

Act 2001.<sup>10</sup> The expressions 'director', 'local agent' and 'registered office' are defined by reference to the (CTH) Corporations Act 2001.<sup>11</sup>

## Notes

1. (CTH) Service and Execution of Process Act 1992 s 9.
2. (CTH) Corporations Act 2001 s 9 (definition of 'corporation').
3. (CTH) Service and Execution of Process Act 1992 s 9(1), 9(2).
4. *Ibid* s 9(3), 9(4).
5. *Ibid* s 9(5).
6. *Ibid* s 9(6).
7. *Ibid* s 9(7).
8. *Ibid* s 9(8).
9. *Ibid* s 9(8A).
10. *Ibid* s 9(10)(a); (CTH) Corporations Act 2001 Pt 2B.5.
11. (CTH) Service and Execution of Process Act 1992 s 9(11); (CTH) Corporations Act 2001 s 9.

**[325-2193] Service on directors and company secretaries** A director or company secretary may be validly served pursuant to the (CTH) Corporations Act 2001<sup>1</sup> (the 'Corporations Act') or the rules of court.<sup>2</sup> For service to be valid pursuant to the Corporations Act, a document served on a director or company secretary may be left at, or sent to, the address notified to the Australian Securities and Investments Commission under the Corporations Act.<sup>3</sup>

The (CTH) Service and Execution of Process Act 1992 (the 'Act') now governs service out of the State or Territory but within the Commonwealth of Australia on corporate bodies other than those incorporated under the Corporations Act.<sup>4</sup> The Act provides special rules for the proof of interstate service<sup>5</sup> and determines that service of a process pursuant to the Act has the same effect and may give rise to the same proceedings as if the process had been served in the place of issue.<sup>6</sup>

## Notes

1. (CTH) Corporations Act 2001 s 109X(2). See also [325-2040].
2. *Ibid* s 109X(6).
3. *Ibid* s 109X(2).
4. (CTH) Service and Execution of Process Act 1992 ss 8, 10.
5. *Ibid* s 11.
6. *Ibid* s 12.

**[325-2195] Proof of service of process** The (CTH) Service and Execution of Process Act 1992 (the 'Act') provides a strict mode for the proof of service of a process, order or document, and service of the relevant process is taken to have been proved only if specified matters are first proved.<sup>1</sup> Matters that must be proved to establish personal service are:<sup>2</sup>

- (1) the identity of the person serving the process;

- (2) the day and time
- (3) the place at which
- (4) the way in which
- (5) if the service was to be identified, the

A process, order or document have been served on the face is adduced that raises real to whom it was addressed with service of a process by proof is proved that it was sent to the person's address for service to an address for service. The procedure is similar for other body corporate.<sup>6</sup> Prosworn before specified persons proved if it had been effected order or document was issued.

## Notes

1. (CTH) Service and Execution of Process Act 1992 s 11(1). As to service of original service is to be proved 11(1) if it is satisfied. For proof of service Act 1901 (repealed) s 11(1) *v Eisenberg* [1913] VLR (1932) 49 WN (NSW SR (NC 2) 105.
2. (CTH) Service and Execution of Process Act 1992 s 11(1).
3. Evidence of a statement person's identity or office.
4. *Ibid* s 11(11).
5. *Ibid* s 11(3).
6. *Ibid* s 11(4).
7. *Ibid* s 11(5). The definition of evidence unless the contrary is proved s 11(6). Territories are also [325-2190] note

**[325-2200] Service of Execution of Process Act 1992** process issued in one State or Territory pursuant to the Act may be effected in the same way in the place of issue.<sup>3</sup> However, service on another body corporate must

- (2) the day and time that the process was served;
- (3) the place at which the process was served;
- (4) the way in which the process was served; and
- (5) if the service was effected in a way that required the person served to be identified, the way in which the person served was identified.<sup>3</sup>

A process, order or document served by post under the 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 was delivered to the person to whom it was addressed within four days after the day it was posted.<sup>4</sup> However, service of a process by post on an individual is taken to be proved only if it is proved that it was sent by prepaid post to the person's last known address or the person's address for service, and 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.<sup>5</sup> The procedure is similar for postal service on a company, registered body or other body corporate.<sup>6</sup> Proof of service may be by way of affidavit of service sworn before specified persons, or in any way in which service might have been proved if it had been effected within the State or Territory in which the process, order or document was issued.<sup>7</sup>

Notes

1. (CTH) Service and Execution of Process Act 1992 s 11(1) (subject to *ibid* s 11(2)). As to service of originating process see [325-2200]. However, the court before which service is to be proved may dispense with all or any of the requirements of *ibid* s 11(1) if it is satisfied that personal service of the process was effected: *ibid* s 11(8). For proof of service by affidavit under the (CTH) Service and Execution of Process Act 1901 (repealed) see *Jarrett v Brown* [1908] VLR 478; (1908) 14 ALR 349; *Casper v Eisenberg* [1913] VLR 262; (1913) 19 ALR 216; *Warringah Shire Council v Magnusson* (1932) 49 WN (NSW) 187; *Artificial Breeding Board of Tasmania v Gordon* [1973] Tas SR (NC 2) 105.
2. (CTH) Service and Execution of Process Act 1992 s 11(1)(a)-(e).
3. Evidence of a statement that is made by a person served and that concerns that person's identity or office is admissible as evidence of the person's identity: *ibid* s 11(7).
4. *Ibid* s 11(11).
5. *Ibid* s 11(3).
6. *Ibid* s 11(4).
7. *Ibid* s 11(5). The deponent of the affidavit of service need not be called to give evidence unless the court, or a person appearing before the court, so requires: *ibid* s 11(6). Territories are regarded as States for the purposes of the Act: *ibid* s 5. See also [325-2190] note 1.

