

**Authorised Version**

**Magistrates' Court General Civil Procedure  
Amendment (Service Out of Jurisdiction)  
Rules 2018**

**S.R. No. 159/2018**

**TABLE OF PROVISIONS**

<i>Rule</i>		<i>Page</i>
1	Object	1
2	Authorising provisions	1
3	Commencement	1
4	Principal Rules	1
5	Order 7 substituted	2
6	New Rule 37A.07 substituted	9
7	New Form 7A substituted	10
<hr/> <hr/>		
<b>Endnotes</b>		<b>12</b>

## **Authorised Version**

STATUTORY RULES 2018

S.R. No. 159/2018

*Magistrates' Court Act 1989*

### **Magistrates' Court General Civil Procedure Amendment (Service Out of Jurisdiction) Rules 2018**

The Chief Magistrate together with 2 Deputy Chief Magistrates jointly make the following Rules:

#### **1 Object**

The object of these Rules is to amend the Magistrates' Court General Civil Procedure Rules 2010 to replace the existing rules for the service out of Australia of originating process (other than documents which may be served under Division 2 of Part 2 of the Trans-Tasman Proceedings Act 2010 of the Commonwealth) with rules which are harmonised with those of like jurisdictions.

#### **2 Authorising provisions**

These Rules are made under section 16 of the **Magistrates' Court Act 1989** and all other enabling powers.

#### **3 Commencement**

These Rules come into operation on 15 October 2018.

#### **4 Principal Rules**

In these Rules, the Magistrates' Court General Civil Procedure Rules 2010<sup>1</sup> are called the Principal Rules.

## **5 Order 7 substituted**

For Order 7 of the Principal Rules **substitute**—

### **"ORDER 7—SERVICE OUT OF AUSTRALIA**

#### **7.01.1 Definition**

In this Order, unless the context or subject matter otherwise requires—

*originating process* means a complaint, counterclaim, notice or any other process in which a claim is made.

#### **7.01 Order does not apply to service in New Zealand of documents for or in certain Trans-Tasman proceedings**

This Order (which contains rules on service out of Australia) does not apply to service in New Zealand of an originating process for, or of any other document to be served in or for, a proceeding an originating process for which may be served in New Zealand under Division 2 of Part 2 of the Trans-Tasman Proceedings Act 2010 of the Commonwealth.

#### **7.02 When allowed without leave**

An originating process may be served out of Australia without leave in the following cases—

- (a) when the claim is founded on a tortious act or omission—
  - (i) which was done or which occurred wholly or partly in Victoria; or
  - (ii) in respect of which the damage was sustained wholly or partly in Victoria;

- (b) when the claim is for the enforcement, rescission, dissolution, annulment, cancellation, rectification, interpretation or other treatment of, or for damages or other relief in respect of a breach of, a contract which—
  - (i) was made or entered into in Victoria; or
  - (ii) was made by or through an agent trading or residing within Victoria; or
  - (iii) was to be wholly or in part performed in Victoria; or
  - (iv) was by its terms or by implication to be governed by Victorian law or to be enforceable or cognizable in a Victorian court;
- (c) when the claim is in respect of a breach in Victoria of any contract, wherever made, whether or not that breach was preceded or accompanied by a breach out of Victoria that rendered impossible the performance of that part of the contract that ought to have been performed in Victoria;
- (d) when the claim—
  - (i) is for an injunction to compel or restrain the performance of any act in Victoria; or
  - (ii) is for interim or ancillary relief in respect of any matter or thing in or connected with Victoria, where such relief is sought in relation to judicial or arbitral proceedings commenced or to be commenced,

or an arbitration agreement made,  
in or outside Victoria; or

(iii) without limiting subparagraph (ii),  
is an application for a freezing  
order or ancillary order under  
Order 37A in respect of any  
matter or thing in or connected  
with Victoria;

(e) when the claim relates to the carrying  
out or discharge of the trusts of any  
written instrument of which the person  
to be served is a trustee and which  
ought to be carried out or discharged  
according to Victorian law;

