

SERVICE AND EXECUTION OF PROCESS.

No. 48 of 1953.

An Act to amend the *Service and Execution of Process Act 1901-1950*.

[Assented to 26th October, 1953.]

[Date of commencement, 23rd November, 1953.]

BE it enacted by the Queen's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows :—

Short title
and citation.

1.—(1.) This Act may be cited as the *Service and Execution of Process Act 1953*.

(2.) The *Service and Execution of Process Act 1901-1950** is in this Act referred to as the Principal Act.

(3.) The Principal Act, as amended by this Act, may be cited as the *Service and Execution of Process Act 1901-1953*.

Title.

2. The title of the Principal Act is amended—

(a) by inserting after the word "Commonwealth" (first occurring) the words "and the Territories of the Commonwealth"; and

(b) by omitting the words "other parts" and inserting in their stead the words "the Territories".

* Act No. 11, 1901, as amended by No. 18, 1912; No. 29, 1918; No. 27, 1922; No. 26, 1924; No. 14, 1928; No. 45, 1931; No. 45, 1934; No. 22, 1945; and No. 80, 1950.

3. Section one of the Principal Act is amended by omitting the words—

“ Part III.—Execution of Warrants, &c., ss. 18, 19.”
and inserting in their stead the words—

“ Part III.—Execution of Warrants and Writs of Attachment,
ss. 18–19c.”.

Short title
and Parts.

4. Section two of the Principal Act is repealed and the following section inserted in its stead :—

“ 2.—(1.) This Act extends to Norfolk Island, the Territory of Papua and the Territory of New Guinea.

Extension to
the Territories.

“ (2.) For the purposes of this Act—

(a) the Territory of Papua and the Territory of New Guinea shall be deemed to be one Territory of the Commonwealth ;
and

(b) the Territory accepted by the Commonwealth by the *Jervis Bay Territory Acceptance Act* 1915 shall be deemed to be part of the Australian Capital Territory.

“ (3.) A reference in this Act to a part of the Commonwealth shall be read as including a reference to a Territory of the Commonwealth to which this Act extends.

“ (4.) For the purposes of the application of this Act to and in relation to Norfolk Island—

(a) a reference in this Act to the Supreme Court of a part of the Commonwealth shall be read as including a reference to the Court of Norfolk Island sitting in its Full Jurisdiction ;
and

(b) a Judge or Magistrate appointed under the *Norfolk Island Act* 1913–1935 shall be deemed to be a Judge of that Court.”.

5. Section eight of the Principal Act is repealed and the following section inserted in its stead :—

“ 8. The period specified in a writ of summons for service under this Act as the period within which a defendant may enter or make an appearance to the writ of summons shall be—

Time limited
for appearance.

(a) if the writ of summons is issued in a State, in the Australian Capital Territory or in the Northern Territory of Australia and is to be served in a State or in either of those Territories—not less than twenty days after service of the writ has been effected ; or

(b) in any other case—not less than forty-five days after service of the writ has been effected,

or, if a longer period is prescribed by the rules of the court out of which the writ of summons is issued, not less than that longer period.”.

6. Section fifteen of the Principal Act is repealed and the following section inserted in its stead :—

Service of
summons or
other process
issued upon
information,
&c., on oath.

“ 15.—(1.) This section applies to a summons or other process, not being a summons or other process to which section four or fourteen of this Act applies, which is issued on an information complaint or application made on oath, being a summons or other process which—

- (a) requires a person to appear before a court and answer to the information, complaint or application ; or
- (b) gives to a person notice of the hearing before a court of the information, complaint or application.

“ (2.) A summons or other process to which this section applies which is issued in one State or part of the Commonwealth may be served on the person to whom it is addressed in another State or part of the Commonwealth.

“ (3.) Service under this section may, subject to the rules of court in force under this Act, be effected in the same way as it could be effected in the State or part of the Commonwealth in which the summons or other process was issued.

