



# **Service and Execution of Process Act 1992**

**No. 172, 1992 as amended**

**Compilation start date:** 11 October 2013

**Includes amendments up to:** Act No. 143, 2010

Prepared by the Office of Parliamentary Counsel, Canberra

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## About this compilation

### **This compilation**

This is a compilation of the *Service and Execution of Process Act 1992* as in force on 11 October 2013. It includes any commenced amendment affecting the legislation to that date.

This compilation was prepared on 11 October 2013.

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of each amended provision.

### **Uncommenced amendments**

The effect of uncommenced amendments is not reflected in the text of the compiled law but the text of the amendments is included in the endnotes.

### **Application, saving and transitional provisions for provisions and amendments**

If the operation of a provision or amendment is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

### **Modifications**

If a provision of the compiled law is affected by a modification that is in force, details are included in the endnotes.

### **Provisions ceasing to have effect**

If a provision of the compiled law has expired or otherwise ceased to have effect in accordance with a provision of the law, details are included in the endnotes.

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# **An Act to provide for the service and execution, throughout the Commonwealth, of process of courts and tribunals, and for related purposes**

## **Part 1—Preliminary**

### **1 Short title**

This Act may be cited as the *Service and Execution of Process Act 1992*.

### **2 Commencement**

- (1) Section 1 and this section commence on the day on which this Act receives the Royal Assent.
- (2) Paragraph 7(2)(a) commences when section 10 of the *Territories Law Reform Act 1992* commences.
- (3) Paragraph 7(2)(b) commences when section 19 of the *Territories Law Reform Act 1992* commences.
- (4) Subject to subsection (5), the remaining provisions of this Act commence on a day to be fixed by Proclamation.
- (5) If those provisions do not commence under subsection (4) within the period of 4 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.

### **3 Interpretation**

- (1) In this Act, unless the contrary intention appears:

***adjudicative function***, in relation to a tribunal, means the function of determining the rights or liabilities of a person in a proceeding in which there are 2 or more parties, including the function of making a determination:

- (a) altering those rights or liabilities; or
- (b) relating to any matters of a kind mentioned in section 48.

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**appearance** means:

- (a) in Division 1 of Part 2—an appearance within the meaning of section 14; and
- (b) in Division 2 of Part 4—an appearance within the meaning of section 49.

**audio link** means facilities (for example, telephone facilities) that enable audio communication between persons in different places.

**audiovisual link** means facilities that enable audio and visual communication between persons in different places.

**Australia** includes the external Territories.

**authority** means a judge, magistrate, coroner or officer of a court appointed or holding office under a law of a State.

Note: Section 81A alters the meaning of this term for the purposes of Part 5.

**authority of issue**, in relation to a process, means the authority by which the process was issued.

**civil proceeding** means a proceeding other than a criminal proceeding.

**company** means a company incorporated, or taken to be incorporated, under the *Corporations Act 2001*.

**court**, except in Part 7, means a court of a State and includes an authority exercising the powers of such a court.

**court of issue**, in relation to a process, means the court by which the process was issued.

**criminal proceeding** means:

- (a) a prosecution for an offence; or
- (b) a procedure, other than a prosecution, that, under a law of a State, may be used:
  - (i) to determine liability for an offence; or
  - (ii) to impose a penalty for an offence; or
- (c) a proceeding that is related to or associated with a prosecution for an offence or a procedure mentioned in paragraph (b);

but does not include:

- (d) a claim for compensation; or
- (e) a proceeding under proceeds of crime legislation.

**cross-border laws** means the following:

- (a) the cross border laws of a participating jurisdiction, within the meaning of the *Cross-Border Justice Act 2008* of Western Australia;
- (b) the laws of a State, or provisions of a law of a State, that are prescribed by the regulations for the purposes of this paragraph.

**custodian**, in relation to a person in prison, means the officer in charge of the institution or place at which the person is detained.

**evidence that relates to matters of state** means evidence the adducing of which would:

- (a) prejudice the security, defence or international relations of Australia; or
- (b) damage relations between the Commonwealth and a State or relations between 2 or more States; or
- (c) prejudice the prevention, investigation or prosecution of offences; or
- (d) prejudice:
  - (i) the prevention or investigation of; or
  - (ii) the conduct of proceedings for recovery of civil penalties brought with respect to; other contraventions of the law; or
- (e) disclose, or enable a person to ascertain, the existence or identity of a confidential source of information in relation to the enforcement or administration of a law of the Commonwealth or of a State; or
- (f) prejudice the proper functioning of the government of the Commonwealth or of a State; or
- (g) be contrary to the public interest for any other reason that could form the basis for a claim in a judicial proceeding that the evidence should not be disclosed.

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**expenses**, in relation to a subpoena, an order under subsection 83(8) or an order under section 86 that is similar to an order under that paragraph, include the reasonable costs of:

- (a) necessary travel to and from, and accommodation at, the place where complying with the subpoena or order is required; and
- (b) finding, collating and producing a document or thing; for the purposes of complying with the subpoena or order.

**initiating process** means a process:

- (a) by which a proceeding is commenced; or
- (b) by reference to which a person becomes a party to a proceeding.

**investigative function**, in relation to a tribunal, means the function of conducting an inquiry other than an inquiry conducted in connection with the performance of an adjudicative function.

**judgment** means:

- (a) a judgment, decree or order given, entered or made by a court in a civil proceeding under which:
  - (i) a sum of money is made payable; or
  - (ii) a person is required to do or not to do an act or thing (other than the payment of money);not being an order made under proceeds of crime legislation (other than a pecuniary penalty order); or
- (b) an order made by a court in a criminal proceeding under which:
  - (i) a sum of money is made payable as a debt due to the Crown in right of the Commonwealth or a State; or
  - (ii) a person is required to do or not to do an act or thing (other than the payment of money); or
- (c) an order made by a court for the forfeiture of bail; or
- (d) an order that:
  - (i) is made by a tribunal in connection with the performance of an adjudicative function; and
  - (ii) is enforceable without an order of a court (whether or not the order made by the tribunal must be registered or filed in a court in order to be enforceable); or

- (e) an order, decree or judgment registered in a court under the *Foreign Judgments Act 1991* or the *Trans-Tasman Proceedings Act 2010*;

whether or not the judgment, decree or order is final, but does not include:

- (f) a judgment, decree or order of a court of a foreign country that has been registered in a court in Australia otherwise than under the *Foreign Judgments Act 1991* or the *Trans-Tasman Proceedings Act 2010*; or
- (g) an order, however described, imposing a fine; or
- (h) an order relating to the granting of probate or letters of administration or the administration of the estate of a deceased person; or
- (i) an order relating to the guardianship of a person who is incapable of managing his or her personal affairs; or
- (j) an order relating to the management of the property of a person who is incapable of managing that property; or
- (k) an order relating to the care, control or welfare of a child; or
- (l) an order that, if contravened by the person to whom it is directed, will render the person liable to conviction for an offence in the State in which the order was made.

**magistrate**, except in sections 57 and 67, includes:

- (a) a justice of the peace who has power to issue warrants under a law of the State in which the justice holds that office; and
- (b) a person who is appointed under section 120 of the *Magistrates' Court Act 1989* of Victoria as a bail justice or is a bail justice because of holding a prescribed office within the meaning of section 121 of that Act.

**order for production** means an order made under section 39, 67 or 79.

**person under restraint** means a person who:

- (a) is on bail; or
- (b) has been conditionally released from prison (whether on parole, licence, work release, home detention or otherwise) before the end of a term of imprisonment to which he or she has been sentenced; or
- (c) is subject to the supervision of another person under a probation order; or

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- (d) is serving a period of home detention or a term of imprisonment by way of periodic detention; or
- (e) is subject to:
  - (i) a community service order; or
  - (ii) a community based order; or
  - (iii) an attendance order; or
  - (iv) a work and development order; or
  - (v) any other restriction on his or her movements, imposed by law or by order of a court, that is inconsistent with the person complying with a subpoena served on the person under this Act;

but does not include a person who is in prison.

**place of issue**, in relation to a process, means the State in which the process was issued.

**prescribed** means prescribed by the regulations or by rules regulating the practice and procedure of a court.

**prison** includes a gaol, lock-up or other place of detention.

**proceeding**, except in Part 4, means a proceeding in a court or before an authority (other than a tribunal that is an authority) and includes:

- (a) an interlocutory or similar proceeding; and
- (b) a proceeding heard in chambers.

**proceeds of crime legislation** means:

- (a) the *Proceeds of Crime Act 1987*; or
- (b) the *Proceeds of Crime Act 2002*; or
- (c) a law of a State that is a corresponding law within the meaning of the *Proceeds of Crime Act 2002*.

**registered body** has the same meaning as it has in section 601CX of the *Corporations Act 2001*.

**State** includes the meaning given in section 5.

**subpoena**, except in Part 4, means a process that requires a person to do one or both of the following:

- (a) to give oral evidence before a court, authority or person;

(b) to produce a document or thing to a court, authority or person;

but does not include a process that requires a person to produce a document in connection with discovery and inspection of documents.

**tribunal** means:

(a) a person appointed by the Governor of a State, or by or under a law of a State; or

(b) a body established by or under a law of a State;

and authorised by or under a law of the State to take evidence on oath or affirmation, but does not include:

(c) a court; or

(d) a person exercising a power conferred on the person as a judge, magistrate, coroner or officer of a court.

Note: Section 81A alters the meaning of this term for the purposes of Part 5.

**warrant** (except in the definition of **authority** in section 81A) means a process issued by a court, authority or tribunal in accordance with:

(aa) this Act; or

(a) a law of a State; or

(b) the provisions of such a law as applied by subsection 68(1) of the *Judiciary Act 1903*;

that authorises the apprehension of a person.

Note: Section 81A alters the meaning of this term for the purposes of Part 5.

- (2) For the purposes of the definition of **tribunal** in subsection (1), a body is taken to be authorised by or under a law of a State to take evidence on oath or affirmation if a member of the body is authorised, by or under the law by or under which the body was established, to take evidence on oath or affirmation.
- (3) A reference in this Act to a subpoena issued by a court or tribunal is a reference to a subpoena issued by or out of the court or tribunal.
- (4) A reference in this Act to allowances and travelling expenses includes a reference to vouchers tendered in substitution for the whole or part of those allowances and travelling expenses.

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- (5) A reference in this Act to a law of the Commonwealth or a State is a reference to a law (whether written or unwritten) of or in force in the Commonwealth or the State, as the case may be.
- (6) A reference in this Act to a person who is in prison does not include a reference to a person who is serving a term of imprisonment by way of periodic detention.
- (7) For the purposes of this Act, if a Territory does not have its own police force, the police force performing the policing functions of the Territory is taken to be the police force of the Territory.

## 4 Copies

- (1) For the purposes of this Act, a document that is identical to a process, order or document in all material respects is taken to be a copy of the process, order or document.
- (2) A document that purports to be a copy of a process, order or document is presumed to be such a copy unless evidence is adduced that raises real doubt that it is such a copy.

## 5 Territories regarded as States

- (1) For the purposes of this Act, each Territory (other than a Territory that, under subsection 7(2), is taken to be part of a State or another Territory) is to be regarded as a State.
- (2) For the purposes of the application of this Act in relation to a Territory (other than the Australian Capital Territory), the reference to the Governor of a State in paragraph (a) of the definition of *tribunal* in subsection 3(1) is a reference to the Administrator of the Territory.

## 6 Act to bind Crown

This Act binds the Crown in all its capacities.

## 7 Territories

- (1) This Act extends to each external Territory.
- (2) For the purposes of this Act:



- (a) the Christmas Island Territory is taken to be part of Western Australia; and
- (b) the Territory of Cocos (Keeling) Islands is taken to be part of Western Australia; and
- (c) the Jervis Bay Territory, the Australian Antarctic Territory and the Territory of Heard Island and McDonald Islands are taken to be part of the Australian Capital Territory; and
- (d) the Territory of Ashmore and Cartier Islands is taken to be part of the Northern Territory; and
- (e) the Coral Sea Islands Territory is taken to be part of Norfolk Island.

## 8 Effect on the operation of other laws

- (1) This Act does not affect a decision of a court or tribunal to allow substituted service of a process.
- (2) This Act does not affect the operation of:
  - (a) the *Transfer of Prisoners Act 1983*, or a law of a State that, in an instrument published under section 5 of that Act, is declared to be a State transfer law of the State; or
  - (b) the *Removal of Prisoners (Territories) Act 1923*; or
  - (c) the *Removal of Prisoners (Australian Capital Territory) Act 1968* of the Australian Capital Territory; or
  - (d) the *Family Law Act 1975*, or the regulations or Rules of Court made under that Act.
- (3) This Act does not affect the operation of a law of a State so far as the law provides for service of a subpoena on a person:
  - (a) only after permission or leave has been given; or
  - (b) only if it is served not less than a specified number of days, being greater than 14 days, before the date for compliance with the subpoena.
- (3A) This Act:
  - (a) does not affect the operation of the cross-border laws; and
  - (b) does not apply to a person in relation to a particular matter if the cross-border laws would, apart from this Act, apply to the person in relation to the matter.

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- (4) Subject to this Act, this Act applies to the exclusion of a law of a State (the *relevant State*) with respect to:
- (a) the service or execution in another State of process of the relevant State that is process to which this Act applies; or
  - (b) the service or execution in the relevant State of process of another State that is process to which this Act applies; or
  - (c) the service or execution in another State of judgments of a court of the relevant State that are judgments to which this Act applies; or
  - (d) the service or execution in the relevant State of judgments of a court of another State that are judgments to which this Act applies; or
  - (e) the service or execution in another State of judgments to which this Act applies that are orders of a tribunal of the relevant State; or
  - (f) the service or execution in the relevant State of judgments to which this Act applies that are orders of a tribunal of another State.

**8A Application of the *Criminal Code***

Chapter 2 of the *Criminal Code* applies to all offences against this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

**9 Service on companies and registered bodies**

- (1) Service of a process, order or document under this Act on a company is to be effected by leaving it at, or by sending it by post to, the company's registered office.
- (2) Without limiting the operation of subsection (1), a process, order or document may be served on a company by delivering a copy of it personally to a director of the company who resides in Australia.
- (3) If a liquidator of a company has been appointed, a process, order or document may be served on the company by leaving it at, or by sending it by post to, the address of the liquidator's office in the most recent notice of that address lodged under the *Corporations Act 2001*.

- (4A) If an administrator of a company has been appointed, a process, order or document may be served on the company by leaving it at, or by sending it by post to, the address of the administrator in the most recent notice of that address lodged under the *Corporations Act 2001*.
- (5) Service of a process, order or document under this Act on a registered body is to be effected by leaving it at, or by sending it by post to, the body's registered office.
- (6) If the registered body is a registered foreign company, a process, order or document may be served by leaving it at, or by sending it by post to:
- (a) the address of a local agent of the foreign company notice of which has been lodged under the *Corporations Act 2001*; or
  - (b) if a notice or notices of a change or alteration in that address has or have been so lodged—the address shown in that last-mentioned notice or the later or latest of those last-mentioned notices.
- (7) Without limiting the operation of subsections (5) and (6), a process, order or document may be served on a registered body by delivering a copy of it personally to each of 2 directors of the registered body who reside in Australia.
- (8) If a liquidator of a registered body has been appointed, a process, order or document may be served on the registered body by leaving it at, or by sending it by post to, the last address of the office of the liquidator notice of which has been lodged under the *Corporations Act 2001*.
- (8A) Without limiting the operation of this section, if the process, order or document is not an initiating process or subpoena, service may be effected at the address for service of the company or registered body in the proceedings concerned in accordance with any applicable rules of court.
- (9) Subsections 109X(1) and (2) and section 601CX of the *Corporations Act 2001* do not apply to a process, order or document that may be served under this Act.

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- (10) For the purposes of this section:
- (a) the situation of a company's registered office is to be determined according to Part 2B.5 of the *Corporations Act 2001*; and
  - (b) the situation of a registered body's registered office is to be determined according to subsection 601CX(2) of the *Corporations Act 2001*.