(f) when any person out of Australia is—

(i) a necessary or proper party to  
a proceeding properly brought  
against another person served  
or to be served (whether within  
Victoria or outside Victoria)  
under any other provision of  
these Rules; or

(ii) a defendant to a claim for  
contribution or indemnity in  
respect of a liability enforceable  
by a proceeding in the Court;

(g) when the claim arises under an  
Victorian enactment and—

(i) any act or omission to which the  
claim relates was done or occurred  
in Victoria; or

(ii) any loss or damage to which the  
claim relates was sustained in  
Victoria; or

- (iii) the enactment applies expressly or by implication to an act or omission that was done or occurred outside Australia in the circumstances alleged; or
- (iv) the enactment expressly or by implication confers jurisdiction on the Court over persons outside Australia (in which case any requirements of the enactment relating to service must be complied with);
- (h) when the person to be served has submitted to the jurisdiction of the Court;
- (i) when a claim is made for restitution or for the remedy of constructive trust and the person to be alleged liability of the person to be served arises out of an act or omission that was done or occurred wholly or partly in Victoria;
- (j) when it is sought to recognise or enforce any judgment;
- (k) when the claim is founded on a cause of action arising in Victoria;
- (l) when the claim affects the person to be served in respect of the person's membership of a corporation incorporated in Victoria, or of a partnership or an association formed or carrying on any part of its affairs in Victoria;
- (m) when the claim—
  - (i) relates to an arbitration held in Victoria or governed by Victorian law; or

- (ii) is to enforce in Victoria an arbitral award wherever made; or
- (iii) is for orders necessary or convenient for carrying into effect in Victoria the whole or any part of an arbitral award wherever made;
- (n) when the claim, so far as concerns the person to be served, falls partly within one or more of the above paragraphs and, as to the residue, within one or more of the others of the above paragraphs.

**Note**

If a proceeding is commenced in the Court and originating process is served out of Australia under this Rule but the Court later decides that it is more appropriate that the proceeding be determined by a court of another Australian jurisdiction, the **Jurisdiction of Courts (Cross-vesting) Act 1987** may enable the proceeding to be transferred to the Supreme Court to make an order transferring the proceeding to the Supreme Court or to the Supreme Court of that other Australian jurisdiction.

**7.03 When allowed with leave**

- (1) In any proceeding when service is not allowed under Rule 7.02, an originating process may be served out of Australia with the leave of the Court.
- (2) An application for leave under this Rule must be made on notice to every party other than the person intended to be served.
- (3) A sealed copy of every order made under this Rule must be served with the document to which it relates.
- (4) An application for leave under this Rule must be supported by an affidavit stating any facts or matters related to the desirability of

the Court assuming jurisdiction, including the place or country in which the person to be served is or possibly may be found, and whether or not the person to be served is an Australian citizen.

- (5) The Court may grant an application for leave if satisfied that—
- (a) the claim has a real and substantial connection with Victoria; and
  - (b) Victoria is an appropriate forum for the hearing of the proceeding; and
  - (c) in all the circumstances the Court should assume jurisdiction.

**7.04 Court's discretion whether to assume jurisdiction**

- (1) On application by a person on whom an originating process has been served out of Australia, the Court may by order set aside the originating process or its service on the person or dismiss or stay the proceeding.
- (2) Without limiting paragraph (1), the Court may make an order under this Rule if satisfied—
- (a) that service out of Australia of the originating process is not authorised by these Rules; or
  - (b) that the Court is an inappropriate forum for the hearing of the proceeding; or
  - (c) that the claim has insufficient prospects of success to warrant putting the person served out of Australia to the time, expense and trouble of defending the claim.



**7.05 Notice to person served out of Australia**

If a person is to be served out of Australia with an originating process, the person must also be served with a notice in Form 7A informing the person of—

- (a) the scope of the jurisdiction of the Court in respect of claims against persons who are served out of Australia; and
- (b) the grounds alleged by the plaintiff to found jurisdiction; and
- (c) the person's right to apply for an order setting aside the originating process or its service on the person or dismissing or staying the proceeding.