“ (4.) Service so effected shall have the same force and effect as if it had been service in the State or part of the Commonwealth in which the summons or other process was issued, and if the person on whom service has been effected fails to appear before the court and at the time and place specified in the summons or other process, and it appears to the court that service was effected a sufficient time before the time so specified, the like proceedings may be taken as if service had been effected in the State or part of the Commonwealth in which the summons or other process was issued.”

7. Part III. of the Principal Act is repealed and the following Part inserted in its stead :—

“ PART III.—EXECUTION OF WARRANTS AND WRITS OF
ATTACHMENT.

Backing of
warrant for
execution out
of the State or
part of the
Commonwealth
in which it was
issued.

“ 18.—(1.) Where a Court, a Judge, a Police, Stipendiary or Special Magistrate, a Justice of the Peace or an officer of a court has, in accordance with the law of a State or part of the Commonwealth, issued a warrant for the apprehension of a person, a Magistrate, Justice of the Peace or officer of a court who has power to issue warrants for the apprehension of persons under the law of another State or part of the Commonwealth, being a State or part of the Commonwealth in or on his way to which the person against whom the warrant has been issued is or is supposed to be, may, on being satisfied that the warrant was issued by the Court, Judge, Magistrate, Justice of the Peace or officer (after proof on oath, in the case of a warrant issued

by a Magistrate, Justice of the Peace or officer of a court, of the signature of the person by whom the warrant was issued), make an endorsement on the warrant in the form, or to the effect of the form, in the Second Schedule to this Act authorizing its execution in that other State or part of the Commonwealth.

“(2.) A warrant so endorsed is sufficient authority to the person bringing the warrant, to all constables and persons to whom the warrant is directed and to all constables and peace officers in that other State or part of the Commonwealth to execute the warrant in that other State or part of the Commonwealth, to apprehend the person against whom the warrant was issued and to bring that person before a Police, Stipendiary or Special Magistrate or a Justice of the Peace who has power to issue warrants for the apprehension of persons under the law of that State or part of the Commonwealth.

“(3.) Subject to this section, the Magistrate or Justice of the Peace before whom the person is brought may—

- (a) by warrant under his hand, order the person to be returned to the State or part of the Commonwealth in which the original warrant was issued and, for that purpose, to be delivered into the custody of the person bringing the warrant or of a constable or other person to whom the warrant was originally directed ; or
- (b) admit the person to bail, on such recognizances as he thinks fit, on condition that the person appears at such time, and at such place in the State or part of the Commonwealth in which the original warrant was issued, as the Magistrate or Justice specifies to answer the charge or complaint or to be dealt with according to law.

“(4.) A warrant issued under paragraph (a) of the last preceding sub-section may be executed according to its tenor.

“(5.) The Magistrate or Justice of the Peace before whom the person is brought has, for the purposes of this section, the same power to remand the person and admit him to bail for that purpose as he has in the case of persons apprehended under warrants issued by him.

“(6.) If, on the application of the person apprehended, it appears to the Magistrate or Justice of the Peace before whom a person is brought under this section that—

- (a) the charge is of a trivial nature ;
- (b) the application for the return of the person has not been made in good faith in the interests of justice ; or
- (c) for any reason, it would be unjust or oppressive to return the person either at all or until the expiration of a certain period,

the Magistrate or Justice of the Peace may—

- (d) order the discharge of the person ;
- (e) order that the person be returned after the expiration of a period specified in the order and order his release on bail until the expiration of that period ; or
- (f) make such other order as he thinks just.

**Review of
order of
Magistrate or
Justice.**

“ 19.—(1.) Where—

- (a) a person apprehended is dissatisfied with an order made under sub-section (3.) or (6.) of the last preceding section ; or
- (b) a Magistrate or Justice of the Peace has made, under sub-section (3.) or (6.) of the last preceding section, an order for the discharge of an apprehended person, or an order for the return or admittance to bail of such a person under the terms of which the person is not, or may not be, required to return or be returned within three months after the date of the order to the State or part of the Commonwealth in which the original warrant was issued,

the apprehended person or the person bringing the warrant, as the case requires, may apply to a Judge of the Supreme Court of the State or part of the Commonwealth in which the person was apprehended, sitting in chambers, for a review of the order, and the Judge may review the order.