- (11) In this section:

**director** has the same meaning as it has in the *Corporations Act 2001*.

**local agent** has the same meaning as it has in the *Corporations Act 2001*.

**registered foreign company** has the same meaning as it has in section 601CX of the *Corporations Act 2001*.

**registered office** has the same meaning as it has in the *Corporations Act 2001*.

## 10 Service on other bodies corporate

- (1) Service of a process, order or document under this Act may be served on a body corporate that is not a company or a registered body in accordance with this section.
- (2) If a law of the State in which service is to be effected provides that service may be effected on the body corporate at a particular place, service may be effected by:
  - (a) leaving the process, order or document at that place; or
  - (b) sending the process, order or document to that place by post.
- (3) If a law of the State in which service is to be effected does not provide that service may be effected on the body corporate at a particular place, service may be effected by:
  - (a) leaving the process, order or document at the head office, a registered office or the principal place of business of the body corporate; or
  - (b) by sending the process, order or document to that office or that place of business by post.

- (4) Without limiting the operation of this section, if the process, order or document is not an initiating process or subpoena, service may be effected at the address for service of the body corporate in the proceedings concerned in accordance with any applicable rules of court.

## **11 Proof of service**

- (1) Subject to subsections (2) and (8), service of a process, order or document under this Act is taken to have been proved only if the following are proved:
- (a) the identity of the person who served it;
  - (b) the time at which and the day on which it was served;
  - (c) the place at which it was served;
  - (d) the way in which it was served;
  - (e) if service was effected in a way that required the person served to be identified—the way in which the person served was identified.
- (2) Subsection (1) does not apply to service by post.
- (3) Service of a process, order or document under this Act by post on an individual is taken to have been proved only if the following are proved:
- (a) it was sent by pre-paid post to the person's last known address, or the person's address for service in the proceedings concerned;
  - (ab) it was addressed to the person, or, if it was sent to an address for service that is the office of a solicitor, to that solicitor;
  - (b) the day on which it was posted.
- (4) Service of a process, order or document under this Act by post on a company, a registered body or any other body corporate is taken to have been proved only if the following are proved:
- (a) it was sent by pre-paid post to an address for service on the company, registered body or other body corporate under section 9 or 10;
  - (ab) it was addressed to the company, registered body or other body corporate, or, if the address for service is the office of a solicitor, to that solicitor;
  - (b) the day on which it was posted.

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- (5) Service of a process, order or document under this Act may be proved:
  - (a) by affidavit sworn before:
    - (i) any justice of the peace having jurisdiction in the State or part of the State in which the service was effected; or
    - (ii) a Commissioner for Affidavits or Declarations; or
    - (iii) a notary public for that State or part of that State; or
    - (iv) a person who is a barrister or a solicitor, or both; or
  - (b) in any way in which the service might have been proved if it had been effected within the State in which the process, order or document was issued.
- (6) It is only necessary to call the deponent to give evidence of service if a court, authority or tribunal, or a person appearing before a court, authority or tribunal, so requires.
- (7) For the purposes of paragraph (1)(e), evidence of a statement that:
  - (a) is made by a person served; and
  - (b) concerns the person's identity or office;is admissible as evidence of the person's identity or office.
- (8) The court, authority or tribunal before which service on a person is to be proved may dispense with all or any of the requirements of subsection (1) if it is satisfied that personal service of the process, order or document in question was effected on the person.
- (9) For the purposes of this Act, a document that purports to have been signed by a person acknowledging that the person has received a specified postal article is admissible as evidence that the person received the article.
- (10) For the purposes of this Act, a document that purports to have been signed by a person acknowledging that a court, authority, tribunal or body for which the person is acting has received a specified postal article is admissible as evidence that the court, authority, tribunal or body received the article.
- (11) A process, order or document served by post under this Act is presumed to have been served on the fourth day after the day it was posted unless evidence is adduced that raises real doubt that the process, order or document was delivered by post to the person to whom it was addressed within 4 days after the day it was posted.

**12 Effect of service**

Subject to this Act, service of a process under this Act:

- (a) has the same effect; and
  - (b) may give rise to the same proceedings;
- as if the process had been served in the place of issue.

## **Part 2—Service of process in civil and criminal proceedings**

### **Division 1—Initiating process in civil proceedings**

#### **13 Application of Division**

This Division applies to civil proceedings in a court.

#### **14 Meaning of appearance**

A reference in this Division to an appearance includes a reference to a notice in writing:

- (a) that a person served with an initiating process gives to the court of issue; and
- (b) that contains a statement that the person:
  - (i) acknowledges service of the process; or
  - (ii) intends to make a submission regarding an issue arising in the proceeding in relation to which the process has been issued; or
  - (iii) intends to contest the court's jurisdiction to hear the proceeding; and
- (c) that:
  - (i) complies with any requirements with which the notice must comply under a law of the place of issue (including rules governing the procedure of the court); or
  - (ii) the court determines to be acceptable despite any non-compliance with such requirements.

#### **15 Initiating process may be served in any part of Australia**

- (1) An initiating process issued in a State may be served in another State.
- (2) Service on an individual must be effected in the same way as service of such an initiating process in the place of issue.



- (3) Service on a company or a registered body must be effected in accordance with section 9.
- (4) Service on any other body corporate must be effected in accordance with section 10.
- (5) Service on a body politic (for example, the Commonwealth or a State) must be effected in the same way in which process of the Supreme Court of the State in which service is to be effected may be served on the body politic.

## **16 Information to be provided**

Service is effective only if copies of such notices as are prescribed are attached to the process, or the copy of the process, served.

## **17 Time for appearance**

- (1) If the person served is required or permitted to enter an appearance under a law of the place of issue, the period after service within which the person may enter an appearance is:
  - (a) whichever is the longer of the following periods:
    - (i) 21 days;
    - (ii) the period in which the appearance would have been required or permitted to be entered if the process had been served in the place of issue; or
  - (b) such shorter period as the court of issue, on application, allows.
- (1A) If, under a provision (the *State provision*) of the law of the place of issue, the period in which an appearance is required or permitted to be entered in respect of process served in the place of issue varies according to the distance of the place of service from another place, the period referred to in subparagraph (1)(a)(ii) is to be calculated by reference to the longest distance mentioned in the State provision.
- (2) The matters that the court must take into account in determining an application to allow a shorter period include:
  - (a) urgency; and
  - (b) the places of residence or business of the parties; and

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- (c) whether a related or similar proceeding has been commenced against the person or another person.

**18 Appearance to state address for service**

- (1) An appearance entered after service of the initiating process must state an address within Australia as an address for service.
- (2) The appearance is effective only if it contains an address for service.
- (3) The court of issue must set aside the appearance if, on application by the party by whom or on whose behalf the process was served, the court is satisfied that the address for service contained in the appearance is false or misleading.
- (4) Subsection (3) does not limit the court's power to set aside an appearance.
- (5) For the purposes of this Act, if the appearance would not have been required to contain an address for service had the initiating process been served in the same State as the State of the court of issue:
  - (a) the appearance is taken to contain an address for service if it states an address of the person entering the appearance; and
  - (b) that address is taken to be the address for service.

**19 Security for costs**

- (1) The court may, on application by the person served, order that:
  - (a) the party by whom or on whose behalf the process was served give such security as the court specifies for the first-mentioned person's costs of and incidental to the proceeding; and
  - (b) the proceeding be stayed until the security is given.
- (2) Subsection (1) does not limit the court's power to make an order requiring security for costs.

**20 Stay of proceedings**

- (1) This section does not apply in relation to a proceeding in which the Supreme Court of a State is the court of issue.

- (2) The person served may apply to the court of issue for an order staying the proceeding.
- (3) The court may order that the proceeding be stayed if it is satisfied that a court of another State that has jurisdiction to determine all the matters in issue between the parties is the appropriate court to determine those matters.
- (4) The matters that the court is to take into account in determining whether that court of another State is the appropriate court for the proceeding include:
  - (a) the places of residence of the parties and of the witnesses likely to be called in the proceeding; and
  - (b) the place where the subject matter of the proceeding is situated; and
  - (c) the financial circumstances of the parties, so far as the court is aware of them; and
  - (d) any agreement between the parties about the court or place in which the proceeding should be instituted; and
  - (e) the law that would be most appropriate to apply in the proceeding; and
  - (f) whether a related or similar proceeding has been commenced against the person served or another person;but do not include the fact that the proceeding was commenced in the place of issue.
- (5) The court's order may be made subject to such conditions as the court considers just and appropriate in order to facilitate determination of the matter in issue without delay or undue expense.
- (6) The court may determine the application for an order without a hearing unless the applicant or a party objects.
- (7) For the purposes of determining the application, the court may hold a hearing by audio link or audiovisual link.
- (8) A person who is entitled to practise as a barrister, solicitor or both before a court in:
  - (a) the place of issue; or

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- (b) another State in which a person is participating in the hearing by audio link or audiovisual link;  
has a right of audience before the court at the hearing.
- (9) This section does not affect the court's power to stay a proceeding on a ground other than the ground mentioned in subsection (3).
- (10) This section does not affect the operation of:
  - (a) the *Jurisdiction of Courts (Cross-vesting) Act 1987*; or
  - (b) a corresponding law of a State.

**21 No restraint of proceedings**

If an initiating process has been served under this Division, a court of a State that is not the place of issue must not restrain a party in the proceeding from taking a step in the proceeding on the ground that the place of issue is not the appropriate forum for the proceeding.

## **Division 2—Initiating process in criminal proceedings**

### **22 Application of Division**

This Division applies to criminal proceedings.

### **23 Initiating process**

In this Division, a reference to initiating process includes a reference to a process, issued in relation to an offence, that first notifies a person that, in specified circumstances:

- (a) no further action will be taken in relation to the offence; or
- (b) liability for the offence may be determined without an appearance by the person before a court.

### **24 Initiating process may be served in any part of Australia**

- (1) An initiating process issued in a State may be served in another State.
- (2) Service on an individual must be effected in the same way as service of such an initiating process in the place of issue.
- (3) Service on a company or a registered body must be effected in accordance with section 9.
- (4) Service on any other body corporate must be effected in accordance with section 10.

### **25 Time for service**

- (1) If the person served is required or permitted to do an act specified or referred to in the process not later than a particular day, service is only effective if the period between service and that day is not less than:
  - (a) 21 days; or
  - (b) such shorter period as a court or authority, on application, allows.

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**Division 2** Initiating process in criminal proceedings

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- (2) The matters that the court or authority is to take into account in determining an application to allow a shorter period include:
- (a) urgency; and
  - (b) the place of residence or business of the person to be served; and
  - (c) whether a related or similar proceeding has been commenced against the person or another person.

- (3) In this section:

***court or authority*** means the court in which, or the authority before whom, the proceeding in relation to which an initiating process has been issued will or might be heard.

## **Division 3—Other process**

### **26 Application of Division**

This Division applies to criminal proceedings and civil proceedings in a court or before an authority.

### **27 Other process may be served in any part of Australia**

- (1) A process issued in a State, other than an initiating process or a subpoena, may be served in another State.
- (2) Service on an individual must be effected in the same way as service of such a process in the place of issue.
- (3) Service on a company or a registered body must be effected in accordance with section 9.
- (4) Service on any other body corporate must be effected in accordance with section 10.
- (5) Service on a body politic (for example, the Commonwealth or a State) must be effected in the same way in which process of the Supreme Court of the State in which service is to be effected may be served on the body politic.

## **Part 3—Service of subpoenas**

### **Division 1—Service of subpoenas generally**

#### **28 Application of Division**

This Division applies to a subpoena, issued by a court or an authority, that is addressed to a person:

- (a) who is not in prison; or
- (b) who is in prison but who need neither attend before the court or authority for the purpose of complying with the subpoena nor give oral evidence, by audio link or audiovisual link, to the court or authority.

#### **29 Subpoenas may be served in any part of Australia**

- (1) A subpoena issued in a State by a court or an authority may be served in another State.
- (2) Service must be effected in the same way as service of a subpoena in the place of issue.
- (3) Service is effective only if the subpoena contains an address for service of the person (if any) at whose request the subpoena was issued.

#### **30 Time for service**

- (1) Service of the subpoena is effective only if the period between service and the day on which the person to whom the subpoena is addressed is required to comply with the subpoena is not less than:
    - (a) 14 days; or
    - (b) such shorter period as the court of issue or the authority of issue, on application, allows.
  - (2) The court or authority may allow a shorter period only if it is satisfied that:
    - (a) the giving of the evidence likely to be given by the person to whom the subpoena is addressed, or the production of a document or thing specified in the subpoena, is necessary in the interests of justice; and
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- (b) there will be enough time for the person:
  - (i) to comply with the subpoena without hardship or serious inconvenience; and
  - (ii) to make an application under section 33.
- (3) In granting an application, the court or authority:
  - (a) is to impose a condition that the subpoena not be served after a specified day; and
  - (b) may impose other conditions.

### **31 Information to be provided**

Service of the subpoena is effective only if:

- (a) copies of such notices as are prescribed; and
- (b) in a case where an application under paragraph 30(1)(b) has been granted—a copy of the order granting the application; are attached to the subpoena, or the copy of the subpoena, served.

### **32 Expenses**

- (1) Service of the subpoena is effective only if, at the time of service or at some other reasonable time before the person to whom the subpoena is addressed is required to comply with it, allowances and travelling expenses sufficient to meet the person's reasonable expenses of complying with the subpoena are paid or tendered to the person.
- (2) Nothing in this section affects the operation of subsection 11AA(9) of the *Christmas Island Act 1958* or subsection 15AC(9) of the *Cocos (Keeling) Islands Act 1955*.

### **33 Application for relief from subpoena**

- (1) This section applies if the person served with the subpoena has a right under the law of the place of issue to apply to a court or authority to set aside or obtain other relief in respect of the subpoena.
- (2) Without limiting the ways in which, under the law of the place of issue, the application may be made, it may be made by transmitting the application to the court or authority by fax.

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- (3) Within 24 hours after making the application, the person must cause a copy of the application to be served on the person (if any) at whose request the subpoena was issued at the person's address for service.
- (4) For the purposes of calculating the 24 hour period, a day that is:
  - (a) a Saturday; or
  - (b) a Sunday; or
  - (c) a public holiday or bank holiday in the place in which the application is to be served;does not count.
- (5) Without limiting the ways in which, under the law of the place of issue, service may be effected, it may be effected by transmitting the copy to that address by fax.
- (6) The court or authority may determine the application without a hearing unless the applicant, or the person (if any) at whose request the subpoena was issued, objects.
- (7) For the purposes of determining the application, the court or authority may hold a hearing by audio link or audiovisual link.
- (8) A person who is entitled to practise as a barrister, solicitor or both before a court in:
  - (a) the place of issue of the subpoena; or
  - (b) another State in which a person is participating in the hearing by audio link or audiovisual link;has a right of audience before the court or authority at the hearing.

**34 Subpoenas not requiring attendance**

- (1) If the subpoena only requires production of a document or thing, it may be complied with by delivering the document or thing, not less than 24 hours prior to the date for compliance, to the Registrar or Clerk:
  - (a) of the court that issued the subpoena; or
  - (b) of the court of which the authority that issued the subpoena is a member or officer;as the case requires.

- (2) If the subpoena is complied with in that way, the person to whom the subpoena is addressed is not required to attend the court or authority on the date for compliance.

### **35 Entitlement to expenses**

- (1) A person served with the subpoena is entitled to payment of an amount equal to the reasonable expenses incurred by the person in complying with the subpoena.
- (2) The amount must be paid:
  - (a) if the subpoena was issued at the request of a person—by that person; or
  - (b) in any other case—by the State in which the subpoena was issued.
- (3) The court or authority that issued the subpoena may make orders to ensure that the person complying with the subpoena receives the exact amount of the person's reasonable expenses in so complying.
- (4) If the subpoena was issued by a court, the orders may be made by an officer of the court if the rules governing the procedure of the court so provide.
- (5) A reference in this section to the reasonable expenses incurred by a person in complying with a subpoena includes, in the case of a person under restraint, a reference to the reasonable expenses incurred by the person in complying with section 36 (whether or not the person was able to comply with the subpoena).
- (6) Nothing in this section affects the operation of subsection 11AA(9) of the *Christmas Island Act 1958* or subsection 15AC(9) of the *Cocos (Keeling) Islands Act 1955*.

