an application of this kind, you must, within 24 hours, give a copy to the person in charge of the institution or place in which you are held.

You will only be able to apply for the order for production to be varied or set aside if complying with it would have a substantial detrimental effect on your health or safety.

If the person in charge of the institution or place in which you are held makes an application to set aside or vary the order for production, you must be given a copy of that application within 24 hours of its being made.

YOUR OBLIGATIONS ON RELEASE FROM CUSTODY

If you are released from the institution or place where you are held before [date for compliance], you must obey the attached subpoena yourself if:

- (a) there is sufficient time between when you are released and [date for compliance] for it to be reasonably practicable for you to comply with the attached subpoena; and
- (b) a copy of the order for production was served on you with the attached subpoena; and
- (c) within a reasonable time after you were released you were offered or given:

- (i) enough money to meet your reasonable expenses in obeying it, including any travel and accommodation costs;
- (ii) a combination of money, travel tickets and vouchers to meet those expenses.

THIS IS MOST IMPORTANT

If, after your release, you are subject to a restriction on your movements that you might breach if you comply with the attached subpoena, there are some additional actions you must take for your own protection.

The restriction on you could be imposed as:

- (a) conditions of bail; or
- (b) conditional release from prison; or
- (c) conditions of probation; or
- (d) home or periodic detention; or
- (e) a community service, community based, attendance or work and development order; or
- (f) some other restriction on your movements imposed by law or by order of a court.

If you are under a restriction of that kind, you must, as soon as practicable after you are released, inform your supervisor of the service of the attached subpoena. If you are on bail, and your bail is subject to a condition that you report periodically, your supervisor is the police officer or correction service officer you report to. If you are not on bail, or if you are on bail but are not required to report periodically, your supervisor is the person who supervises your compliance with an order or restriction.

Also, you must, as soon as practicable, inform:

the [issuing tribunal]

⁴and [name of the person at whose request the subpoena was issued];

of the restriction to which you are subject.

You must take all reasonable steps to have the restriction varied so that you can comply with the attached subpoena.

If the restriction is not varied, you must inform:

the [issuing tribunal]

⁴and [person at whose request the subpoena was issued] either:

- (a) of the steps you took to have the restriction varied, and that the restriction has not been varied; or
- (b) that the law does not permit that variation;

whichever is the case.

¹If the process to be served is not called a subpoena, substitute the name of the process for the word "subpoena".

²Omit if the subpoena is issued in performance of an investigative function.

³Omit if the subpoena is issued in the performance of an adjudicative function.

⁴Omit if the subpoena was not issued at the request of a person.

FORM 7

Subsection 112 (3)

COMMONWEALTH OF AUSTRALIA

Service and Execution of Process Act 1992

WARRANT OF APPREHENSION

To all members of the Police Force of a State or Territory other than [State or Territory of issue]:

- (1) This warrant authorises the apprehension of [name] ("the offender").
- (2) On [date], the offender, then of [address of offender at time of sentencing court's order] was ordered by [sentencing Court] at [place] in [State or Territory] to pay [amount, including any costs or other amounts that the offender was ordered to pay] for the offence of [short description of the offence].
- (3) Of that amount, the sum of [amount] remains unpaid.
- (4) Because that sum remains unpaid, the offender is liable to be committed to prison in [State or Territory] for [period].
- (5) I have reason to believe that the offender may be in a State or Territory other than [State or Territory of order].
- (6) I have reason to believe that the offender may be found at [address or addresses].

You are authorised and commanded to find the offender in the State or Territory of whose police force you are a member and after finding the offender:

(a) to give the offender an opportunity of paying to you without delay the whole of the unpaid amount referred to in paragraph (3) above; and

(b) if the offender does not pay that unpaid amount to you without delay, to apprehend the offender and bring the offender before a Court of the State or Territory in which the offender is apprehended having jurisdiction in relation to the summary trial of all or any offences under the law of that State or Territory.

If the offender pays that unpaid amount to you without delay, you are to cause it to be sent to the Clerk¹ of the [sentencing court] at [place of conviction].

Issued by me at [place] on [date]

[Signature]

Clerk² of the [sentencing court]/Justice of the Peace

¹If the title of the proper officer to receive the payment is not "Clerk", substitute the correct title.

²If the title of the issuing officer is not "Clerk", substitute the correct title. Omit "Clerk (etc) or "Justice of the Peace" as appropriate.

FORM 8

Subsection 117 (2)

COMMONWEALTH OF AUSTRALIA

Service and Execution of Process Act 1992

WARRANT OF COMMITMENT

To all members of the Police Force of [State or Territory in which the person is to be committed to prison]

and to

the person in charge of the prison at [place] in [State or Territory]:

- (1) This warrant authorises the conveying to prison, and imprisonment, of [name] ("the offender").
- (2) On [date], the offender, then of [address of offender at time of sentencing court's order] was ordered by [sentencing court] at [place] in [State or Territory] to pay [amount, including any costs or other amounts that the offender was ordered to pay] for the offence of [short description of the offence].
- (3) The offender appeared or was brought before the [court that ordered the offender's committal to prison] at [place].
- (4) It appeared to that Court that, of the amount referred to in paragraph (2), the sum of [amount] remained unpaid.
- (5) Because that sum remained unpaid, the offender was committed to prison for [period] unless sooner released.
- ¹(6) By reason of payment made, or remission granted, the amount unpaid is now [amount] and the period for which the offender is to be committed to prison is now [period].

You, the members of that Police Force, are authorised and commanded to convey the offender to the prison at [place] in [State or Territory] and deliver the offender to the person in charge of that prison.

You, the person in charge of that prison, are authorised and commanded to receive the offender into your custody in that prison and hold the offender in that prison for [period] unless in the meantime you are required under section 121 of the Service and Execution of Process Act 1992 to release the offender.

Issued by me at [place] on [date]

Clerk² of the [court ordering the offender's committal to prison]/Justice of the Peace

¹Omit this paragraph if it does not apply.

²If the title of the issuing officer is not "Clerk", substitute the correct title. Omit either "Clerk (etc)" or "Justice of the Peace" as appropriate.

SCHEDULE 2

Regulation 5

PERSONS TAKEN TO BE IN CHARGE OF THE CORRECTION SERVICE OF A STATE OR TERRITORY

Column	Column 2	Column 3
l Item	State or Territory	Office
1	Australian Capital Territory	Director Corrective Services
2	New South Wales	Director Community Corrections
3	Norfolk Island	Gaoler
4	Northern Territory	Director Correctional Services
5	Queensland	Director-General Corrective Services
6	South Australia	Executive Director Department of Correctional Services
7	Tasmania	Director Corrective Services
8	Victoria	Director Correctional Services
9	Western Australia	Executive Director Department of Corrective Services

NOTE

 $1. \quad \text{Notified in the $Commonwealth of Australia Gazette} \ \textbf{on}$

1993. 7 April