“ (2.) A Judge to whom an application is made for the review of an order may—

- (a) order the release on bail of the apprehended person on such terms and conditions as the Judge thinks fit ; or
- (b) direct that the apprehended person be kept in such custody as the Judge directs in the State or part of the Commonwealth in which the person is apprehended until the order has been reviewed.

“ (3.) The review of the order shall be by way of rehearing, and evidence in addition to, or in substitution for, the evidence given on the making of the order may be given on or in connexion with the review.

“ (4.) For the purposes of a review under this section, a copy of a public document or of a document filed in a Department or office of the Commonwealth or of a State or part of the Commonwealth, certified to be a true copy of the document by the person purporting by the certificate to have charge of the document, shall be received as evidence of the facts stated in the copy.

“ (5.) Upon the review of an order, the Judge may confirm or vary the order, or quash the order and substitute a new order in its stead.

“ (6.) The order as confirmed or varied, or the substituted order, shall be executed according to its tenor as if it had been made by the Magistrate or Justice of the Peace.

“ 19A.—(1.) A Magistrate, Justice of the Peace or officer of a court who, under sub-section (1.) of section eighteen of this Act, is empowered, subject to his being satisfied as to the matter specified in that sub-section, to endorse a warrant for the apprehension of a person may, if the warrant is not produced to him or he requires further information or proof before endorsing the warrant, issue a provisional warrant for the apprehension of that person upon such information and under such circumstances as, in his opinion, justify the issue of a provisional warrant, and the provisional warrant may be executed according to its tenor.

Provisional
warrants.

“ (2.) Where a person is apprehended in pursuance of a provisional warrant, he shall be brought forthwith before a Police, Stipendiary or Special Magistrate or Justice of the Peace who has power to issue warrants for the apprehension of persons under the law of the State or part of the Commonwealth in which he is apprehended, and, if the original warrant has not yet been endorsed, the Magistrate or Justice may—

- (a) discharge the person ;
- (b) admit him to bail on such conditions and recognizances as the Magistrate or Justice thinks fit ; or
- (c) authorize his detention for a reasonable time pending the endorsement of the original warrant.

“ (3.) Where a person has been apprehended under a provisional warrant (not being a person who has been discharged in pursuance of the last preceding sub-section) and the original warrant is not, within a reasonable time, endorsed by a Magistrate or Justice of the Peace for the State or part of the Commonwealth in which the person was apprehended a Magistrate or Justice of the Peace for that State or part of the Commonwealth may discharge the person or release him from bail, as the case requires.

“ 19B.—(1.) Where a person has, in pursuance of any of the last three preceding sections, been admitted to bail in a State or part of the Commonwealth, and a Magistrate, Justice of the Peace for that State or part or, where the person was admitted to bail by a Judge of the Supreme Court of that State or part, a Judge of that Court, is satisfied that the person has failed to comply with the conditions of the recognizance upon which he was so admitted to bail, that Magistrate, Justice or Judge may, by order under his hand, declare the recognizance to be forfeited.

Forfeiture of
recognizances.

“ (2.) Where a recognizance is so declared to be forfeited, payment of any sum due under the recognizance by a person residing in the State or part of the Commonwealth in which the recognizance was declared to be forfeited may be enforced as a fine imposed by a District or County Court or other inferior Court of Record having jurisdiction in that State or part.

“(3.) An amount recovered in pursuance of this section shall be transmitted to the Attorney-General of the State in which the original warrant was issued or, if that warrant was issued in a part of the Commonwealth other than a State, to the Attorney-General of the Commonwealth.

Writ of attachment may be executed in another State or part of the Commonwealth.

“19c.—(1.) Where a Court of Record of a State or part of the Commonwealth or a Judge of such a Court has, whether before or after the commencement of this section, issued a writ of attachment for the arrest of a person for a contempt of the Court or disobedience of an order of the Court, the writ may—

- (a) by leave of a Justice of the High Court, be executed in any other State or part of the Commonwealth specified by the Justice; or
- (b) by leave of a Judge of the Supreme Court of another State or part of the Commonwealth, be executed in that other State or part of the Commonwealth.