### **36 Persons under restraint**

- (1) Service of a subpoena under this Division on a person under restraint does not relieve the person from a restriction or obligation imposed by or under a law of a State on the person because the person is a person under restraint.
  - (2) Subject to subsection (3), action may not be taken against a person under restraint in respect of failure to comply with a subpoena served on the person under this Division if:
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- (a) by leaving, or remaining outside, the State in which the person is under restraint, or a particular place in the State, in order to comply with the subpoena, the person might breach a restriction, or be unable to comply with an obligation, imposed on the person by or under the order or restriction to which the person is subject; and
  - (b) as soon as practicable after being served with the subpoena, the person:
    - (i) has informed the person's supervisor of the service of the subpoena; and
    - (ii) has informed the person (if any) at whose request the subpoena was issued, and the court of issue or authority of issue, of the restriction or obligation; and
  - (c) unless the law of the State does not permit the restriction or obligation to be varied so as to allow the person to comply with the subpoena—the person has taken such steps as are, in all the circumstances (including, in particular, the time left for compliance), reasonable to have the restriction or obligation varied so as to allow the person so to comply; and
  - (d) the person does not succeed in the steps (if any) taken by the person in order to have the restriction or obligation varied in time reasonably to allow compliance with the subpoena; and
  - (e) the person has, as soon as practicable, informed the person (if any) at whose request the subpoena was issued, and the court of issue or authority of issue:
    - (i) of any steps the person took in an attempt to have the restriction or obligation varied, and that the restriction or obligation has not been varied; or
    - (ii) that the law of the State does not permit such a variation;as the case requires.
- (3) Subsection (2) does not apply to action taken under this Act in relation to failure to comply with the subpoena.
- (4) The reference in subparagraph (2)(b)(i) to the supervisor of a person under restraint is a reference to:
- (a) if the person under restraint is on bail subject to a condition that he or she periodically reports to the police—any police officer at the police station at which he or she is required to report; or

- (b) if the person under restraint is on bail subject to a condition that he or she periodically reports to an officer of a correction service of a State—that officer; or
  - (c) in any other case—the person who, under a law of a State or the order of a court, supervises compliance with the order or restriction to which the person under restraint is subject.
- (5) A reference in subsection (2) to varying a restriction or obligation so as to allow a person to comply with a subpoena includes a reference to giving a consent or permission so as to allow the person so to comply.

### **37 Issue of warrants for non-compliance with subpoenas**

- (1) If a person (other than a person under restraint) served with a subpoena under this Division fails to comply with the subpoena, a court or authority of the place of issue of the subpoena may issue such warrant as it might have issued had the subpoena been served in its place of issue.
- (2) If a person under restraint served with a subpoena under this Division fails to comply with the subpoena, a court or authority that could have issued a warrant under subsection (1) if the person were not a person under restraint may issue a warrant to have the person apprehended and brought before a court, authority or person to give evidence, or produce a document or thing, or both.
- (3) If a person under restraint served with a subpoena under this Division fails to comply with the subpoena and also fails to comply with section 36, a court or authority of the place of issue of the subpoena may, as an alternative to issuing a warrant under subsection (2), issue such warrant as it might have issued had the subpoena been served in its place of issue.

## **Division 2—Service of subpoenas addressed to persons in prison**

### **38 Application of Division**

This Division applies to a subpoena, issued by a court or an authority, that is addressed to a person (in this Division called the *prisoner*) who:

- (a) is in prison in a State other than the place of issue; and
- (b) is required to:
  - (i) attend before a court, authority or person for the purpose of complying with the subpoena; or
  - (ii) give oral evidence, by audio link or audiovisual link, to a court, authority or person.

### **39 Order for production**

- (1) The court of issue or the authority of issue may order that the prisoner be produced at the time and place specified in the subpoena as the time and place at which compliance with the subpoena is required.
- (2) The court or authority may make an order only if it is satisfied that:
  - (a) the giving of the evidence that the prisoner is likely to give, or the production of a document or thing specified in the subpoena, is necessary in the interests of justice; and
  - (b) there will be enough time:
    - (i) for compliance with the order; and
    - (ii) to permit the making of applications under sections 43 and 44.
- (3) Before making an order the court or authority may:
  - (a) require the person (if any) at whose request the subpoena was issued to give such security as the court or authority specifies for ensuring compliance with an order under section 45; and
  - (b) stay the proceeding for the making of the order until the security is given.

- (4) An order:
  - (a) may be made subject to specified conditions; and
  - (b) must be addressed to the custodian of the prisoner.

#### **40 Service of order for production**

- (1) Subject to any conditions specified under paragraph 39(4)(a), the order for production and the subpoena, or a copy of both the order and the subpoena, must be served on the custodian of the prisoner, together with a copy, or a further copy, of both the order and the subpoena for service on the prisoner.
- (2) Service of the order for production and subpoena must be effected in the same way as service of a subpoena in the place of issue.
- (3) Service of the order for production and subpoena is effective only if the subpoena contains an address for service of the person (if any) at whose request the subpoena was issued.
- (4) The custodian, or, if more than one person is the custodian of the prisoner, any such custodian, must comply with the order for production even if that custodian:
  - (a) is not the person named in the order as the custodian of the prisoner; or
  - (b) is not the custodian who was served with the order for production and subpoena.
- (5) As soon as practicable after receiving the order for production and subpoena, the custodian must serve a copy of the order and a copy of the subpoena on the prisoner.
- (6) If:
  - (a) the copies are so served; and
  - (b) the prisoner is released from prison at a time sufficiently prior to the date for compliance with the subpoena to make compliance with the subpoena reasonably practicable;then:
  - (c) the prisoner:
    - (i) is taken to have been served with the subpoena under section 29; and
    - (ii) subject to paragraph 42(2)(b), is required to comply with the subpoena; and

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- (d) sections 35, 36 and 37 apply in relation to the subpoena as if it had been issued under Division 1; and
  - (e) section 36 so applies as if the subpoena had been served on the day of release.
- (7) The custodian need not comply with the order for production if the person to whom the subpoena is addressed is released from prison before the time for compliance.

**41 Information to be provided**

Service of the subpoena is effective only if copies of such notices as are prescribed are attached to the subpoena, or copy of the subpoena, served.

**42 Expenses**

- (1) Service of the order for production is effective only if, at the time of service or at some other reasonable time before the date for compliance with the order, there are paid or tendered to the custodian the allowances and travelling expenses that would have been required under section 32 to have been paid or tendered to the prisoner if he or she were not in prison.
- (2) If, before the time for compliance with the order for production, the person to whom the order relates is released from prison:
  - (a) the custodian, or a person acting on his or her behalf, must, as soon as practicable, pay or tender to the person the allowances and travelling expenses paid or tendered to the custodian under subsection (1); and
  - (b) the person is not required to comply with the subpoena to which the order relates unless the allowances and travelling expenses were paid or tendered to the person, by the custodian or another person, no later than a reasonable time after the time when the person ceased to be in prison.

**43 Application for relief from subpoena**

- (1) This section applies if the prisoner has a right under the law of the place of issue to apply to a court or authority to set aside or obtain other relief in respect of the subpoena.



- (2) Without limiting the ways in which, under the law of the place of issue, the application may be made, it may be made by transmitting the application to the court or authority by fax.
- (3) Within 24 hours after making the application, the prisoner must cause a copy of the application to be served on the person (if any) at whose request the subpoena was issued at the person's address for service.
- (4) For the purposes of calculating the 24 hour period, a day that is:
  - (a) a Saturday; or
  - (b) a Sunday; or
  - (c) a public holiday or bank holiday in the place in which the application is to be served;does not count.
- (5) Without limiting the ways in which, under the law of the place of issue, service may be effected, it may be effected by transmitting the copy to that address by fax.
- (6) The court or authority may determine the application without a hearing unless the prisoner, or the person (if any) at whose request the subpoena was issued, objects.
- (7) For the purposes of determining the application, the court or authority may hold a hearing by audio link or audiovisual link.
- (8) A person who is entitled to practise as a barrister, solicitor or both before a court in:
  - (a) the place of issue of the subpoena; or
  - (b) another State in which a person is participating in the hearing by audio link or audiovisual link;has a right of audience before the court or authority at the hearing.
- (9) If the court or authority sets aside or grants other relief in respect of the subpoena, it is to make any necessary consequential order in respect of the order for production.

#### **44 Application for relief from order for production**

- (1) Subject to subsection (2), the court or authority that made the order for production may, on application by the custodian or the prisoner, set aside or vary the order.

**Part 3** Service of subpoenas

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- (2) The prisoner may only make an application on the ground that compliance with the order would have a substantial detrimental effect on his or her health or safety.
  - (3) Without limiting the ways in which, under the law of the place of issue, the application may be made, it may be made by transmitting the application to the court or authority by fax.
  - (4) Within 24 hours after making the application, the applicant must cause copies of the application to be served:
    - (a) on the person (if any) at whose request the subpoena was issued at the person's address for service; and
    - (b) if the applicant is the custodian—on the prisoner; and
    - (c) if the applicant is the prisoner—on the custodian.
  - (5) For the purposes of calculating the 24 hour period, a day that is:
    - (a) a Saturday; or
    - (b) a Sunday; or
    - (c) a public holiday or bank holiday in the place in which the application is to be served;does not count.
  - (6) Without limiting the ways in which, under the law of the place of issue, service on the person under paragraph (4)(a) may be effected, it may be effected by transmitting the copy to that address by fax.
  - (7) Without limiting the matters that the court or authority may take into account in determining the application, the court or authority is to take into account:
    - (a) public safety; and
    - (b) the prisoner's health and safety.
  - (8) The court or authority may determine the application without a hearing unless the custodian, the prisoner, or the person (if any) at whose request the subpoena was issued, objects.
  - (9) For the purposes of determining the application, the court or authority may hold a hearing by audio link or audiovisual link.
  - (10) A person who is entitled to practise as a barrister, solicitor or both before a court in:
    - (a) the place of issue of the subpoena; or
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- (b) another State in which a person is participating in the hearing by audio link or audiovisual link;  
has a right of audience before the court or authority at the hearing.
- (11) If the court or authority sets aside or varies the order for production, it is to make any necessary consequential order in respect of the subpoena.

#### **45 Entitlement to expenses**

- (1) A person who has incurred reasonable expenses as a result of compliance (by that person or another person) with the order for production is entitled to payment of an amount equal to those expenses.
- (2) The amount must be paid:
  - (a) if the subpoena was issued at the request of a person—by that person; or
  - (b) in any other case—by the State in which the subpoena was issued.
- (3) The court or authority that issued the order for production may make orders to ensure that the person who incurred those expenses receives the exact amount of those expenses.
- (4) If the subpoena was issued by a court, the orders may be made by an officer of the court if the rules governing the procedure of the court so provide.
- (5) Nothing in this section affects the operation of subsection 11AA(9) of the *Christmas Island Act 1958* or subsection 15AC(9) of the *Cocos (Keeling) Islands Act 1955*.

#### **46 Custody of prisoner etc.**

- (1) The custodian of the prisoner, and any escort of the prisoner arranged by the custodian, have:
  - (a) custody of the prisoner; and
  - (b) while the prisoner is outside the State in which he or she was in prison—the same powers of detention and disposition of the prisoner as the custodian has in relation to the prisoner in that State; and

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**Division 2** Service of subpoenas addressed to persons in prison

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- (c) power to do such things as are necessary to ensure that the prisoner is:
    - (i) produced in compliance with the order; and
    - (ii) afterwards returned to the prison in which the prisoner was in prison.
- (2) Without limiting subsection (1), the custodian or the escort may, in any State, require that a person in charge of a prison in the State:
  - (a) receive the prisoner and keep the prisoner in custody for such time as the custodian or the escort requires; and
  - (b) surrender custody of the prisoner to the custodian or the escort at the time and in the way that the custodian or the escort requires.
- (3) The person so required must comply with such requirements as are reasonable.
- (4) Subject to any conditions specified in writing by the custodian as conditions to be complied with while the prisoner is outside the State in which he or she was in prison, the law in force in the State that relates to the liability of a person who escapes from lawful custody applies to the prisoner while the prisoner is outside the State for the purposes of compliance with the order for production.
- (5) Subsection (4) does not apply to lawful custody in respect of an offence against a law of the Commonwealth.
- (6) A person who is serving a sentence of imprisonment in a State is taken to be serving that sentence while the person is outside the State for the purposes of compliance with the order for production so long as the person remains in the custody of the custodian or escort, or in custody arranged by the custodian or escort.

## **Part 4—Service of process of tribunals**

### **Division 1—Preliminary**

#### **47 Interpretation**

In this Part:

*proceeding* means a proceeding in a tribunal in connection with the performance of an adjudicative function by the tribunal.

*subpoena* means a process that requires a person to do one or both of the following:

- (a) to give oral evidence before a tribunal;
- (b) to produce a document or thing to a tribunal;

but does not include a process that requires a person to produce a document in connection with discovery and inspection of documents.

*tribunal of issue*, in relation to a process, means the tribunal by which the process was issued.

## **Division 2—Service of initiating and other process related to adjudicative functions**

### **48 Application of Division**

This Division applies with respect to a proceeding that concerns:

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

### **49 Meaning of appearance**

A reference in this Division to an appearance includes a reference to a notice in writing:

- (a) that a person served with an initiating process gives to the tribunal of issue; and
- (b) that contains a statement that the person:
  - (i) acknowledges service of the process; or
  - (ii) intends to make a submission regarding an issue arising in the proceeding in relation to which the process has been issued; or
  - (iii) intends to contest the tribunal's jurisdiction to hear the proceeding; and
- (c) that:
  - (i) complies with any requirements with which the notice must comply under a law of the place of issue (including rules governing the procedure of the tribunal); or
  - (ii) the tribunal determines to be acceptable despite any non-compliance with such requirements.

### **50 Initiating process may be served in any part of Australia**

- (1) An initiating process issued in a State may be served in another State.
- (2) Service on an individual must be effected in the same way as service of such an initiating process in the place of issue.
- (3) Service on a company or a registered body must be effected in accordance with section 9.
- (4) Service on any other body corporate must be effected in accordance with section 10.
- (5) Service on a body politic (for example, the Commonwealth or a State) must be effected in the same way in which process of the Supreme Court of the State in which service is to be effected may be served on the body politic.

### **51 Information to be provided**

Service is effective only if copies of such notices as are prescribed are attached to the process, or the copy of the process, served.

### **52 Time for appearance**

- (1) If the person served is required or permitted to enter an appearance under a law of the place of issue, the period after service within which that person may enter an appearance is:
  - (a) 21 days; or
  - (b) such shorter period as the tribunal of issue, on application, allows.
- (2) If the law of the place of issue does not provide for a procedure by which the person served may enter an appearance, a step is not to be taken in the proceeding before the end of a period of 21 days, or such shorter period as the tribunal, on application, allows, after service of the process.
- (3) The matters that the tribunal must take into account in determining an application to allow a shorter period include:
  - (a) urgency; and
  - (b) the places of residence or business of the parties; and

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- (c) whether a related or similar proceeding has been commenced against the person or another person.

**53 Appearance to state address for service**

- (1) An appearance entered after service of the initiating process must state an address within Australia as an address for service.
- (2) The appearance is effective only if it contains an address for service.
- (3) The tribunal must set aside the appearance if, on application by the party by whom or on whose behalf the process was served, the tribunal is satisfied that the address for service contained in the appearance is false or misleading.
- (4) Subsection (3) does not limit the tribunal's power to set aside an appearance.
- (5) For the purposes of this Act, if the appearance would not have been required to contain an address for service had the initiating process been served in the same State as the State in which the tribunal is established:
  - (a) the appearance is taken to contain an address for service if it states an address of the person entering the appearance; and
  - (b) that address is taken to be the address for service.

**54 Security for costs**

- (1) If the tribunal has power, under a law of the place of issue, to make an order for costs in the proceeding, the tribunal may, on application by the person served, order that:
  - (a) the party by whom or on whose behalf the process was served give such security as the tribunal specifies for the first-mentioned person's costs of and incidental to the proceeding; and
  - (b) the proceeding be stayed until the security is given.
- (2) If the tribunal's power to make an order for costs in a proceeding is limited as to amount, an order under paragraph (1)(a) that requires security to be given in excess of that amount is ineffective to the extent of the excess.



- (3) Subsection (1) does not limit the tribunal's power to make an order requiring security for costs.

**55 Other process may be served in any part of Australia**

- (1) A process issued in a State, other than an initiating process or a subpoena, may be served in another State.
- (2) Service on an individual must be effected in the same way as service of such a process in the place of issue.
- (3) Service on a company or a registered body must be effected in accordance with section 9.
- (4) Service on any other body corporate must be effected in accordance with section 10.
- (5) Service on a body politic (for example, the Commonwealth or a State) must be effected in the same way in which process of the Supreme Court of the State in which service is to be effected may be served on the body politic.