**7.06 Time for filing a notice of defence**

Except when the Court otherwise orders, a defendant who has been served out of Australia must give notice of defence within 42 days from the date of service.

**7.07 Leave to proceed where no notice of defence by person**

- (1) If an originating process is served on a person out of Australia and the person does give notice of defence, the party serving the document may not proceed against the person served except by leave of the Court.
- (2) An application for leave under paragraph (1) may be made without serving notice of the application on the person served with the originating process.

**7.08 Service of other documents out of  
Australia**

Any document other than an originating process may be served out of Australia with the leave of the Court, which may be given with any directions that the Court thinks fit.

**7.09 Mode of service**

A document to be served out of Australia need not be personally served on a person so long as it is served on the person in accordance with the law of the country in which service is effected.

\_\_\_\_\_".

**6 New Rule 37A.07 substituted**

For Rule 37A.07 of the Principal Rules  
**substitute—**

**"37A.07 Service**

A freezing order—

- (a) must be authenticated pursuant to Rule 60.04;
- (b) when served, must be served together with a copy of—
  - (i) the application, or, if none was filed, any draft application produced to the Court;
  - (ii) the material (other than material excepted by the Court as confidential) that was relied on by the applicant at the hearing when the order was made;

(iii) a transcript or, if none is available, a note, of any oral allegation of fact that was made and of any oral submission that was put, to the Court; and

(iv) the complaint, or, if none was filed, any draft complaint produced to the Court.

**Note**

An application for a freezing order or an ancillary order may be served on a person who is out of Australia where such service is authorised by or under Order 7—see, in particular, Rule 7.02(d)."

**7 New Form 7A substituted**

For Form 7A of the Principal Rules **substitute—**

**"FORM 7A**

Rule 7.05

**SERVICE OUT OF AUSTRALIA—NOTICE TO  
DEFENDANT SERVED OUT OF AUSTRALIA**

*[heading as in Form 5A]*

To the Defendant:

1. You have been served with an originating process out of Australia under Rules 7.01.1 to 7.09 of the Magistrates' Court General Civil Procedure Rules 2010 of the Magistrates' Court of Victoria. A copy of those Rules is enclosed for your information. They show the scope of the jurisdiction of the Court in respect of claims against persons who are served out of Australia.
2. The grounds alleged by the plaintiff to support its claim to be entitled to serve you out of Australia are:  
*[specify grounds]*
3. If you do not give notice of defence in accordance with the Rules of the Court, the Court may, on application made by you, make an order setting aside the complaint or its service on you or dismissing or staying the proceeding. Without limiting the Court's powers in this regard, the Court may make such an order if satisfied that—
  - (a) the service was not authorised by the Rules of the Court; or

Magistrates' Court General Civil Procedure Amendment (Service Out of  
Jurisdiction) Rules 2018  
S.R. No. 159/2018

---

- (b) this Court is an inappropriate forum for the trial of the proceeding; or
  - (c) the claim has insufficient prospects of success to warrant putting you to the time, expense and trouble of defending the claim.
4. Alternatively you may give notice of defence (in the form prescribed by the Rules of the Court) within the time required under the Rules of the Court.
  5. If you give notice of defence, additional procedural obligations (such as an obligation to file a notice of defence) may apply to you in accordance with the Rules of the Court.
  6. If you do not give notice of defence within the time required under the Rules of the Court and you have not made an application of a kind referred to in paragraph 3, the Court may give leave to the plaintiff to proceed against you without further notice.

\_\_\_\_\_".

Dated: 11 October 2018

PETER HENRY LAURITSEN,  
*Chief Magistrate*

FELICITY ANNE BROUGHTON,  
*Deputy Chief Magistrate*

LANCE IVAN MARTIN,  
*Deputy Chief Magistrate*

---

---

Magistrates' Court General Civil Procedure Amendment (Service Out of  
Jurisdiction) Rules 2018  
S.R. No. 159/2018

Endnotes

---

## **Endnotes**

<sup>1</sup> Rule 4: S.R. No. 140/2010. Reprint No. 3 as at 15 March 2018. Reprinted to  
S.R. No. 128/2017.