

# **Service and Execution of Process Regulations (Amendment)**

## **1997 No. 250**

EXPLANATORY STATEMENT

STATUTORY RULES 1997 No. 250

ISSUED BY THE AUTHORITY OF THE ATTORNEY-GENERAL AND MINISTER FOR JUSTICE

*Service and Execution of Process Act 1992*

SERVICE AND EXECUTION OF PROCESS REGULATIONS (AMENDMENT)

Section 132 of the *Service and Execution of Process Act 1992* (the Act) provides, among other things, that the Governor-General may make regulations prescribing all matters required or permitted by the Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

These Regulations amend the Service and Execution of Process Regulations (the principal Regulations) consequent on amendment of the Act by items of Schedule 14 of the *Law and Justice Legislation Amendment Act 1997*, which will come into force on 18 October 1997.

The Regulations:

- \* prescribe certain States and the Australian Capital Territory, for the purposes of paragraph (b) or of paragraphs (b) and (c) of the definition of "enforcement office" in subsection 110(1) of the Act so that Sheriffs and Sheriff's officers and, in the case of the Australian Capital Territory, bailiffs may execute warrants to enforce interstate lower court fines (Regulation 3); and
- \* amend Forms 1, 7 and 8 of Schedule 1 to the principal Regulations in order to accord with the Act as amended (Regulation 4).

Section 4 of the *Acts Interpretation Act 1901* provides for exercise of a power to make an instrument, including regulations, before commencement of relevant provisions as if they had come into operation.

Details of the Regulations are as follows:

Regulation 1 provides that the Regulations commence on the same date as the provisions of the Act which provide for prescription of enforcement officers, the direction of warrants to those officers and vary the period of time in which a person who is served with initiating process under the Act may enter an appearance. Pursuant to subsection 2(3) of the *Law and Justice Legislation Amendment Act 1997*, the relevant provisions of the Act, which are set out at items 4, 5, and 9-16 of Schedule 14 of the *Law and Justice Legislation Amendment Act 1997*, will commence automatically on 18 October 1997.

Regulation 2 is formal.

Regulation 3 adds a new Regulation 6 to the principal Regulations. Subregulation 6(1) Prescribes South Wales, Victoria, South Australia and the Australian Capital Territory as States whose Sheriff and Sheriffs officers are "enforcement officers" for the purposes of paragraph 110(1)(b) of the Act. Subregulation 6(2) prescribes the Australian Capital Territory as a State in which a bailiff is an enforcement officer for the purposes of paragraph 110(1)(c) of the Act. By operation of subsection 5(1) of the Act, the Australian Capital Territory is regarded as a State for the purposes of the Act.

Under the Act, enforcement officers may execute warrants to enforce fines imposed by interstate courts of summary jurisdiction.

Regulation 4 amends Schedule 1 of the principal Regulations.

Paragraph 4.1 substitutes a new Footnote 6 to Form 1 to reflect the new provisions in sections 17(1) and 17(1A) of the Act relating to the time a person has to enter an appearance after the initiating process in civil proceedings is served.

Paragraph 4.2 amends Form 7 of Schedule 1. The amendment has the effect of directing the warrant of apprehension set out in Form 7 to all enforcement officers. This reflects paragraph 112(3)(b) of the Act as amended, which provides that a warrant of apprehension be addressed to all enforcement officers in the State or Territory in which it is believed the person to be apprehended may be.

Paragraph 4.3 amends Form 7 of Schedule 1 by inserting an explanatory note.

Paragraph 4.4 amends Form 8 of Schedule 1. The amendment has the effect of directing the warrant of commitment set out in Form 8 to all enforcement officers.

Paragraph 4.5 amends Form 8 of Schedule 1 by inserting an explanatory note.

Paragraph 4.6 amends Form 8 of Schedule 1. The amendment has the effect of addressing the command in the warrant of commitment to all enforcement officers of the State or Territory in which the person named in the warrant is to be committed to prison.