### **Division 3—Service of subpoenas in the performance of adjudicative functions**

#### **Subdivision A—Service of subpoenas generally**

##### **56 Application of Subdivision**

This Subdivision applies to a subpoena that:

- (a) has been issued by a tribunal in connection with the performance of an adjudicative function by the tribunal; and
- (b) is addressed to a person:
  - (i) who is not in prison; or
  - (ii) who is in prison but who need neither attend before the tribunal for the purpose of complying with the subpoena nor give oral evidence, by audio link or audiovisual link, to the tribunal.

##### **57 Order for leave**

- (1) A court of a State in which a subpoena is issued may give leave to serve the subpoena outside the State.
- (2) The court may give leave only if it is satisfied that:
  - (a) the giving of the evidence likely to be given by the person to whom the subpoena is addressed, or the production of a document or thing specified in the subpoena, is necessary in the interests of justice; and
  - (b) there will be enough time for the person:
    - (i) to comply with the subpoena without hardship or serious inconvenience; and
    - (ii) to make an application under section 61.
- (3) In granting an application under this section, the court:
  - (a) is to impose a condition that the subpoena not be served after a specified day; and
  - (b) may impose other conditions.

(4) In this section:

**court** means:

- (a) in any case—a person who:
  - (i) is a magistrate or judge; and
  - (ii) is a member of, or constitutes, the tribunal that issued the subpoena; or
- (b) if the subject matter of the proceeding to which the subpoena relates has a monetary value or concerns a claim for payment of money:
  - (i) the court that would have jurisdiction to the extent of that monetary value or the amount claimed; or
  - (ii) where there is more than one such court—the court of more limited jurisdiction; or
- (c) if the subject matter of the proceeding does not have a monetary value and does not concern a claim for payment of money—a judge of any court, or a magistrate, of the place of issue of the subpoena.

### **58 Subpoenas may be served in any part of Australia**

- (1) If such leave is given, a subpoena issued in a State by a tribunal may be served in another State.
- (2) Service must be effected in the same way as service of a subpoena in the place of issue.
- (3) Service is effective only if the subpoena contains an address for service of the person (if any) at whose request the subpoena was issued.

### **59 Information to be provided**

Service of the subpoena is effective only if:

- (a) copies of such notices as are prescribed; and
  - (b) a copy of the order giving leave to serve the subpoena;
- are attached to the subpoena, or the copy of the subpoena, served.

### **60 Expenses**

Service of the subpoena is effective only if, at the time of service or at some other reasonable time before the person to whom the

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subpoena is addressed is required to comply with it, allowances and travelling expenses sufficient to meet the person's reasonable expenses of complying with the subpoena are paid or tendered to the person.

**61 Application for relief from subpoena**

- (1) This section applies if a person has a right under the law of the place of issue to apply to the tribunal or a court to set aside or obtain other relief in respect of the subpoena.
- (2) Without limiting the ways in which, under the law of the place of issue, the application may be made, it may be made by transmitting the application to the tribunal or court by fax.
- (3) Within 24 hours after making the application, the person must cause a copy of the application to be served on the person (if any) at whose request the subpoena was issued at the person's address for service.
- (4) For the purposes of calculating the 24 hour period, a day that is:
  - (a) a Saturday; or
  - (b) a Sunday; or
  - (c) a public holiday or bank holiday in the place in which the application is to be served;does not count.
- (5) Without limiting the ways in which, under the law of the place of issue, service may be effected, it may be effected by transmitting the copy to that address by fax.
- (6) The tribunal or court may determine the application without a hearing unless the applicant, or the person (if any) at whose request the subpoena was issued, objects.
- (7) For the purposes of determining the application, the tribunal or court may hold a hearing by audio link or audiovisual link.
- (8) A person who is entitled to practise as a barrister, solicitor or both before a court in:
  - (a) the place of issue of the subpoena; or

- (b) another State in which a person is participating in the hearing by audio link or audiovisual link;  
has a right of audience before the tribunal or court at the hearing.

## **62 Subpoenas not requiring attendance**

- (1) If the subpoena only requires production of a document or thing, it may be complied with by delivering the document or thing, not less than 24 hours before the date for compliance, to the person holding the office (however described) of secretary of the tribunal.
- (2) If the subpoena is complied with in that way, the person to whom the subpoena is addressed is not required to attend the tribunal on the date for compliance.

## **63 Entitlement to expenses**

- (1) A person served with the subpoena is entitled to payment of an amount equal to the reasonable expenses incurred by the person in complying with the subpoena.
- (2) The amount must be paid:
  - (a) if a law of the place of issue requires another person to pay or tender the person's expenses—by that other person; or
  - (b) if a law of the place of issue empowers the tribunal to order that another person pay or tender the expenses and the tribunal so orders—by that other person; or
  - (c) in any other case:
    - (i) if the subpoena was issued at the request of a party to the proceeding to which the subpoena relates—by that party; or
    - (ii) if it was issued by the tribunal of its own motion—by the State in which the subpoena was issued.
- (3) If the tribunal is empowered to determine the amount that a person is to be paid for expenses and so determines, the amount of the expenses reasonably incurred by the person is taken to be the amount so determined.
- (4) Subject to subsection (5), if subsection (3) does not apply, the amount of the expenses reasonably incurred by a person (other than the reasonable expenses (if any) incurred by the person in

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complying with section 64) is taken to be the amount that the person would be entitled to be paid if the subpoena had been issued by the Supreme Court of the place of issue in connection with proceedings before that court.

- (5) If a law of the place of issue fixes the amount to be paid to the person for expenses, that amount is taken to be the amount of the expenses reasonably incurred (other than the reasonable expenses (if any) incurred by the person in complying with section 64).
- (6) A reference in this section to the reasonable expenses incurred by a person in complying with a subpoena includes, in the case of a person under restraint, a reference to the reasonable expenses incurred by the person in complying with section 64 (whether or not the person was able to comply with the subpoena).

**64 Persons under restraint**

- (1) Service of a subpoena under this Subdivision on a person under restraint does not relieve the person of an obligation imposed by or under a law of a State on the person because the person is a person under restraint.
- (2) Subject to subsection (3), action may not be taken against a person under restraint in respect of failure to comply with a subpoena served on the person under this Subdivision if:
  - (a) by leaving, or remaining outside, the State in which the person is under restraint, or a particular place in the State, in order to comply with the subpoena, the person might breach a restriction, or be unable to comply with an obligation, imposed on the person by or under the order or restriction to which the person is subject; and
  - (b) as soon as practicable after being served with the subpoena, the person:
    - (i) has informed the person's supervisor of the service of the subpoena; and
    - (ii) has informed the person (if any) at whose request the subpoena was issued, and the tribunal of issue, of the restriction or obligation; and
  - (c) unless the law of the State does not permit the restriction or obligation to be varied so as to allow the person to comply with the subpoena—the person has taken such steps as are, in

- all the circumstances (including, in particular, the time left for compliance), reasonable to have the restriction or obligation varied so as to allow the person so to comply; and
- (d) the person does not succeed in the steps (if any) taken by the person in order to have the restriction or obligation varied in time reasonably to allow compliance with the subpoena; and
  - (e) the person has, as soon as practicable, informed the person (if any) at whose request the subpoena was issued, and the tribunal of issue:
    - (i) of any steps the person took in an attempt to have the restriction or obligation varied, and that the restriction or obligation has not been varied; or
    - (ii) that the law of the State does not permit such a variation;as the case requires.
- (3) Subsection (2) does not apply to action taken under this Act in relation to failure to comply with the subpoena.
  - (4) The reference in subparagraph (2)(b)(i) to the supervisor of a person under restraint is a reference to:
    - (a) if the person under restraint is on bail subject to a condition that he or she periodically reports to the police—any police officer at the police station at which he or she is required to report; or
    - (b) if the person under restraint is on bail subject to a condition that he or she periodically reports to an officer of a correction service of a State—that officer; or
    - (c) in any other case—the person who, under a law of a State or the order of a court, supervises compliance with the order or restriction to which the person under restraint is subject.
  - (5) A reference in subsection (2) to varying a restriction or obligation so as to allow a person to comply with a subpoena includes a reference to giving a consent or permission so as to allow the person so to comply.

## **65 Issue of warrants for non-compliance with subpoenas**

- (1) If a person (other than a person under restraint) served with a subpoena under this Subdivision fails to comply with the subpoena, a tribunal of or magistrate in the place of issue of the subpoena

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may issue such warrant as the tribunal or magistrate might have issued had the subpoena been served in its place of issue.

- (2) If a person under restraint served with a subpoena under this Subdivision fails to comply with the subpoena, a tribunal that or magistrate who could have issued a warrant under subsection (1) if the person were not a person under restraint may issue a warrant to have the person apprehended and brought before the tribunal that issued the subpoena to give evidence, or produce a document or thing, or both.
- (3) If a person under restraint served with a subpoena under this Subdivision fails to comply with the subpoena and also fails to comply with section 64, a tribunal or magistrate in the place of issue of the subpoena may, as an alternative to issuing a warrant under subsection (2), issue such warrant as the tribunal or magistrate might have issued had the subpoena been served in its place of issue.

**Subdivision B—Service of subpoenas addressed to persons in prison**

**66 Application of Subdivision**

This Subdivision applies to a subpoena that:

- (a) has been issued by a tribunal in connection with the performance of an adjudicative function by the tribunal; and
- (b) is addressed to a person (in this Subdivision called the *prisoner*) who is in prison in a State other than the place of issue and who is required to:
  - (i) attend before the tribunal for the purpose of complying with the subpoena; or
  - (ii) give oral evidence, by audio link or audiovisual link, to the tribunal.

**67 Order for production**

- (1) A court of a State in which a subpoena is issued may order that the prisoner be produced at the time and place specified in the subpoena as the time and place at which compliance with the subpoena is required.



- (2) The court may make an order only if it is satisfied that:
- (a) the giving of the evidence that the prisoner is likely to give, or the production of a document or thing specified in the subpoena, is necessary in the interests of justice; and
  - (b) there will be enough time:
    - (i) for compliance with the order; and
    - (ii) to permit the making of applications under sections 71 and 72.
- (3) Before making an order the court may:
- (a) require the person (if any) at whose request the subpoena was issued to give such security as the court specifies for ensuring compliance with any obligations under section 73; and
  - (b) stay the proceeding for the making of the order until the security is given.
- (4) An order:
- (a) may be made subject to specified conditions; and
  - (b) must be addressed to the custodian of the prisoner.
- (5) In this section:
- court*** means:
- (a) in any case—a person who:
    - (i) is a magistrate or a judge; and
    - (ii) is a member of, or constitutes, the tribunal that issued the subpoena; or
  - (b) if the subject matter of the proceeding to which the subpoena relates has a monetary value or concerns a claim for payment of money:
    - (i) the court that would have jurisdiction to the extent of that monetary value or the amount claimed; or
    - (ii) where there is more than one such court—the court of more limited jurisdiction; or
  - (c) if the subject matter of the proceeding does not have a monetary value and does not concern a claim for payment of money—a judge of any court, or a magistrate, of the place of issue of the subpoena.

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**68 Service of order for production**

- (1) Subject to any conditions specified under paragraph 67(4)(a), the order for production and the subpoena, or a copy of both the order and the subpoena, must be served on the custodian of the prisoner, together with a copy, or a further copy, of both the order and the subpoena for service on the prisoner.
- (2) Service of the order for production and subpoena must be effected in the same way as service of a subpoena in the place of issue.
- (3) Service of the order for production and subpoena is effective only if the subpoena contains an address for service of the person (if any) at whose request the subpoena was issued.
- (4) The custodian, or, if more than one person is the custodian of the prisoner, any such custodian, must comply with the order for production even if that custodian:
  - (a) is not the person named in the order as the custodian of the prisoner; or
  - (b) is not the custodian who was served with the order for production and subpoena.
- (5) As soon as practicable after receiving the order for production and subpoena, the custodian must serve a copy of the order and a copy of the subpoena on the prisoner.
- (6) If:
  - (a) the copies are so served; and
  - (b) the prisoner is released from prison at a time sufficiently prior to the date for compliance with the subpoena to make compliance with the subpoena reasonably practicable;then:
  - (c) the prisoner:
    - (i) is taken to have been served with the subpoena under section 58; and
    - (ii) subject to paragraph 70(2)(b), is required to comply with the subpoena; and
  - (d) sections 63, 64 and 65 apply in relation to the subpoena as if it had been issued under Subdivision A of this Division; and
  - (e) section 64 so applies as if the subpoena had been served on the day of release.

- (7) The custodian need not comply with the order for production if the person to whom the subpoena is addressed is released from prison before the time for compliance.

### **69 Information to be provided**

Service of the subpoena is effective only if copies of such notices as are prescribed are attached to the subpoena, or copy of the subpoena, served.

### **70 Expenses**

- (1) Service of the order for production is effective only if, at the time of service or at some other reasonable time before the date for compliance with the order, there are paid or tendered to the custodian the allowances and travelling expenses that would have been required under section 60 to have been paid or tendered to the prisoner if he or she were not in prison.
- (2) If, before the time for compliance with the order for production, the person to whom the order relates is released from prison:
- (a) the custodian, or a person acting on his or her behalf, must, as soon as practicable, pay or tender to the person the allowances and travelling expenses paid or tendered to the custodian under subsection (1); and
  - (b) the person is not required to comply with the subpoena to which the order relates unless the allowances and travelling expenses were paid or tendered to the person, by the custodian or another person, no later than a reasonable time after the time when the person ceased to be in prison.

### **71 Application for relief from subpoena**

- (1) This section applies if the prisoner has a right under the law of the place of issue to apply to the tribunal or a court to set aside or obtain other relief in respect of the subpoena.
- (2) Without limiting the ways in which, under the law of the place of issue, the application may be made, it may be made by transmitting the application to the tribunal or court by fax.
- (3) Within 24 hours after making the application, the prisoner must cause a copy of the application to be served on the person (if any)

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at whose request the subpoena was issued at the person's address for service.

- (4) For the purposes of calculating the 24 hour period, a day that is:
  - (a) a Saturday; or
  - (b) a Sunday; or
  - (c) a public holiday or bank holiday in the place in which the application is to be served;does not count.
- (5) Without limiting the ways in which, under the law of the place of issue, service may be effected, it may be effected by transmitting the copy to that address by fax.
- (6) The tribunal or court may determine the application without a hearing unless the prisoner, or the person (if any) at whose request the subpoena was issued, objects.
- (7) For the purposes of determining the application, the tribunal or court may hold a hearing by audio link or audiovisual link.
- (8) A person who is entitled to practise as a barrister, solicitor or both before a court in:
  - (a) the place of issue of the subpoena; or
  - (b) another State in which a person is participating in the hearing by audio link or audiovisual link;has a right of audience before the tribunal or court at the hearing.
- (9) If the tribunal or court sets aside or grants other relief in respect of the subpoena, it is to make any necessary consequential order in respect of the order for production.

**72 Application for relief from order for production**

- (1) Subject to subsection (2), a court may, on the application of the custodian or the prisoner, set aside or vary the order for production.
- (2) The prisoner may only make an application on the ground that compliance with the order would have a substantial detrimental effect on his or her health or safety.
- (3) The application must be made to a court that could have made the order.

- (4) Without limiting the ways in which, under the law of the place of issue, the application may be made, it may be made by transmitting the application to the court by fax.
- (5) Within 24 hours after making the application, the applicant must cause copies of the application to be served:
  - (a) on the person (if any) at whose request the subpoena was issued at the person's address for service; and
  - (b) if the applicant is the custodian—on the prisoner; and
  - (c) if the applicant is the prisoner—on the custodian.
- (6) For the purposes of calculating the 24 hour period, a day that is:
  - (a) a Saturday; or
  - (b) a Sunday; or
  - (c) a public holiday or bank holiday in the place in which the application is to be served;does not count.
- (7) Without limiting the ways in which, under the law of the place of issue, service on the person under paragraph (5)(a) may be effected, it may be effected by transmitting the copy to that address by fax.
- (8) Without limiting the matters that the court may take into account in determining the application, the court is to take into account:
  - (a) public safety; and
  - (b) the prisoner's health and safety.
- (9) The court may determine the application without a hearing unless the custodian, the prisoner, or the person (if any) at whose request the subpoena was issued, objects.
- (10) For the purposes of determining the application, the court may hold a hearing by audio link or audiovisual link.
- (11) A person who is entitled to practise as a barrister, solicitor or both before a court in:
  - (a) the place of issue of the subpoena; or
  - (b) another State in which a person is participating in the hearing by audio link or audiovisual link;has a right of audience before the court at the hearing.

