

EXPLANATORY STATEMENT

Subordinate Law No. 15 of 1995

Issued by the Authority of the Judges
of the Supreme Court of the Australian Capital Territory

SUPREME COURT RULES (AMENDMENT)

The Standing Committee of Attorneys-General has recommended that Australia should accede to the Hague Convention on Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters ("the Convention").

Australia's compliance with the terms of the Convention requires that the rules of various Commonwealth, State and Territory Courts make provision for the service of foreign process (of other contracting states to the Convention) in Australia and the service of Australian process in other contracting states. There also needs to be provision in the rules for the entry of default judgment where no appearance has been entered by the defendant, where Australian process has been transmitted for service pursuant to the Convention, and for the setting aside of such judgments.

These amending rules will fulfil the Territory's obligations in respect of the Convention. The rules are largely based upon draft model rules prepared by the Commonwealth to ensure substantial uniformity and compliance with the Convention. It is proposed that no amendment would be made to the rules, once made, without prior consultation with the Commonwealth Attorney-General's Department.

An outline of the provisions of the amending rules is set out below.

Commencement:

Rule 1: The operational provisions of the rules are to commence on a day fixed by the Registrar by notice in the Gazette. It is proposed that the rules will be gazetted for commencement once all Australian jurisdictions have their rules in place.

Principal Rules:

Rule 2: defines "Principal Rules" in these Rules to mean the Supreme Court Rules.

Interpretation:

Rule 3: amends Rule 4 of Order 1 by inserting a number of definitions required for the interpretation of these amending rules.

Substituted Service:

Rule 4: amends Rule 1 of Order 11 (Substituted Service) so that it applies only to non-Convention countries. Specific provision has been made for substituted service in Convention Countries in new Part 15 of the Rules (Service of Foreign Documents).

Insertion:

Rule 5: inserts new Order 11A (Service Under the Hague Convention) which sets out the procedures to be followed with regard to service in a Convention country of a judicial document connected with civil proceedings pending before the Supreme Court or before another court of the Territory.

Heading to Order 12:

Rule 6: omits the present heading to Order 12 and substitutes a new heading to limit the operation of the Order to service in a country that is not a party to the Convention.

Insertion:

Rule 7: inserts a new rule 1 to Order 12 which limits the application of Order 12 to service of process in a country that is not a party to the Convention.

Procedure to effect service in certain cases:

Rule 8: inserts new sub-rule 10(5) to Order 12 to define 'Convention', for the purposes of the rule, not to include the Hague Convention.

Repeal:

Rule 9: repeals Rule 11 of Order 12. The Rule currently provides for service of overseas process in the Territory. The repealed rule is replaced by new Orders 84 and 85. New Order 85 deals specifically with the service of overseas process from a country that is not a party to the Hague Convention.

Consequential Orders:

Rule 10: omits "Crown" from Rule 12 of Order 12 and substitutes "Government" to accord with the relevant Australian Capital Territory authority which would make the application.

Heading to Order 14:

Rule 11: The amendment is consequential upon the insertion of new Order 14A.

Insertion:

Rule 12: inserts new Order 14A which sets out the procedures for the entry of judgment in favour of the plaintiff in default of appearance by the defendant to the originating process where that process has been served under the Convention.

Insertion:

Rule 13: inserts new Part 15 ("Service of Foreign Documents"), which comprises Orders 84 and 85, to the Principal Rules.

New Order 84 sets out the procedures to be followed with regard to service in the Territory of a document originating in a Convention country and connected with civil proceedings pending before a court or tribunal of that country, where a request for service has been made under the Convention.

New Order 85 sets out the procedures to be followed with regard to the service in the Territory of a document originating in a country that is not a party to the Convention and connected with civil proceedings pending before a court or tribunal of a foreign country, where a request for service has been made.

Schedule:

Rule 14: New Schedule 15 to the Rules contains forms required to give effect to the Hague Convention. The forms follow those in the Commonwealth model rules, which in turn follow the forms in the Convention.