

# **SERVICE AND EXECUTION OF PROCESS REGULATIONS 2018**

## **EXPLANATORY STATEMENT**

Issued by authority of the Attorney-General

in compliance with section 15J of the *Legislation Act 2003*

### **PURPOSE AND OPERATION OF THE INSTRUMENT**

The *Service and Execution of Process Act 1992* (Cth) (the Act) allows the service of process and the enforcement of judgements of state and territory courts and tribunals throughout the Commonwealth with few formal requirements. The Act provides that service interstate of an initiating process or a subpoena is effective only if copies of any prescribed notices are attached to the initiating process or subpoena.

Subsection 132(1) of the Act provides that the Governor-General may make regulations prescribing all matters required or permitted to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The *Service and Execution of Process Regulations 1993* (the current Regulations) were due to sunset in October 2018 and have been remade with minor amendments to ensure fitness for purpose, consistency with current drafting practices, and to remove obsolete or unnecessary provisions.

The *Service and Execution of Process Regulations 2018* (the Regulations) as remade, contain:

- the prescribed notices which are to be attached to the process of State and Territory courts and tribunals, setting out information about the rights and obligations of the person to whom the process or subpoena is addressed;
- a list of authorities who may issue a warrant for the arrest and return to custody or detention of a person following the revocation or cancellation of certain orders; and
- a list of persons taken to be in charge of a correction service within a State or Territory.

### **CONSULTATION**

Consistent with the requirements of the *Legislation Act 2003*, State and Territory Departments of Justice, Courts and Law Societies were consulted over a three week period during the initial review

and throughout the drafting process. State and Territory bodies were asked to review the Regulations, determine whether they should be remade, advise any updates required and note any issues or difficulties experienced in the operation of the Regulations. Only minor amendments were suggested by State and Territory bodies to ensure currency.

## **REGULATION IMPACT STATEMENT**

The Office of Best Practice Regulation issued a *Guidance Note on Sunsetting Legislative Arrangements* which stipulates that agencies can self-assess the performance of the instrument. The Attorney-General's Department assessed that the current Regulations were operating effectively and efficiently and that a Regulation Impact Statement was not required for the Regulations to be remade.

## **STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

This Disallowable Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

### **Overview of the Disallowable Legislative Instrument**

The Disallowable Legislative Instrument remakes the current Regulations to allow the ongoing effect of a number of key provisions and processes within the Act. The Act provides that service interstate of initiating process or a subpoena is effective only if copies of any prescribed notices are attached to the initiating process or subpoena. The Regulations contain the prescribed notices which are to be attached to the process of State and Territory courts and tribunals, which set out information about the rights and obligations of the person to whom the process or subpoena is addressed. The Regulations also contain minor amendments to ensure fitness for purpose, consistency with current drafting practices, and to remove obsolete or unnecessary provisions.

### **Human rights implications**

The Regulations are largely comprised of forms outlining the rights and obligations of the person being served. These forms are to be provided to a person when they are served with an initiating process or subpoena. Provision of the relevant form ensures the person is aware of how to contest a claim, how to comply with a subpoena should they be imprisoned or if they are released from custody, and how to comply if they are subject to a restriction on their movements. The forms also advise persons to seek legal advice. For these reasons, the Disallowable Legislative Instrument does not engage any of the applicable rights or freedoms.

**Conclusion**

This Disallowable Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

## **NOTES ON SECTIONS**

### **PART 1 – Preliminary**

#### **Section 1 – Name**

Section 1 provides that the title of the instrument is the *Service and Execution of Process Regulations 2018* (the Regulations).

#### **Section 2 – Commencement**

This section provides that the Regulations will commence on the day after it is registered on the Federal Register of Legislation.

#### **Section 3 – Authority**

This section provides that the Regulations are made under the *Service and Execution of Process Act 1992* (the Act) as allowed by subsection 132(1).