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- (12) If the court sets aside or varies the order for production, it is to make any necessary consequential order in respect of the subpoena.
- (13) In this section:
  - court* has the same meaning as in section 67.

**73 Entitlement to expenses**

- (1) A person who has incurred reasonable expenses as a result of compliance (by that person or another person) with the order for production is entitled to be paid an amount equal to those expenses.
- (2) The amount must be paid:
  - (a) if the court that made the order for production orders a person to pay the amount—by that person; or
  - (b) in any other case:
    - (i) if the subpoena was issued at the request of a party to the proceeding to which the subpoena relates—by that party; or
    - (ii) if it was issued by the tribunal of its own motion—by the State in which the subpoena was issued.

**74 Custody of prisoner etc.**

- (1) The custodian of the prisoner, and any escort of the prisoner arranged by the custodian, have:
  - (a) custody of the prisoner; and
  - (b) while the prisoner is outside the State in which he or she was in prison—the same powers of detention and disposition of the prisoner as the custodian has in relation to the prisoner in that State; and
  - (c) power to do such things as are necessary to ensure that the prisoner is:
    - (i) produced in compliance with the order; and
    - (ii) afterwards returned to the prison in which the prisoner was in prison.
- (2) Without limiting subsection (1), the custodian or the escort may, in any State, require that a person in charge of a prison in the State:
  - (a) receive the prisoner and keep the prisoner in custody for such time as the custodian or the escort requires; and

- (b) surrender custody of the prisoner to the custodian or the escort at the time and in the way that the custodian or the escort requires.
- (3) The person so required must comply with such requirements as are reasonable.
- (4) Subject to any conditions specified in writing by the custodian as conditions to be complied with while the prisoner is outside the State in which he or she was in prison, the law in force in the State that relates to the liability of a person who escapes from lawful custody applies to the prisoner while the prisoner is outside the State for the purposes of compliance with the order for production.
- (5) Subsection (4) does not apply to lawful custody in respect of an offence against a law of the Commonwealth.
- (6) A person who is serving a sentence of imprisonment in a State is taken to be serving that sentence while the person is outside the State for the purposes of compliance with the order for production so long as the person remains in the custody of the custodian or escort, or in custody arranged by the custodian or escort.

## **Division 4—Service of subpoenas in the performance of investigative functions**

### **Subdivision A—Service of subpoenas generally**

#### **75 Application of Subdivision**

This Subdivision applies to a subpoena that:

- (a) has been issued by a tribunal in connection with the performance of an investigative function by the tribunal; and
- (b) is addressed to a person:
  - (i) who is not in prison; or
  - (ii) who is in prison but who need neither attend before the tribunal for the purpose of complying with the subpoena nor give oral evidence, by audio link or audiovisual link, to the tribunal.

#### **76 Order for leave**

- (1) The Supreme Court of a State in which a subpoena is issued may, on application, give leave to serve the subpoena outside the State.
- (2) The court may give leave only if it is satisfied that:
  - (a) the evidence likely to be given by the person to whom the subpoena is addressed, or a document or thing specified in the subpoena, is relevant to the performance by the tribunal of the investigative function concerned; and
  - (b) if the evidence, document or thing may constitute or contain evidence that relates to matters of state—it is in the public interest that the evidence be given or the document or thing be produced.
- (3) In granting an application, the court:
  - (a) is to impose a condition that the subpoena not be served after a specified day; and
  - (b) may impose other conditions.



### **77 Application of other provisions**

- (1) Subject to this section, sections 58 to 65 (inclusive) (other than subsection 63(2)) apply to the subpoena as if the investigative function concerned were an adjudicative function.
- (2) Any right referred to in subsection 61(1) (as that subsection applies in relation to the subpoena because of this section) that the person served with the subpoena has to apply to set aside or obtain other relief in respect of the subpoena may only be exercised by making any such application to the Supreme Court of the State in which the subpoena was issued.
- (3) An amount payable to a person under subsection 63(1) (as that subsection applies in relation to the subpoena because of this section) must be paid by the State in which the subpoena was issued.

### **Subdivision B—Service of subpoenas addressed to persons in prison**

#### **78 Application of Subdivision**

This Subdivision applies to a subpoena that:

- (a) has been issued by a tribunal in connection with the performance of an investigative function by the tribunal; and
- (b) is addressed to a person (in this Subdivision called the ***prisoner***) who is in prison in a State other than the place of issue and who is required to:
  - (i) attend before the tribunal for the purpose of complying with the subpoena; or
  - (ii) give oral evidence, by audio link or audiovisual link, to the tribunal.

#### **79 Order for production**

- (1) The Supreme Court of a State in which a subpoena is issued may, on application, order that the prisoner be produced at the time and place specified in the subpoena as the time and place at which compliance with the subpoena is required.

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- (2) The court may make an order only if it is satisfied that:
  - (a) the evidence likely to be given by the prisoner, or a document or thing specified in the subpoena, is relevant to the performance by the tribunal of the investigative function concerned; and
  - (b) if the evidence, document or thing may constitute or contain evidence that relates to matters of state—it is in the public interest that the evidence be given or the document or thing be produced.
- (3) An order:
  - (a) may be made subject to specified conditions; and
  - (b) must be addressed to the custodian for the time being of the prisoner.

**80 Application of other provisions**

- (1) Subject to this section, sections 68 to 74 (inclusive) (other than subsections 72(3) and (13) and 73(2)) apply to the subpoena, and to an order for production made in connection with the subpoena, as if the investigative function concerned were an adjudicative function.
- (2) Any right referred to in subsection 71(1) (as that subsection applies in relation to the subpoena because of this section) that the person served with the subpoena has to apply to set aside or obtain other relief in respect of the subpoena may only be exercised by making any such application to the Supreme Court of the State in which the subpoena was issued.
- (3) An application under subsection 72(1) (as that subsection applies in relation to the order for production because of this section) must be made to the Supreme Court of the State in which the subpoena was issued.
- (4) An amount payable to a person under subsection 73(1) (as that subsection applies in relation to the order for production because of this section) must be paid by the State in which the subpoena was issued.

## **Part 5—Execution of warrants**

### **Division 1—General**

#### **81 Application of Division**

This Division applies in relation to all warrants other than warrants issued by tribunals.

##### **81A Interpretation**

In this Part:

**authority** includes a body or person that:

- (a) under a law of a State, may issue a warrant for the arrest and return to custody or detention of a person, following the revocation or cancellation of:
  - (i) a parole order; or
  - (ii) an order for conditional release; or
  - (iii) an order for home detention; or
  - (iv) an order for periodic detention; or
  - (v) any other order for the release of a person from custody; or
  - (vi) any other order of a kind prescribed by the regulations; and
- (b) is prescribed by the regulations.

**tribunal** does not include a body or person of a kind referred to in the definition of **authority** in this section.

**warrant** includes a warrant issued by a body or person that is an authority for the purposes of this Part.

#### **82 Persons subject to warrants may be apprehended**

- (1) Subject to subsection (2), the person named in a warrant issued in a State may be apprehended in another State.
- (2) This section does not apply in relation to a person who is in prison.
- (3) The person may be apprehended by:

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- (a) an officer of the police force of the State in which the person is found; or
  - (b) the Sheriff of that State, or any of the Sheriff's officers; or
  - (c) a member or special member of the Australian Federal Police.
- (4) It is not necessary to produce the warrant when the person is apprehended.
- (5) Even though a person has been released under subsection 83(3), (4) or (7), the person may be re-apprehended under the same warrant.
- (6) The warrant or a copy of the warrant must be produced when the person is re-apprehended.

**83 Procedure after apprehension**

- (1) As soon as practicable after being apprehended, the person is to be taken before a magistrate of the State in which the person was apprehended.
- (2) The warrant or a copy of the warrant must be produced to the magistrate if it is available.
- (3) If the warrant or a copy of the warrant is not produced, the magistrate may:
- (a) order that the person be released; or
  - (b) adjourn the proceeding for such reasonable time as the magistrate specifies and remand the person on bail or in such custody as the magistrate specifies.
- (4) If the warrant or a copy of the warrant is not produced when the proceeding resumes, the magistrate may:
- (a) order that the person be released; or
  - (b) if reasonable cause is shown, adjourn the proceeding for such further reasonable time as the magistrate specifies and remand the person on bail or in such custody as the magistrate specifies.
- (5) The total time of the adjournments referred to in paragraphs (3)(b) and (4)(b) must not exceed 5 days.

- (6) The magistrate may resume the proceeding at any time before the end of a period of adjournment if the warrant or a copy of the warrant becomes available.
- (7) If the warrant or a copy of the warrant is not produced when the proceeding resumes after the further adjournment, the magistrate must order that the person be released.
- (8) Subject to subsections (10) and (14) and section 84, if the warrant or a copy of the warrant is produced, the magistrate must order:
  - (a) that the person be remanded on bail on condition that the person appear at such time and place in the place of issue of the warrant as the magistrate specifies; or
  - (b) that the person be taken, in such custody or otherwise as the magistrate specifies, to a specified place in the place of issue of the warrant.
- (9) The order may be subject to other specified conditions.
- (10) The magistrate must order that the person be released if the magistrate is satisfied that the warrant is invalid.
- (11) The magistrate may suspend an order made under paragraph (8)(b) for a specified period.
- (12) On suspending the order, the magistrate must order that the person be remanded:
  - (a) on bail; or
  - (b) in such custody as the magistrate specifies;until the end of that period.
- (13) An order of a magistrate under this section may be executed according to its tenor.
- (14) For the purposes of a proceeding under this section:
  - (a) the magistrate may adjourn the proceeding and remand the person on bail, or in such custody as the magistrate specifies, for the adjournment; and
  - (b) the magistrate is not bound by the rules of evidence; and
  - (c) it is not necessary that a magistrate before whom the proceeding was previously conducted continue to conduct the proceeding.

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- (15) Nothing in this section affects the operation of Part IC of the *Crimes Act 1914*.

**84 Additional provisions relating to persons under restraint**

- (1) If a person is taken before a magistrate under section 83, the magistrate must, before dealing with the matter, make reasonable enquiries of the person to find out:
- (a) whether he or she is a person under restraint; and
  - (b) if so, the State or States under whose law he or she is a person under restraint.
- (1A) If the magistrate is satisfied that the person:
- (a) is not under restraint; or
  - (b) is under restraint only under the law of the State in which the warrant was issued;
- the following provisions of this section do not apply.
- (2) If the person informs the magistrate that he or she is on bail, the magistrate must, before dealing with the matter, make reasonable enquiries of the person to ascertain the reporting requirements (if any) to which the person is subject.
- (3) The person must not:
- (a) fail to answer the magistrate's enquiries under subsection (1) or (2); or
  - (b) intentionally give a false or misleading answer to any of those enquiries.
- Penalty: \$3,000.
- (4) If the person under restraint is not on bail:
- (a) the magistrate must:
    - (i) adjourn the proceeding for such reasonable time, not exceeding 7 days, as the magistrate specifies; and
    - (ii) remand the person:
      - (A) on bail on condition that the person appear when the proceeding resumes; or
      - (B) in such custody as the magistrate specifies for the time of the adjournment; and

- (iii) as soon as practicable after the adjournment, cause notice of the person's apprehension to be given, by audio link or fax, to the person in charge of the correction service of the State in which the person is under restraint; and
  - (b) when the proceeding resumes:
    - (i) the person so informed; and
    - (ii) a supervisor of the person under restraint;may make submissions to the magistrate.
- (5) If the person under restraint is on bail, the magistrate may, on the application of:
  - (a) any officer of the police force of any State; or
  - (b) any member or special member of the Australian Federal Police; or
  - (c) the person under restraint;adjourn the proceeding for such reasonable time, not exceeding 7 days, as the magistrate specifies.
- (6) If the magistrate adjourns the proceeding under subsection (5):
  - (a) he or she must:
    - (i) remand the person under restraint:
      - (A) on bail on condition that the person appear when the proceeding resumes; or
      - (B) in such custody as the magistrate specifies for the time of the adjournment; and
    - (ii) if the person is subject to a requirement to report to an officer of a correction service of a State—as soon as practicable after the adjournment, cause notice of the person's apprehension to be given, by audio link or fax, to the person in charge of that correction service; and
    - (iii) if the person is subject to a requirement to report to the police in a State other than the State in which he or she is apprehended—as soon as practicable after the adjournment, cause notice of the person's apprehension to be given, by audio link or fax, to a police officer at the police station at which the person is required to report; and
  - (b) when the proceeding resumes:
    - (i) the person's supervisor; and

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- (ii) any officer of the police force of any State; and
- (iii) any member or special member of the Australian Federal Police;

may make submissions to the magistrate.

- (7) If a person under restraint who is named in a warrant is remanded on bail under an order made under paragraph 83(8)(a), it is a condition to which the grant of bail is subject that the person must return as soon as practicable to the State in which he or she was under restraint.
- (8) Where an order is made under paragraph 83(8)(b) in relation to a person under restraint, a magistrate may make orders relating to the return of the person, in such custody or otherwise as the magistrate specifies, to the State in which he or she was under restraint.
- (9) The regulations may provide that, for the purposes of this section, the holder of a specified office in a State is taken to be the person in charge of the correction service of the State.
- (10) In this section:

*supervisor*, in relation to a person under restraint, means a person who, under the law of a State or the order of a court, supervises compliance with the order or restriction to which the person under restraint is subject.

### 85 Procedure on remand on bail

- (1) If a magistrate has made an order under paragraph 83(8)(a) or (12)(a), the magistrate must prepare, or cause to be prepared, an instrument setting out the conditions to which the grant of bail is subject.
- (2) The instrument must be signed by:
  - (a) the magistrate, or the person who prepared the instrument; and
  - (b) the person who is the subject of the order.
- (3) The person, and the court, authority, tribunal or person before which or whom the person has been remanded to appear, must each be given a copy of the instrument.



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- (4) The magistrate must revoke the order and make an order under paragraph 83(8)(b) or (12)(b) if the person:
  - (a) refuses to sign the instrument; or
  - (b) does not comply with a condition to which the grant of bail is subject and that condition is a condition precedent to the person's release on bail.

**85A Notification when persons are released or remanded on bail**

- (1) If the person named in the warrant has been:
  - (a) taken before a magistrate under section 83; and
  - (b) released or remanded on bail under that section or section 84;the Commissioner of the police force of which the police officer who apprehended the person is a member must cause the clerk of the court that issued the warrant, or the authority that issued the warrant, to be notified without delay of the release or remand.
- (2) As soon as practicable after being so notified, the clerk, or the authority, must notify the police force of each other State that was notified of the issue of the warrant that:
  - (a) if the person has been released under paragraph 83(3)(a) or (4)(a) or subsection 83(7)—that the person has been released and can only be re-apprehended if the warrant or a copy of the warrant is produced when the person is re-apprehended; or
  - (b) in any other case—that the warrant has been executed.

**86 Review**

- (1) If an order has been made under section 83, the apprehended person or a person to whom the warrant was directed may apply to the Supreme Court of the State in which the order was made for review of the order.
- (2) The application must be made within 7 days after the making of the order.
- (3) The respondent is to be:
  - (a) if the application is made by the apprehended person—the Commissioner of the police force of the State in which the person was apprehended; or

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- (b) if the application is made by a person to whom the warrant was directed—the apprehended person.
- (4) Service of the notice of application on the respondent must be effected in the same way as service of a notice of an appeal to the Supreme Court of the State in a criminal proceeding.
- (5) If, under the order, the apprehended person is remanded on bail, notice of the application must be served in the same way on any person providing surety for the granting of the bail.
- (6) The Supreme Court may, pending its review:
  - (a) stay the execution of the order; and
  - (b) order the person to be remanded on bail or in such custody as the Supreme Court specifies.
- (7) The review is to be by way of rehearing.
- (8) The Supreme Court may confirm, vary or revoke the order.
- (9) If the order is revoked, the Supreme Court may make a new order.
- (10) The Supreme Court may suspend an order for a specified period if it is an order of a kind that a magistrate may suspend under section 83.
- (11) The order as confirmed or varied, or the new order, may be executed according to its tenor.
- (12) If the order as confirmed or varied, or the new order, is an order that is similar to an order mentioned in paragraph 83(8)(a):
  - (a) the Supreme Court must cause an instrument of the type mentioned in subsection 85(1) to be prepared; and
  - (b) subject to subsection (13), subsections 85(2), (3) and (4) apply.
- (13) For the purposes of paragraph (12)(b):
  - (a) the reference in paragraph 85(2)(a) to a magistrate is taken to be omitted; and
  - (b) the reference in subsection 85(4) to a magistrate is a reference to the Supreme Court.
- (14) For the purposes of a review under this section, the Supreme Court of a State is not bound by the rules of evidence.