**[325-2200] Service of originating process** The (CTH) Service and Execution of Process Act 1992 (the 'Act') refers to 'initiating process'.<sup>1</sup> Initiating process issued in one State or Territory may be served in another State or Territory pursuant to the Act<sup>2</sup> and service on a person, if that person is an individual or a body politic (for example, the Commonwealth or a State), must be effected in the same way as service of the same initiating process is required in the place of issue.<sup>3</sup> However, service on a company, a registered body or any other body corporate must be effected pursuant to the Act.<sup>4</sup> Service is only

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effective if copies of certain prescribed notices are attached to the process that is served.<sup>5</sup> There is no longer any nexus requirement as was enshrined in the (CTH) Service and Execution of Process Act 1901 (repealed), and which still applies under some of the rules of court that govern service out of the territorial limits of the Commonwealth of Australia.<sup>6</sup> An initiating process served under the Act cannot be stayed by a court of a State that is not the place of issue on the ground that the place of issue is not the 'appropriate forum' for the proceedings.<sup>7</sup>

## Notes

1. (CTH) Service and Execution of Process Act 1992 s 3(1) (definition of 'initiating process').
2. Ibid s 15(1), 15(2). The (CTH) Service and Execution of Process Act 1901 (repealed) restricted the type of originating process that could be served under its provisions; however, an order made on the application of a liquidator for a company director to attend before a court for an examination has been held to be within its ambit: *Re Austral Oil Estates Ltd (in liq)* (1986) 7 NSWLR 440; 86 FLR 247. A process of this nature is also likely to be covered by the Act as an 'initiating process'. Territories are regarded as States for the purposes of the Act: (CTH) Service and Execution of Process Act 1992 s 5. See further [325-2190] note 1.
3. Ibid s 15(2), 15(5).
4. Ibid s 15(3), 15(4). See also *ibid* ss 9, 10.
5. Ibid s 16; (CTH) Service and Execution of Process Regulations 1993 reg 4, Sch 1 Form 1. Failure to comply with the prescribed notice requirements may affect the validity of the service, although a service defect may be waived by the person served: *Atlas Co of Engineers v York* (1903) 29 VLR 92; 9 ALR 183; *Lindgran v Lindgran* [1956] VLR 215; [1956] ALR 731.
6. A person served may only apply to the court of issue for an order staying proceedings if those proceedings are not issued from the Supreme Court of a State: (CTH) Service and Execution of Process Act 1992 s 20. The court of issue is required then to rule on the question of whether it is the 'appropriate court' to determine all of the matters in issue between the parties: *ibid* s 20(3). As to the matters to be taken into account in determining whether a court in another State is the 'appropriate court' see *ibid* s 20(4)(a)-(f). The court's power to stay a proceeding on a ground other than that it is not the appropriate court is not, however, affected by *ibid* s 20, nor does it affect the operation of the (CTH) Jurisdiction of Courts (Cross-vesting) Act 1987, or a corresponding law of a State: (CTH) Service and Execution of Process Act 1992 s 20(10). As to service outside Australia see [325-2230] and CONFLICT OF LAWS [85-335]-[85-400].
7. (CTH) Service and Execution of Process Regulations 1993 reg 4, Sch 1 Form 1.

**[325-2205] Substituted service** The (CTH) Service and Execution of Process Act 1992 perpetuates the availability of substituted service.<sup>1</sup>

## Note

1. (CTH) Service and Execution of Process Act 1992 s 8(1). For examples of substituted service under the (CTH) Service and Execution of Process Act 1901 (repealed) see *Stubbs v J and J Lonsdale and Co Ltd* [1915] VLR 448; *Grice v Grice* [1930] St R Qd 261. As to substituted service generally see [325-2090]-[325-2115].

**[325-2210] Service** of Process Act 1992 pe not an initiating proc Territory.<sup>1</sup> Service on required for service of company, registered bo the (CTH) Service an

## Notes

1. (CTH) Service as States for the *ibid* s 5. See fu [325-7360]-[32:
2. *Ibid* s 27(2). As
3. *Ibid* s 27(3), 27

**[325-2215] Role ir** The proclamation of t 'Act') on 10 April 1 authorities that gover or Territory. Under tl 1901 (the 'repealed A of the jurisdiction, n party wished to servi the jurisdiction of th appropriate rules of insofar as service wi concerned.

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## (iii) Service C

**[325-2230] Gene** ordinarily run beyo of court may be us or granting leave to and other process, c Australia.<sup>2</sup> Before th Act 1992 (the 'A. (CTH) Service and outside the jurisc