#### **Section 4 – Schedule 2**

This section outlines that the instrument specified in Schedule 2 (the *Service and Execution of Process Regulations 1993*) will be amended or repealed as set out in the Schedule.

#### **Section 5 – Definitions**

This section provides that the definition for ‘Act’ used in the Regulations means the *Service and Execution of Process Act 1992*.

### **PART 2 – Notices, warrants and correction services**

#### **Section 6 – Required notices for service**

The Act contains a number of references to prescribed forms which are to be used for certain purposes. Section 6 contains a table outlining relevant sections of the Act and the corresponding relevant form.

## **Section 7 - Additional authorities that may issue warrants**

Section 81A of the Act provides that for the purpose of Part 5, an authority includes a body or person who is prescribed in the Regulations and may, under a law of a State, issue a warrant for the arrest and return to custody or detention of a person following the revocation or cancellation of the following orders:

- a parole order;
- an order for conditional release;
- an order for home detention;
- an order for periodic detention;
- any other order for the release of a person from custody; or
- any other order of a kind prescribed by the regulations.

Section 7 of the Regulations outlines the prescribed bodies or persons for each State and Territory that are authorities for the purposes of Part 5 of the Act. Section 7(1) also prescribes an intensive correction order for the purposes of paragraph 81A(a)(vi).

## **Section 8 – Person taken to be in charge of the correction service of a State**

Section 84 of the Act provides that the Regulations may prescribe, for the purposes of that section, the person who is taken to be in charge of the correction service of the State. Section 8 of the Regulations provides a table of the persons taken to be in charge of the correction service, referencing the relevant State or Territory legislation.

## **SCHEDULE 1 – Forms**

### **Form 1 – Notice when serving initiating process in civil proceedings**

This is the prescribed form under section 16 of the Act which must be attached to the initiating process issued by a court in a civil proceeding when it is served interstate. This form outlines the rights of the defendant and ways in which they may contest the claim.

### **Form 2 – Notice when serving subpoena**

This is the prescribed form under subsection 31(a) of the Act to be used when serving a subpoena issued by a court or an authority that is addressed to a person who is not in prison, or who is in prison but who does not need to attend or give oral evidence. This form must be attached to the subpoena being served interstate as it outlines the witnesses' rights and obligations (when they must obey the attached subpoena) and what that person must do if they are subject to a restriction on their movements.

### **Form 3 – Notice when serving subpoena address to person in prison**

This is the prescribed form under section 41 of the Act to be used when serving a subpoena issued by a court or an authority that is addressed to a person who is in prison and who is required to attend or give oral evidence. This form must be attached to the subpoena being served interstate as it outlines the witnesses' rights and obligations in regards to being released from custody.

### **Form 4 – Notice when serving initiating process in tribunal proceedings**

This is the prescribed form under section 51 of the Act to be used when serving an initiating process for certain proceedings in a tribunal. This form must be attached to the initiating process being served interstate as it outlines the rights of the respondent and ways in which they may contest the claim.

### **Form 5 – Notice when serving tribunal subpoena**

This is the prescribed form under subsections 59(a) and 77(1) of the Act to be used when serving a subpoena issued by a tribunal that is addressed to a person who is not in prison, or who is in prison but who does not need to attend or give oral evidence. This form must be attached to the subpoena being served interstate as it outlines the witnesses' rights and obligations (when they must obey the attached subpoena) and what that person must do if they are subject to a restriction on their movements.

### **Form 6 – Notice when serving tribunal subpoena addressed to person in prison**

This is the prescribed form under section 69 and subsection 80(1) of the Act to be used when serving a subpoena issued by a tribunal that is addressed to a person who is in prison and who is required to attend or give oral evidence. This form must be attached to the subpoena being served interstate as it outlines the witnesses' rights and obligations in regards to being released from custody.

### **SCHEDULE 2 – Repeals**

This Schedule outlines that the *Service and Execution of Process Regulations 1993* will be repealed entirely.