### **87 Entitlement to expenses**

- (1) This section applies to a warrant issued for the purpose of having a person attend before a court, authority or person to give evidence or produce a document or thing.
- (2) Subject to subsection (3), a person who has incurred reasonable expenses as a result of compliance (by that person or another person) with:
  - (a) an order of a magistrate under subsection 83(8) in relation to a person brought before the magistrate under a warrant to which this section applies; or
  - (b) an order of that kind made by the Supreme Court of a State under section 86;is entitled to payment, from the person at whose request the warrant was issued, of an amount equal to those expenses.
- (3) Subsection (2) does not apply if:
  - (a) the warrant was issued because of a person's failure to comply with a subpoena; and
  - (b) that person:
    - (i) is not a person under restraint; or
    - (ii) is a person under restraint who has failed to comply with section 36.
- (4) The court or authority that issued the warrant may make orders to ensure that the person who incurred those expenses receives the exact amount of those expenses.
- (5) If the warrant was issued by a court, the orders may be made by an officer of the court if the rules governing the procedure of the court so provide.

### **88 Law applicable to grant etc. of bail**

- (1) Despite subsection 68(1) of the *Judiciary Act 1903*, the law of a State with respect to the granting of bail applies in relation to a power under this Division to grant bail to:
  - (a) a person apprehended in that State; or

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- (b) a person who has applied in that State for an order under section 90;  
as if the person had been apprehended under, or by authority of, a law of that State.
- (2) The law of a State with respect to bail and matters related to bail (including enforcement of bail) applies in relation to a person who has been remanded on bail in that State under this Division as if the person had been remanded on bail to appear before a court of that State.
- (3) Money received in proceedings for the enforcement of bail is to be retained by the State in which the bail condition, the breach of which lead to the proceedings being brought, was imposed.

**89 Custody of persons etc.**

- (1) For the purpose of complying with an order made under paragraph 83(8)(b), or an order confirmed, varied or made under section 86 that is similar to an order mentioned in that paragraph, the person to whom the custody of the apprehended person has been committed may require that the person in charge of a prison in a State:
  - (a) receive the apprehended person and keep the apprehended person in custody for such time as the first-mentioned person requires; and
  - (b) surrender custody of the apprehended person to the first-mentioned person at the time and in the way that the first-mentioned person requires.
- (2) The person so required must comply with such requirements as are reasonable.
- (3) An apprehended person who is a person under restraint and who is serving a period of home detention or a term of imprisonment by way of periodic detention is taken to be serving that period of home detention or term of imprisonment:
  - (a) during the period commencing when the person is apprehended under section 82 and ending when the person is first taken before a magistrate under section 83; and

- (b) during any period during which the person is in custody under an order made under paragraph 83(3)(b), (4)(b), (8)(b) or (12)(b), paragraph 86(6)(b) or subsection 86(9).
- (4) The law in force in the place of issue of a warrant, being the law relating to the liability of a person who escapes from lawful custody, applies to a person being taken to the place of issue in compliance with an order mentioned in subsection (1).
- (5) Subsection (4) does not apply to lawful custody in respect of an offence against a law of the Commonwealth.
- (6) A reference in this section to an order made under paragraph 83(8)(b) includes a reference to an order made under subsection 84(8) that relates to the first-mentioned order.

## **90 Release of persons unnecessarily detained**

- (1) This section applies to a person who has been taken in custody, pursuant to an order made, confirmed or varied under this Division, to the place of issue of a warrant for the purpose of giving evidence or producing a document or thing.
- (2) The person may apply to the court of issue, or authority of issue, of the warrant for an order that he or she be released from custody.
- (3) The respondent is to be the person at whose request the warrant was issued.
- (4) Notice of the application must be served on the respondent:
  - (a) personally; or
  - (b) by sending it by post to his or her address for service in the proceeding in relation to which the warrant was issued; or
  - (c) by sending it by fax to that address; or
  - (d) by leaving a copy of the application at that address.
- (5) The court of issue, or authority of issue, of the warrant may order that the person be released from custody if it is satisfied that it is not necessary for the person to be held in custody in order to secure his or her attendance to give the evidence or produce the document or thing.
- (6) Upon such an order being made, the person is to be released.

**Part 5** Execution of warrants

**Division 1** General

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- (7) The court of issue, or authority of issue, of the warrant may further order that the person be remanded on bail on condition that he or she appear, at a specified time or day, before the court, authority, tribunal or person to which the evidence is to be given or the document or thing is to be produced.

## **Division 2—Execution of warrants issued by tribunals**

### **91 Application of Division**

This Division applies in relation to warrants that have been issued by a tribunal in connection with:

- (a) the performance of an adjudicative function by the tribunal;  
or
- (b) the performance of an investigative function by the tribunal.

### **92 Application of Division 1 to certain warrants issued by tribunals**

- (1) Subject to this Division, Division 1 (other than section 81 and subsections 87(4) and (5)) applies to a warrant issued by a tribunal if:
  - (a) the warrant was issued because of non-compliance with a subpoena in relation to which leave has been given under section 57 or 76; or
  - (b) the Supreme Court of the place of issue of the warrant (not being a warrant mentioned in paragraph (a)) makes an order under section 93.
- (2) For the purposes of the application of Division 1 in relation to a warrant referred to in paragraph (1)(a), the requirement under subsection 82(6) or section 83 to produce the warrant or a copy of the warrant (as that section applies to the warrant because of this section) includes a requirement to produce a copy of the instrument by which leave was given under section 57 or 76.
- (3) For the purposes of the application of Division 1 in relation to a warrant referred to in subsection (1):
  - (aa) references in section 85A to the clerk of a court are taken to be references to the secretary (however described) of a tribunal; and
  - (a) references in section 87 to a court, authority or person are taken to be references to a tribunal; and
  - (b) the reference in paragraph 87(3)(b) to section 36 is taken to be a reference to section 64; and

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- (c) references in section 90 to the court of issue, or authority of issue, of the warrant are taken to be references to the Supreme Court of the place of issue of the warrant.

**93 Orders for the execution of warrants**

- (1) The Supreme Court of the place of issue of a warrant (not being a warrant mentioned in paragraph 92(1)(a)) may, on application, make an order authorising the apprehension of the person named in the warrant.
- (2) If the warrant was issued:
- (a) for the purpose of bringing the person before the tribunal to give evidence, or to produce a document or thing; and
  - (b) in connection with the performance of an adjudicative function by the tribunal;
- the court may make an order only if it is satisfied that the giving of the evidence likely to be given by the person, or the production of a document or thing specified in the warrant, is necessary in the interests of justice.
- (3) If the warrant was issued:
- (a) for the purpose of bringing the person before the tribunal to give evidence, or to produce a document or thing; and
  - (b) in connection with the performance of an investigative function of the tribunal;
- the court may make an order only if it is satisfied that:
- (c) the evidence likely to be given by the person, or a document or thing specified in the warrant, is relevant to the performance by the tribunal of the investigative function; and
  - (d) if the evidence, document or thing may constitute or contain evidence that relates to matters of state—it is in the public interest that the evidence be given or the document or thing be produced.
- (4) An order may be subject to specified conditions.
- (5) The application of Division 1 to the warrant is subject to the conditions (if any) to which the order is subject.
- (6) The requirement under section 83 to produce the warrant or a copy of the warrant (as that section applies in relation to the warrant



because of this Division) includes a requirement to produce a copy of the order.

**94 Additional provisions relating to warrants issued in the performance of investigative functions**

- (1) If the warrant was issued in connection with the performance by the tribunal of an investigative function, the respondent under subsection 90(3) (as that subsection applies to the warrant because of this Division) is to be:
  - (a) if the tribunal that issued the subpoena to which the order mentioned in subsection 90(1) relates is a body corporate or is constituted by an individual—the tribunal; or
  - (b) in any other case—the members of the tribunal.
- (2) Subsection 90(4) does not apply to such a warrant.
- (3) Notice of the application may be served on the tribunal, or the members of the tribunal:
  - (a) by sending it by post to the address of the tribunal’s principal office; or
  - (b) by sending it by fax to that address; or
  - (c) by leaving a copy of the application at that address.

## **Division 2A—Transit through State in execution of warrant**

### **94A Application of Division**

This Division applies if:

- (a) a warrant authorises the taking of a person (the *prisoner*) to a place in the State in which the warrant was issued (the *issuing State*); and
- (b) for the purpose of taking the prisoner to that place, it is necessary or convenient for the prisoner to be taken into a State (the *transit State*) other than the issuing State.

### **94B Effect of warrant**

The warrant has the same effect in the transit State as it has in the issuing State.

### **94C Applicable laws relating to escape from custody**

The law in force in the issuing State relating to the liability of a prisoner who escapes from lawful custody applies to the prisoner in relation to anything done by the prisoner while the prisoner is in the transit State.

### **94D Powers of person executing the warrant**

While the prisoner is in the transit State, the person executing the warrant:

- (a) has the same powers of detention and disposition of the prisoner as the person would have in the issuing State; and
- (b) has power to do anything else that he or she could lawfully do in the issuing State for the purpose of executing the warrant.

## Division 3—Suppression orders

### 95 Interpretation

In this Division, unless the contrary intention appears:

***apprehended person*** means a person apprehended under a warrant.

***child***: without limiting who is a child of a person for the purposes of this Act, someone is the ***child*** of a person if he or she is a child of the person within the meaning of the *Family Law Act 1975*.

***parent***: without limiting who is a parent of a person for the purposes of this Act, someone is the ***parent*** of a person if the person is his or her child because of the definition of ***child*** in this subsection.

***protected person*** means the person mentioned in paragraph 96(3)(a) as the person charged with the offence mentioned in that paragraph.

***publishing organisation*** means a person or body that is in the business of:

- (a) publishing newspapers, magazines, periodicals, books or pamphlets; or
- (b) broadcasting radio or television programs;

whether or not the business is carried on for profit, and includes a person or body that provides news to a person or body that is in such a business.

***suppression order*** means an order made under subsection 96(2) and includes an interim suppression order.

***warrant*** means a warrant to which proceedings under section 83 or 86 relate.

### 96 Suppression orders

- (1) This section applies to:
  - (a) a magistrate conducting a proceeding under section 83; or
  - (b) the Supreme Court of a State conducting a review under section 86.

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- (2) The magistrate or Court may, on application, order that a report of:
- (a) a part of the proceeding or review held in public; or
  - (b) a finding publicly made by the magistrate or Court;
- is not to be published.
- (3) The order is not to be made unless the magistrate or Court is satisfied that the publication of the report would give rise to a substantial risk that:
- (a) the fair trial of a person charged with an offence against a law of the Commonwealth or of a State triable by a jury might be prejudiced because of the influence that the publication might exert on the members of the jury; or
  - (b) either:
    - (i) a witness in a proceeding (including a pending or contemplated proceeding) before a court, authority or tribunal, or before a person who is authorised to take evidence; or
    - (ii) a member of the witness's family; would die or suffer personal injury; or
  - (c) property of such a witness, or property of a member of the witness's family, would be damaged; or
  - (d) the prosecution of an offence against a law of the Commonwealth or a State, or a proceeding under a law of the Commonwealth or a State for the recovery of a pecuniary penalty, would be prejudiced; or
  - (e) an investigation preparatory to such a prosecution or proceeding would be prejudiced; or
  - (f) national security would be prejudiced; or
  - (g) if the proceeding concerns an offence of a sexual nature—a victim of the alleged offence would be identified; or
  - (h) if the proceeding concerns:
    - (i) the welfare of a child; or
    - (ii) an offence of which a child is a victim; or
    - (iii) an offence alleged to have been committed by a child; the child would be identified.
- (4) The magistrate or Court must not, by exercising any other power that the magistrate or Court might have, make an order in the nature of a suppression order for the purpose of preventing or lessening a risk mentioned in subsection (3).
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- (5) For the purposes of this section, the members of a person's family are taken to include the following (without limitation):
- (a) a de facto partner of the person (within the meaning of the *Acts Interpretation Act 1901*);
  - (b) someone who is the child of the person, or of whom the person is the child, because of the definition of **child** in section 3;
  - (c) anyone else who would be a member of the person's family if someone mentioned in paragraph (a) or (b) is taken to be a member of the person's family.

### **97 Duration etc. of suppression orders**

- (1) A suppression order made on the ground mentioned in paragraph 96(3)(a) remains in force until:
- (a) it is revoked; or
  - (b) the verdict of the jury is given at the trial of the protected person; or
  - (c) the protected person is discharged in respect of the offence; or
  - (d) a plea of guilty made by the protected person at committal proceedings in respect of the offence, or at the trial of the person, is accepted; or
  - (e) the prosecution of the protected person for the offence is discontinued.
- (2) A suppression order made on any other ground mentioned in subsection 96(3) remains in force until it is revoked.
- (3) A suppression order must specify whether it is to be enforceable in:
- (a) the State in which it is made; or
  - (b) in specified States or specified parts of Australia; or
  - (c) throughout Australia.
- (4) A suppression order may be made subject to specified conditions.

### **98 Interim suppression orders**

- (1) The magistrate or Court may make an interim suppression order.
- (2) The order may be made without inquiring into the merits of the matter.
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- (3) The interim suppression order is to have effect until:
  - (a) the application for a suppression order is determined; or
  - (b) the interim suppression order is revoked.

**99 Variation and revocation of suppression orders**

- (1) A suppression order may be varied or revoked:
  - (a) if the suppression order was made by a magistrate conducting a proceeding under section 83—by a magistrate in the State in which the proceeding is or was conducted; and
  - (b) if the suppression order was made by the Supreme Court of a State conducting a review under section 86—by the Court.
- (2) A suppression order in relation to a protected person may also be varied or revoked by a magistrate or court before which the protected person has appeared or been taken for the purposes of:
  - (a) committal proceedings in relation to the offence; or
  - (b) the trial of the person for the offence.
- (3) Subject to subsection (4), a suppression order must be revoked if the ground or grounds on which the suppression order was made no longer exist.
- (4) Even though the ground or grounds on which the suppression order was made no longer exist, the order may be continued if, at the time the order is continued, there are other grounds on which such an order might be made.
- (5) A ground on which a suppression order is continued need not have existed when the order was made.
- (6) The power to vary or revoke a suppression order may only be exercised on application.

**100 Applications for suppression orders etc.**

- (1) An application for a suppression order on the ground mentioned in paragraph 96(3)(a) may be made by:
  - (a) the apprehended person; or
  - (b) a person to whom the warrant was directed; or

- (c) a person who satisfies the magistrate or Court that he or she has a special interest in the question whether the suppression order should be made.
- (2) An application for a suppression order on the ground mentioned in paragraph 96(3)(b) or (c) may be made by:
- (a) a party to the proceeding mentioned in paragraph 96(3)(b); or
  - (b) a person who is, or is likely to be, a witness in the proceeding; or
  - (c) a person or body having responsibility or power under a law of the Commonwealth or a State:
    - (i) to investigate or to bring proceedings in respect of an offence against a law of the Commonwealth or the State; or
    - (ii) to investigate contraventions of a law of the Commonwealth or the State that may give rise to proceedings for the recovery of a pecuniary penalty; or
    - (iii) to bring proceedings under a law of the Commonwealth or the State for the recovery of a pecuniary penalty.
- (3) An application for a suppression order on the ground mentioned in paragraph 96(3)(d) or (e) may be made by a person or body having responsibility or power under a law of the Commonwealth or a State:
- (a) to investigate or to bring proceedings in respect of an offence against a law of the Commonwealth or the State; or
  - (b) to investigate contraventions of a law of the Commonwealth or the State that may give rise to proceedings for the recovery of a pecuniary penalty; or
  - (c) to bring proceedings under a law of the Commonwealth or the State for the recovery of a pecuniary penalty.
- (4) An application for a suppression order on the ground mentioned in paragraph 96(3)(f) may be made by the Attorney-General for the Commonwealth.
- (5) An application for a suppression order on the ground mentioned in paragraph 96(3)(g) may be made by:
- (a) a victim of the alleged offence mentioned in that paragraph; or
  - (b) a parent or guardian of such a victim; or
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- (c) a person or body having responsibility or power under a law of the Commonwealth or a State to investigate or bring proceedings in respect of an offence against a law of the Commonwealth or the State; or
  - (d) a person to whom the warrant was directed.
- (6) An application for a suppression order on the ground mentioned in paragraph 96(3)(h) may be made by:
  - (a) the child mentioned in that paragraph; or
  - (b) a parent or guardian of the child; or
  - (c) a person or body having responsibility or power under a law of a State to bring proceedings concerning the welfare of a child.
- (7) An application for the variation or revocation of a suppression order may be made by:
  - (a) a person entitled to apply for the suppression order; or
  - (b) a publishing organisation; or
  - (c) a person who satisfies the magistrate or court that he or she has a special interest in the question whether the order should be varied or revoked.
- (8) A person who may apply for a suppression order, or for the variation or revocation of a suppression order, may make a submission to the magistrate or court on the question whether a suppression order should be made, varied or revoked.
- (9) The person may make the submission without being joined as a party to the proceeding or review.
- (10) The person may call or give evidence in support of the submission.
- (11) The magistrate or court may delay a proceeding or review to allow the submission to be made or evidence to be called or given.

