

ARTICLE

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Hague Service Convention

Australia has become the 61st country to accede to the Hague Convention on *Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters 1965* (**Convention**). It is expected that the Convention will apply in Australia after October 2010.

The Convention facilitates the service of court documents on overseas parties and, as a result, will:

- create clearer arrangements to assist in cross-border litigation;
- reduce costs and delays in cross-border litigation;
- reduce the ability of overseas defendants to challenge the legality of service of process;
- allow proceedings to proceed to judgment rapidly;
- improve legal and commercial assurance; and
- clarify the position for defendants who are parties to cross-border litigation.

Service of process is a critical initial step in litigation. Irregularities in service can result in considerable delay and expense to the parties.

Under the current law, Australians wishing to litigate against defendants located overseas are required to comply both with the rules applicable

within Australia for the service of process and the rules of the country in which service is to be effected.

In consequence, Australian court documents are often ignored by overseas defendants or disputed on grounds of improper service. The result is delay and increased cost. The Convention will eliminate such issues for Australians wishing to pursue litigation against defendants who are residents of countries that are parties to the Convention.

Canada, China, France, India, Japan, the United Kingdom and the United States of America have already ratified the Convention.

The Convention can be used in circumstances where:

- a document is to be transmitted from a country that is a party to the Convention to another country that is also a party to the Convention;
- the address of the person to be served is known;
- the documents to be served are judicial or extrajudicial; and
- the documents to be served relate to civil or commercial matters.

The Convention requires that each acceding country put in place a 'Central Authority' who will accept and carry out the service requirements of a litigant requesting service from another Convention country. The following



procedure is to apply:

- the party seeking to serve process is to make application to the relevant officer of the issuing court for a request to be sent to the overseas Central Authority;
- the issuing court is to issue the request to the relevant Central Authority;
- the Central Authority is to arrange service of the documents upon the defendant; and
- once service has been effected, the Central Authority is to verify and complete a certificate to be returned to the issuing court.

Rules effecting the implementation of the Convention have been promulgated in the state Supreme Courts and the Federal Court of Australia (see the *Federal Court Amendments Rules (No 1) 2009 (Cth)* and the *Supreme Court (Chapter 1 Amendment No 14) Rules 2009 (Vic)*).

The Convention will be of considerable benefit to parties wishing to undertake litigation involving residents of Convention countries.

A copy of the Convention, and an outline summarising the relevant process, can be found at: http://www.hcch.net/index_en.php?act=conventions.text&cid=17.

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