“(2.) The leave—

- (a) shall be endorsed on the writ of attachment; and
- (b) shall be sufficient authority to—
 - (i) the Marshal of the High Court;
 - (ii) the Sheriff of the State or part of the Commonwealth in which the writ was issued;
 - (iii) the Sheriff of a State or part of the Commonwealth in which leave to execute the warrant is given; and
 - (iv) all other officers named in the endorsement on the writ,

to apprehend the person against whom the writ was issued and to bring that person before the Court out of which the writ was issued.”.

8. Section twenty-two of the Principal Act is repealed and the following section inserted in its stead:—

Definition of courts of like jurisdiction.

“22. For the purposes of the last preceding section—

- (a) the Supreme Courts of the several States and parts of the Commonwealth are Courts of like jurisdiction to one another;
- (b) the District Courts, County Courts and other Courts of Record of the several States and parts of the Commonwealth having limited civil jurisdiction (other than Courts referred to in the next succeeding paragraph) are Courts of like jurisdiction to one another; and
- (c) the Small Debts Courts, Courts of Petty Sessions and other Courts of Record of the several States and parts of the Commonwealth having civil jurisdiction to hear and determine suits in a summary way are Courts of like jurisdiction to one another.”.

9.—(1.) Part V. of the Principal Act is repealed and the following Part inserted in its stead :—

“ PART V.—RULES AND REGULATIONS.

“ 27.—(1.) The powers of a Judge or Judges, or of another authority, under the law of a State or part of the Commonwealth, to make rules of court in relation to the Supreme Court of that State or part extend, by force of this Act, to the making of rules of court for prescribing—

- (a) the practice and procedure in connexion with the service of the process of the Courts of that State or part of the Commonwealth under this Act ;
- (b) the practice and procedure in connexion with the execution and enforcement by the Courts of that State or part of the Commonwealth of the process and judgments of the Courts of other States and parts of the Commonwealth ;
- (c) the fees to be paid in connexion with the service of the process of the Courts of that State or part of the Commonwealth under this Act ;
- (d) the fees to be paid in connexion with the execution and enforcement under this Act by Courts of that State or part of the Commonwealth of the process and judgments of the Courts of other States and parts of the Commonwealth ;
- (e) the costs to be allowed to a person upon the execution or enforcement under this Act by the Courts of that State or part of the Commonwealth of a judgment or other process of another State or part of the Commonwealth ; and
- (f) the manner of recovery of any such fees or costs.

“ (2.) So far as rules of court made under the last preceding sub-section do not prescribe matters referred to in that sub-section, the practice and procedure shall be—

- (a) in connexion with the service of process—the practice and procedure that would be applicable to service in the State or part of the Commonwealth in which the process was issued ; or
- (b) in connexion with the execution and enforcement of process and judgments—the practice and procedure applicable in the State or part of the Commonwealth in which the execution or enforcement is effected.

“ (3.) Rules of court made by virtue of this section shall not be deemed to be statutory rules within the meaning of the *Rules Publication Act 1903–1939*.

“ 28. The Governor-General may make regulations for applying this Act, with or without modifications, to, or in relation to, a Territory of the Commonwealth not specified in sub-section (1.) of section two of this Act.”

Rules of Court.

Regulations.

(2.) The Rules under the Principal Act in force in a State or part of the Commonwealth at the date of commencement of this Act continue in force in that State or part as if made by virtue of the Principal Act as amended by this Act to the extent that they are not inconsistent with that Act as so amended, but may be amended or repealed by Rules of Court made by virtue of the Principal Act as amended by this Act.

First Schedule.

10. The First Schedule to the Principal Act is repealed.

**Principal Act
to apply to
certain process
and judgments.**

11. Notwithstanding the amendments effected by this Act, the provisions of the Principal Act and of the Principal Act as modified by the regulations made under that Act continue to apply to—

- (a) the service and execution of process issued before the commencement of this Act ; and
 - (b) the enforcement of judgments registered in accordance with Part IV. of the Principal Act before the commencement of this Act.
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