**101 Appeals against suppression orders**

- (1) Except as provided by the *Judiciary Act 1903*, an appeal may be made as of right against the decision of a magistrate or court:
  - (a) to make a suppression order; or
  - (b) not to make a suppression order; or
  - (c) to confirm, vary, revoke or continue a suppression order; or



- (d) not to vary or revoke a suppression order.
- (2) If the decision is made by a magistrate in a State, the appeal is to be made to the Supreme Court of the State.
- (3) Except as provided in this section, no appeal is to be made against a decision or order made under this Division.
- (4) The appellate court:
  - (a) may confirm or vary the decision, or revoke the decision, whether or not it substitutes another decision; and
  - (b) may make orders for costs and deal with any other incidental or ancillary matters.

## **102 Institution of appeals**

The appeal against the decision may be made by:

- (a) if the decision was made on application—the applicant; or
- (b) the apprehended person; or
- (c) a person to whom the warrant was directed; or
- (d) a person who:
  - (i) could have applied, but did not apply, for the suppression order; and
  - (ii) satisfies the appellate court that his or her failure to do so was not attributable to a lack of diligence on his or her part; or
- (e) a publishing organisation that:
  - (i) made a submission under subsection 100(8); or
  - (ii) did not exercise its right to make such a submission but that satisfies the appellate court that its failure to make such a submission was not attributable to a lack of diligence on its part; or
- (f) a person who made a submission under subsection 100(8); or
- (g) a person who did not exercise his or her right to make a submission under subsection 100(8) but who satisfies the appellate court that:
  - (i) he or she has a special interest in the question whether the suppression order should be made, varied or revoked; and
  - (ii) the failure to make such a submission was not attributable to a lack of diligence on his or her part.

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**103 Disobedience of suppression orders**

(1) A person must not fail to comply with a suppression order.

Penalty: Imprisonment for 6 months.

(1A) Subsection (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

(2) It is a defence to a prosecution for an offence against subsection (1) if the defendant proves that:

(a) he or she did not know of the existence of the suppression order; and

(b) he or she had made all reasonable inquiries in the circumstances regarding the existence of a suppression order.

(3) A publishing organisation, or an employee or agent of a publishing organisation, is taken not to have made all reasonable inquiries regarding the existence of a suppression order if the organisation, or the employee or agent, as the case requires, has not made inquiries of the magistrate or Court in which the relevant proceedings are being, or were, heard as to whether a suppression order has been made in relation to the proceedings.

## Part 6—Judgments

### 104 Interpretation

In this Part:

*court of rendition* means:

- (a) in relation to a judgment of a court, the court in which the judgment was given, entered or made; or
- (b) in relation to a judgment that is an order of a tribunal:
  - (i) if the law of the State in which the tribunal is established provides that the order is enforceable without registration or filing of the order in a court—the tribunal; or
  - (ii) in any other case—the court of that State in which the order is registered or filed.

*enforcement*, in relation to a judgment, includes execution of the judgment.

*place of rendition*, in relation to a judgment, means the State in which is established the court of rendition of the judgment.

*sealed copy*, in relation to a judgment, includes a copy of the judgment that is certified as a true copy by:

- (a) if the court of rendition is a tribunal—a member of the tribunal; or
- (b) in any other case—a judge, magistrate or registrar of the court of rendition.

### 105 Enforcement of judgments

- (1) Upon lodgment of a sealed copy of a judgment, or a fax of such a sealed copy, the prothonotary, registrar or other proper officer of the appropriate court in a State other than the place of rendition must register the judgment in the court.
- (2) Subject to subsection (4), a registered judgment:
  - (a) has the same force and effect; and

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- (b) subject to sections 106 and 108, may give rise to the same proceedings by way of enforcement; as if the judgment had been given, entered or made by the court in which it is registered.
- (3) If the copy lodged is a fax, a sealed copy of the judgment is to be lodged with the prothonotary, registrar or other proper officer of the court within 7 days (not including any day that is a Saturday, a Sunday or a public holiday or bank holiday in the place at which the fax was lodged) after the fax was lodged.
- (4) If the sealed copy of the judgment is not so lodged within the 7 day period, until the sealed copy is lodged with the prothonotary, registrar or other proper officer of the court, a proceeding to enforce the judgment is not to be commenced or continued without the leave of the court.
- (5) A judgment is capable of being enforced in or by a court of a State in which it is registered only if, and to the extent that, at the time when the proceeding for enforcement is or is to be taken, the judgment is capable of being enforced in or by:
- (a) the court of rendition; or
  - (b) a court in the place of rendition.
- (6) In this section:
- appropriate court***, in relation to a State other than the place of rendition of a judgment, means:
- (a) if the court of rendition is the Supreme Court of the place of rendition—the Supreme Court of the first-mentioned State; or
  - (b) in any other case:
    - (i) the court of the first-mentioned State (including, if applicable, the Supreme Court of that State) in or by which relief as given by the judgment could have been given; or
    - (ii) if there is more than one such court—the court of more limited jurisdiction; or
    - (iii) if there is no such court—the Supreme Court of the first-mentioned State.

**106 Stay may be granted**

- (1) A court of a State in which a judgment has been registered under subsection 105(1) may, on application by a person against whom the judgment has been given, entered or made, order that proceedings in that court by way of enforcement of the judgment:
  - (a) not be commenced until a specified time; or
  - (b) be stayed for a specified period.
- (2) The order:
  - (a) must be made subject to conditions that:
    - (i) within the period specified in the order, the person make and prosecute an appropriate application for relief in respect of the judgment; and
    - (ii) the application be prosecuted in an expeditious manner; and
  - (b) may be made subject to such other conditions, including conditions as to the giving of security, as the court thinks fit.
- (3) For the purposes of paragraph (2)(a), an appropriate application for relief is an application to set aside, vary or appeal against the judgment, being an application made to a court or tribunal that has jurisdiction under the law in force in the place of rendition to grant the application.

**107 Costs**

- (1) The following are recoverable in proceedings by way of enforcement of a judgment that is registered under subsection 105(1):
  - (a) the reasonable costs and expenses of, and incidental to, obtaining and lodging the copy of the judgment; and
  - (b) the costs and expenses reasonably incurred in attempting to execute the judgment in the court of rendition or in another State.
- (2) The entitlement of a person to, and the liability of a person for, the costs or expenses of and incidental to such proceedings are the same as they are in proceedings by way of enforcement of:
  - (a) a similar judgment given, entered or made by the court in which the judgment is registered under subsection 105(1); or

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- (b) if there is no such similar judgment—the most closely analogous judgment given, entered or made by that court.

**108 Interest**

Interest on the amount of a judgment that is registered under subsection 105(1):

- (a) is payable at the same rate or rates and in respect of the same period or periods as would be applicable in the court of rendition; and
- (b) is recoverable to the extent that the judgment creditor satisfies the court in which proceedings by way of enforcement of the judgment are taken as to the amount of the interest.

**109 Rules of private international law not to apply**

If a judgment is registered in a court of a State under subsection 105(1), the courts of the State must not, merely because of the operation of a rule of private international law, refuse to permit proceedings by way of enforcement of the judgment to be taken or continued.

## **Part 7—Enforcement of fines imposed by courts of summary jurisdiction**

### **Division 1—Preliminary**

#### **110 Definitions**

In this Part:

***court*** means a court of a State having jurisdiction in relation to the summary trial of all or any offences under the law of the State.

***discharged***, in relation to a fine or part of a fine, means discharged because of a payment, remission or pardon, or otherwise.

***fine*** means a pecuniary penalty imposed by a court for an offence against a law of the Commonwealth (other than a revenue law) or of a State, together with any amount (including an amount of costs, compensation or revenue charges) that the person on whom the fine was imposed was ordered to pay by the court in the proceedings in which the fine was imposed.

***fine enforcement officer*** means:

- (a) an officer of a Department of State of a State, or a body established for a public purpose by or under a law of a State, that is responsible for the enforcement of fines; or
- (b) an officer of a court who is responsible for the enforcement of fines.

***offender***, in relation to a fine, means the person on whom the fine was imposed.

***originating State*** for a fine means the State in which the fine was imposed.

***post-commencement fine*** means a fine imposed after the commencement of this Part.

***pre-commencement fine*** means a fine imposed before the commencement of this Part.

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***pre-commencement serious fine*** means a pre-commencement fine that the originating State considers is a serious fine:

- (a) because of the value of the fine; or
- (b) because of the nature or seriousness of the conduct in relation to which the fine was imposed; or
- (c) because the fine is not the first fine imposed on the offender in relation to an offence of the same kind as the offence for which the fine was imposed; or
- (d) for any other reason.

***registered fine*** means a fine that has been registered under section 113, and the registration of which has not been cancelled.

***registering State*** for a fine means the State in which the fine is registered under section 113.

***related***: a pre-commencement fine is ***related*** to a post-commencement fine if:

- (a) the pre-commencement fine is imposed on the same offender as the post-commencement fine; and
- (b) the pre-commencement fine is imposed by a court of the same State as the post-commencement fine; and
- (c) the liability of the offender to pay the post-commencement fine has not been fully discharged.

***revenue law*** means a law of the Commonwealth relating to taxation (including duties) that contains special provisions with respect to imprisonment for non-payment of penalties.

## 111 Constitution of courts

The jurisdiction of a court for the purposes of this Part may be exercised by the court constituted by any person (other than a single justice of the peace sitting as such) or persons competent to exercise the jurisdiction of the court in any other matter.



## **Division 2—Registration and enforcement of fines**

### **112 Request for registration**

- (1) A fine enforcement officer of the originating State for a fine may request registration of the fine in another State if:
  - (a) the liability of the offender to pay the fine has not been fully discharged; and
  - (b) there is reason to believe that the offender is resident in, or appears to be resident in, the other State; and
  - (c) the fine is any of the following:
    - (i) a post-commencement fine;
    - (ii) a pre-commencement fine that is related to a post-commencement fine;
    - (iii) a pre-commencement serious fine.
- (2) The request must:
  - (a) be in writing; and
  - (b) be made to a fine enforcement officer of the other State; and
  - (c) be accompanied by a copy of the order, however described, of the court imposing the fine; and
  - (d) be accompanied by, or include:
    - (i) a statement by a fine enforcement officer of the originating State stating that the liability of the offender to pay the fine has not been fully discharged, and specifying the amount of the fine that remains unpaid;
    - (ii) if the fine is a pre-commencement serious fine—a statement by a fine enforcement officer of the originating State stating why the originating State considers the fine is a serious fine.
- (3) A single request under subsection (1) may relate to more than one fine, in which case this section applies to each of the fines to which the request relates.
- (4) A request cannot be made under this section for registration of a fine that is already registered in another State.

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**113 Registration**

*Registration*

- (1) If a fine enforcement officer of a State receives a request made in accordance with section 112 for the registration of a fine, the officer must, subject to this section, register the fine in that State.
- (2) The registration must specify who is the offender in relation to the fine.

*Related fines*

- (3) A fine enforcement officer of a State may register a pre-commencement fine that is related to a post-commencement fine only if the post-commencement fine is registered in that State.

**114 Effect of registration**

*Effect*

- (1) Subject to this section, a registered fine:
  - (a) has the same force and effect; and
  - (b) may give rise to the same actions by way of enforcement;as if the fine had been imposed on the offender by a court of the registering State.

*Enforcement only by registering State*

- (2) A registered fine cannot be enforced in the originating State for the fine.

Note: This subsection does not prevent voluntary payment of the fine in the originating State—see sections 115 and 116.

*Fine capable of enforcement*

- (3) A registered fine is capable of being enforced in or by the registering State only if, and to the extent that, when the action for enforcement is or is to be taken, the fine could, but for subsection (2), be enforced in the originating State.

*No imprisonment*

- (4) Despite anything in the laws of the registering State, a registered fine cannot be enforced by the imposition of a sentence of imprisonment on the offender.

### **Division 3—Amendment, cancellation and challenge to imposition etc.**

#### **115 Amendment of registration initiated by originating State**

##### *Obligation to initiate amendment*

- (1) The originating State for a registered fine must notify the registering State if part of the amount of a fine that remains unpaid is paid to the originating State.

##### *Amendment*

- (2) As soon as practicable after receiving a notice under subsection (1), the registering State must amend the registration of the fine accordingly.

#### **116 Cancellation of registration initiated by originating State**

##### *Obligation to initiate cancellation*

- (1) The originating State for a registered fine must notify the registering State if:
  - (a) the amount of the fine that remains unpaid is paid to the originating State; or
  - (b) a fine enforcement officer of the originating State is satisfied that the offender is not resident in the registering State.

##### *Option to initiate cancellation*

- (2) A fine enforcement officer of the originating State for a registered fine may, at any time, send a written request for the cancellation of the registration of the fine to a fine enforcement officer of the registering State.

##### *Cancellation*

- (3) As soon as practicable after receiving a notice under subsection (1), or a request under subsection (2), the registering State must cancel the registration of the fine.

### **117 Payment of fine to the registering State**

The registering State for a fine must:

- (a) notify the originating State if the amount of the fine, or part of the amount, is paid to the registering State; and
- (b) forward to a fine enforcement officer of the originating State the amount, or the part of the amount, that was paid.

### **118 Cancellation of registration initiated by registering State**

- (1) This section applies if a fine enforcement officer of the registering State for a fine is satisfied:
  - (a) that the request for registration of the fine was not made in accordance with section 112; or
  - (b) that the person specified in the register as the offender in relation to the fine is not the offender in relation to the fine; or
  - (c) that the offender in relation to the fine is not resident in the State; or
  - (d) of a matter or matters prescribed by the regulations for the purposes of this paragraph.
- (2) The registering State must:
  - (a) notify the originating State that the officer is so satisfied; and
  - (b) cancel the registration of the fine.

### **119 Effect of cancellation of registration**

*Originating State can enforce fine*

- (1) If the registration of a fine is cancelled for any reason, the originating State can, subject to subsections (2) and 114(3), enforce the fine.

*Cancellation of registration of related fine*

- (2) The registering State for a pre-commencement fine must cancel the registration of the fine if:
  - (a) the registration of a post-commencement fine is cancelled for any reason; and

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- (b) the pre-commencement fine is related to the post-commencement fine; and
- (c) the pre-commencement fine is not related to another post-commencement fine that is registered in the State.

**120 Challenge to imposition of fine**

*Challenge in accordance with laws of originating State*

- (1) Any challenge to the imposition of a registered fine may be brought only in accordance with the laws of the originating State.

*Offender to notify registering State*

- (2) If the offender in relation to a registered fine challenges the imposition of the fine in accordance with subsection (1), the offender must notify the registering State.

*Certain fines cannot be enforced during challenge*

- (3) If a challenge to the imposition of a registered fine has been initiated under subsection (1) and the challenge has not yet been finally determined, the registering State cannot enforce:
  - (a) the registered fine; or
  - (b) any pre-commencement related fines.

*Cancellation of registration if challenge upheld*

- (4) If a challenge to the imposition of a registered fine is upheld, the registering State must cancel the registration of the fine.

*Fine enforcement officer of originating State to notify registering State*

- (5) A fine enforcement officer of the originating State must notify the registering State of the outcome of the challenge.

## **Division 4—Miscellaneous**

### **121 Operation of State laws**

Nothing in this Part excludes the operation of a law of a State relating to the imposition of a fee (however described) by the State for the cost of enforcing a fine for an offence against a law of the Commonwealth.

### **122 Saving**

Nothing in this Part affects the operation of any other Part of this Act.

## Part 8—Miscellaneous

### 127 Matters of state

- (1) This section applies to a proceeding if:
  - (a) it is a proceeding to determine an application to a court for:
    - (i) leave under section 76 for service of a subpoena; or
    - (ii) an order under section 79 in relation to a subpoena; or
    - (iii) an order under section 93 in relation to a warrant issued in connection with the performance of an investigative function by a tribunal; and
  - (b) the court is satisfied that:
    - (i) the evidence likely to be given by the person to whom the subpoena is addressed; or
    - (ii) a document or thing specified in the subpoena; may constitute or contain evidence relating to matters of state.
- (2) In a proceeding to which this section applies, the court may give leave under section 76 or make an order under section 79 or 93 only if the applicant for leave or for the making of the order has given at least 14 days notice of the proceeding, and the issue of the subpoena, to all of the following persons:
  - (a) the Attorney-General for the Commonwealth;
  - (b) the Attorney-General for the State in which the tribunal is established;
  - (c) the Attorney-General for the State in which is located the person to whom the subpoena is addressed.
- (3) In a proceeding to which this section applies:
  - (a) the Commonwealth; and
  - (b) the State in which the tribunal is established; and
  - (c) the State in which is located the person to whom the subpoena is addressed;are entitled to intervene.
- (4) A court may direct that a proceeding to which this section applies is to be held in camera.



**128 Claim of public interest immunity not precluded**

A claim by a person in proceedings before a tribunal performing an investigative function that certain evidence is subject to public interest immunity is not precluded or affected by:

- (a) the fact that a court has given leave or made an order under Division 4 of Part 4 or Division 2 of Part 5; or
- (b) the disclosure of any evidence or matter in the course of proceedings for the giving of such leave or the making of such an order.

**129 Custodians to assist prisoners served with subpoenas**

The custodian of a person who is in prison in a State and who is served with a subpoena that was issued in another State must provide the person with such assistance as the person reasonably requires in order to enable him or her to do one or more of the following:

- (a) if the person need not, for the purposes of complying with the subpoena, do either or both of the following:
  - (i) attend before the court, authority or tribunal that issued the subpoena;
  - (ii) give oral evidence, by audio link or audiovisual link, to the court, authority or tribunal;comply with the subpoena;
- (b) apply, under section 33, 43, 61 or 71, to set aside, or obtain other relief from, the subpoena;
- (c) apply, under section 44 or 72, to set aside or vary an order for production relating to the subpoena;
- (d) obtain legal advice in connection with the subpoena or any such order.

**130 Jurisdiction not limited by locality**

The jurisdiction that a court or tribunal has because of service of process under this Act is not affected by any limitation arising under a law of a State concerning the locality in which the process may be served.

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**131 Constitution of courts**

The jurisdiction of the Supreme Court of a State in a matter arising under section 76, 77, 79, 80, 86, 92, 93 or 99 or subsection 101(2) is to be exercised by the court constituted by a single judge.

**132 Regulations etc.**

- (1) The Governor-General may make regulations prescribing all matters:
  - (a) required or permitted by this Act to be prescribed; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) The power of a body or person to make rules regulating the practice and procedure of a court extends to making any rules, not inconsistent with the regulations, prescribing all matters:
  - (a) required or permitted by this Act to be prescribed; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (3) In particular, the regulations and rules may make provision with respect to:
  - (a) the practice or procedure in connection with the service and execution of process and judgments; and
  - (b) the fees to be paid in connection with the service and execution of process and judgments; and
  - (c) the costs or expenses of any proceedings under this Act; and
  - (d) the recovery of any such fees, costs or expenses; and
  - (e) the recovery of costs or expenses recoverable under this Act.
- (4) The regulations may make different provisions with respect to:
  - (a) different States; and
  - (b) different process and judgments; and
  - (c) different courts and tribunals.
- (5) So far as the regulations and rules do not make provision with respect to a matter of practice or procedure, the practice or procedure is:
  - (a) in connection with the service of process—the practice or procedure that would be applicable in the place of issue; and

- (b) in connection with the execution of process or judgments—the practice or procedure applicable in the State in which execution is effected.
- (6) So far as the regulations and rules do not make provision with respect to fees, costs or expenses, the fees, costs or expenses are:
- (a) in connection with the service of process—the fees, costs or expenses that would be applicable to service in the place of issue; and
  - (b) in connection with the execution of process or judgments—the fees, costs or expenses applicable in the State in which execution is effected; and
  - (c) in connection with obtaining a sealed copy of a judgment—the fees, costs or expenses applicable in the State in which the judgment is obtained; and
  - (d) in connection with any other proceeding under this Act—the fees, costs or expenses applicable in the State in which the proceeding is brought.

## **Endnotes**

Endnote 1—About the endnotes

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## **Endnotes**

### **Endnote 1—About the endnotes**

The endnotes provide details of the history of this legislation and its provisions. The following endnotes are included in each compilation:

- Endnote 1—About the endnotes
- Endnote 2—Abbreviation key
- Endnote 3—Legislation history
- Endnote 4—Amendment history
- Endnote 5—Uncommenced amendments
- Endnote 6—Modifications
- Endnote 7—Misdescribed amendments
- Endnote 8—Miscellaneous

If there is no information under a particular endnote, the word “none” will appear in square brackets after the endnote heading.

### **Abbreviation key—Endnote 2**

The abbreviation key in this endnote sets out abbreviations that may be used in the endnotes.

### **Legislation history and amendment history—Endnotes 3 and 4**

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended the compiled law. The information includes commencement information for amending laws and details of application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision level. It also includes information about any provisions that have expired or otherwise ceased to have effect in accordance with a provision of the compiled law.

### **Uncommenced amendments—Endnote 5**

The effect of uncommenced amendments is not reflected in the text of the compiled law but the text of the amendments is included in endnote 5.

**Modifications—Endnote 6**

If the compiled law is affected by a modification that is in force, details of the modification are included in endnote 6.

**Misdescribed amendments—Endnote 7**

An amendment is a misdescribed amendment if the effect of the amendment cannot be incorporated into the text of the compilation. Any misdescribed amendment is included in endnote 7.

**Miscellaneous—Endnote 8**

Endnote 8 includes any additional information that may be helpful for a reader of the compilation.

## Endnotes

### Endnote 2—Abbreviation key

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#### Endnote 2—Abbreviation key

ad = added or inserted	pres = present
am = amended	prev = previous
c = clause(s)	(prev) = previously
Ch = Chapter(s)	Pt = Part(s)
def = definition(s)	r = regulation(s)/rule(s)
Dict = Dictionary	Reg = Regulation/Regulations
disallowed = disallowed by Parliament	reloc = relocated
Div = Division(s)	renum = renumbered
exp = expired or ceased to have effect	rep = repealed
hdg = heading(s)	rs = repealed and substituted
LI = Legislative Instrument	s = section(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sch = Schedule(s)
mod = modified/modification	Sdiv = Subdivision(s)
No = Number(s)	SLI = Select Legislative Instrument
o = order(s)	SR = Statutory Rules
Ord = Ordinance	Sub-Ch = Sub-Chapter(s)
orig = original	SubPt = Subpart(s)
par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)	

## Endnote 3—Legislation history

## Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Service and Execution of Process Act 1992	172, 1992	11 Dec 1992	ss. 1 and 2: Royal Assent s. 7(2)(a) and (b): 29 June 1993 ( <i>see Gazette</i> 1993, No. S196) Remainder: 10 Apr 1993 ( <i>see Gazette</i> 1993, No. GN13)	
Law and Justice Legislation Amendment Act (No. 2) 1994	141, 1994	28 Nov 1994	ss. 3 and 6 And Schedule 1 (items 12–16): Royal Assent ( <i>a</i> ) s. 3 and Schedule 1 (items 17–20): 26 Dec 1994 ( <i>a</i> )	s. 6
Law and Justice Legislation Amendment Act 1997	34, 1997	17 Apr 1997	Schedule 14 (items 1–3, 6–8, 17): Royal Assent ( <i>b</i> ) Schedule 14 (items 4, 5, 9–16): 17 Oct 1997 ( <i>b</i> )	Sch. 14 (item 17)
Company Law Review Act 1998	61, 1998	29 June 1998	Schedule 4 (items 39–49): 1 July 1998 ( <i>see Gazette</i> 1998, No. S317) ( <i>c</i> )	—
Australian Federal Police Legislation Amendment Act 2000	9, 2000	7 Mar 2000	2 July 2000 ( <i>see Gazette</i> 2000, No. S328)	Sch. 3 (items 20, 34, 35)
Law and Justice Legislation Amendment (Application of Criminal Code) Act 2001	24, 2001	6 Apr 2001	s. 4(1), (2) and Schedule 44: ( <i>d</i> )	s. 4(1) and (2)

## Endnotes

### Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Corporations (Repeals, Consequential and Transitional) Act 2001	55, 2001	28 June 2001	ss. 4–14 and Schedule 3 (items 465–473): 15 July 2001 ( <i>see Gazette</i> 2001, No. S285) (e)	ss. 4–14
Proceeds of Crime (Consequential Amendments and Transitional Provisions) Act 2002	86, 2002	11 Oct 2002	ss. 1–3: Royal Assent Remainder: 1 Jan 2003 ( <i>see s. 2(1) and Gazette</i> 2002, No. GN44)	—
Crimes Legislation Enhancement Act 2003	41, 2003	3 June 2003	Schedule 2 (items 18–22): 3 Dec 2003	—
Statute Law Revision Act 2007	8, 2007	15 Mar 2007	Schedule 4 (items 25, 26): Royal Assent	—
Same-Sex Relationships (Equal Treatment in Commonwealth Laws—General Law Reform) Act 2008	144, 2008	9 Dec 2008	Schedule 2 (items 73–75): 10 Dec 2008	—
Law and Justice (Cross Border and Other Amendments) Act 2009	77, 2009	7 Sept 2009	Schedules 1 and 2: Royal Assent	—
Trans-Tasman Proceedings (Transitional and Consequential Provisions) Act 2010	36, 2010	13 Apr 2010	Schedule 2 (items 25, 26): 11 Oct 2013 ( <i>see s 2(1)</i> )	—
Service and Execution of Process Amendment (Interstate Fine Enforcement) Act 2010	143, 2010	15 Dec 2010	Schedule 1 and Schedule 2 (items 1, 2): 15 June 2011	Sch. 1 (items 2, 3)

- (a) The *Service and Execution of Process Act 1992* was amended by Schedule 1 (items 12–20) only of the *Law and Justice Legislation Amendment Act (No. 2) 1994*, subsections 2(1) and (3) of which provide as follows:



## Endnote 3—Legislation history

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- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (3) Items 17 to 20 of Schedule 1 commence 28 days after this Act receives the Royal Assent.
- (b) The *Service and Execution of Process Act 1992* was amended by Schedule 14 (items 1–17) only of the *Law and Justice Legislation Amendment Act 1997*, subsections 2(1)–(3) of which provide as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (2) Items 1, and 3 to 6, of Schedule 1, items 4, 5, and 9 to 16, of Schedule 14 and items 1 to 6, and 8 to 11, of Schedule 16 commence on a day or days to be fixed by Proclamation.
- (3) If the items mentioned in subsection (2) do not commence under that subsection within the period of 6 months beginning on the day on which this Act receives the Royal Assent, those items commence on the first day after the end of that period.
- (c) The *Service and Execution of Process Act 1992* was amended by Schedule 4 (items 39–49) only of the *Company Law Review Act 1998*, subsection 2(2) of which provides as follows:
- (2) Subject to subsection (3), section 3 and Schedules 1, 2, 3 and 4 commence on a day to be fixed by Proclamation.
- (d) The *Service and Execution of Process Act 1992* was amended by Schedule 44 only of the *Law and Justice Legislation Amendment (Application of Criminal Code) Act 2001*, subsection 2(1)(a) of which provides as follows:
- (1) Subject to this section, this Act commences at the later of the following times:
- (a) immediately after the commencement of item 15 of Schedule 1 to the *Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000*;
- Item 15 commenced on 24 May 2001.
- (e) The *Service and Execution of Process Act 1992* was amended by Schedule 3 (items 465–473) only of the *Corporations (Repeals, Consequential and Transitional) Act 2001*, subsection 2(3) of which provides as follows:
- (3) Subject to subsections (4) to (10), Schedule 3 commences, or is taken to have commenced, at the same time as the *Corporations Act 2001*.
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## Endnotes

### Endnote 4—Amendment history

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### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
<b>Part 1</b>	
s. 3.....	am. No. 34, 1997; No. 61, 1998; No. 9, 2000; No. 55, 2001; No. 86, 2002; No. 41, 2003; No. 77, 2009; No 36, 2010
s. 5.....	am. No. 143, 2010
s. 8.....	am. No. 34, 1997; No. 77, 2009
s. 8A.....	ad. No. 24, 2001
s. 9.....	am. No. 141, 1994; No. 61, 1998; No. 55, 2001; No. 8, 2007
s. 10.....	am. No. 141, 1994; No. 61, 1998
s. 11.....	am. No. 141, 1994
<b>Part 2</b>	
<b>Division 1</b>	
s. 17.....	am. No. 34, 1997
s. 20.....	am. No. 77, 2009
<b>Part 3</b>	
<b>Division 1</b>	
s. 28.....	am. No. 77, 2009
s. 33.....	am. No. 77, 2009
<b>Division 2</b>	
s. 38.....	am. No. 77, 2009
ss. 43, 44 .....	am. No. 77, 2009
<b>Part 4</b>	
<b>Division 3</b>	
<b>Subdivision A</b>	
s. 56.....	am. No. 77, 2009
s. 61.....	am. No. 77, 2009
<b>Subdivision B</b>	
s. 66.....	am. No. 77, 2009
ss. 71, 72 .....	am. No. 77, 2009
<b>Division 4</b>	
<b>Subdivision A</b>	

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## Endnote 4—Amendment history

<b>Provision affected</b>	<b>How affected</b>
s. 75.....	am. No. 77, 2009
<b>Subdivision B</b>	
s. 78.....	am. No. 77, 2009
<b>Part 5</b>	
<b>Division 1</b>	
s. 81.....	rs. No. 143, 2010
s. 81A.....	ad. No. 41, 2003
s. 82.....	am. No. 9, 2000
s. 84.....	am. No. 34, 1997; No. 9, 2000; No. 24, 2001; No. 77, 2009
s. 85A.....	ad. No. 141, 1994
<b>Division 2</b>	
s. 92.....	am. No. 141, 1994
<b>Division 2A</b>	
Div. 2A of Part 5.....	ad. No. 34, 1997
ss. 94A–94D.....	ad. No. 34, 1997
<b>Division 3</b>	
ss. 95, 96.....	am. No. 144, 2008
s. 103.....	am. No. 24, 2001
<b>Part 7</b>	
Part 7.....	rs. No. 143, 2010
<b>Division 1</b>	
s. 110.....	am. No. 34, 1997 rs. No. 143, 2010
s. 111.....	rs. No. 143, 2010
<b>Division 2</b>	
ss. 112, 113.....	am. No. 141, 1994; No. 34, 1997 rs. No. 143, 2010
s. 114.....	rs. No. 143, 2010
<b>Division 3</b>	
ss. 115–118.....	rs. No. 143, 2010
s. 119.....	am. No. 34, 1997 rs. No. 143, 2010

## Endnotes

### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
s. 120 .....	rs. No. 143, 2010
<b>Division 4</b>	
ss. 121, 122 .....	rs. No. 143, 2010
s. 123 .....	am. No. 34, 1997
	rep. No. 143, 2010
ss. 124–126 .....	rep. No. 143, 2010
<b>Part 8</b>	
s. 129 .....	am. No. 77, 2009

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Endnote 5—Uncommenced amendments [none]

**Endnote 5—Uncommenced amendments [none]**

**Endnote 6—Modifications [none]**

**Endnote 7—Misdescribed amendments [none]**

**Endnote 8—Miscellaneous [none]**