

Service of summonses on interstate bodies corporate: What is the proper process to follow?

Coercive information gathering powers are important regulatory tools for Victorian integrity, accountability and investigatory bodies (Victorian bodies) that require evidence during an investigation. These powers include seeking the production of documents from a body corporate which is located interstate.

Given the intrusive nature of these information gathering powers and their potential impact on the recipient, proper processes must be followed to ensure that the evidence is gathered in accordance with State and Commonwealth statutory requirements.

The purpose of Guidance Note 2 (GN2) by the Victorian Inspectorate (VI) is to assist:

- **Victorian bodies to comply with the service requirements when they issue summonses¹ (or similar) to interstate bodies corporate²; and**
- **Interstate bodies corporate to understand the service requirements when they are served with a summons by a Victorian body.**

GN2 applies to summonses issued by the following Victorian bodies: the VI, the Independent Broad-based Anti-corruption Commission (IBAC), the Chief Examiner³, Victorian Auditor-General's Office (VAGO), Victorian Ombudsman (VO), Office of the Victorian Information Commissioner (OVIC) and the Wage Inspectorate Victoria.

Service and Execution of Process Act 1992 (Cth)

The *Service and Execution of Process Act 1992 (Cth)* (SEP Act) is made under section 51(xxiv) of the *Commonwealth of Australia Constitution Act* (The Constitution), which confers power to make laws with respect to the 'service and execution throughout the Commonwealth of the civil and criminal process and the judgments of the courts of the States'.⁴ The SEP Act provides for, inter alia:

- interstate service of courts and of tribunals exercising adjudicative functions
- service of subpoenas issued by courts and tribunals.⁵

1 For this Guidance Notice, the use of 'summons' refers to a witness summons or a notice to give evidence/produce documents or things.

2 The service requirements in the SEP Act also apply to a witness summons issued to an interstate natural person. This includes the requirement to seek leave of the Supreme Court under section 76 of the SEP Act.

3 The VI notes there is a different process for a summons issued by the Supreme Court under section 14 of the *Major Crime (Investigative Powers) Act 2004*. In that case, Part 3 of the SEP Act would apply to the service of that summons, and an order for leave to serve interstate is not required.

4 Section 51(xxiv) of The Constitution.

5 Explanatory Memorandum, *Service and Execution of Process Bill 1992*.

Victorian bodies established by or under a law of a State, that are authorised to take evidence on oath or affirmation are considered 'tribunals' within the meaning of section 3 of the SEP Act.

When a Victorian body requires an interstate body corporate to give evidence or produce documents or other things in connection with the performance of an investigative function such as an investigation, Part 4, Division 4 of the SEP Act applies.⁶

The process

Service of a summons on an interstate body corporate in connection with a Victorian body's investigative functions requires the following steps to occur.

Step One: The Victorian body must issue the summons in accordance with the relevant governing statute.

- For example, the VI must issue a witness summons in accordance with sections 53 and 54 of the *Victorian Inspectorate Act 2011* (VI Act).

Step Two: The Victorian body that has issued the summons must apply to the Supreme Court of Victoria under section 76 of the SEP Act for leave to serve the summons outside the State.

- The Court will give leave if satisfied that the evidence likely to be given by the interstate body corporate, or the document or thing specified in the summons, is relevant to, for example, the Victorian body's investigation.

Step Three: Once leave has been given by the Supreme Court, the Victorian body must serve the summons on the interstate body corporate in the same way as service would be effected in the place of issue.⁷ This incorporates the provisions of relevant governing legislation.

- For example, methods of service in sections 56(4) and (4A) of the VI Act include leaving the summons at, or sending it by post to, the body corporate's registered office or delivering a copy of the document to the body corporate by means of an electronic communication that is confirmed as having been received by the body corporate.
- Under section 59 of the SEP Act (as applied by section 77(1) of that Act), service of the summons is only effective if it is served with a copy of the order from the Supreme Court of Victoria and a copy of the notice in Form 5 in Schedule 1 to the *Service and Execution of Process Regulations 2018*.

Step Four: The Victorian body must also serve the summons, copy of the court order and Form 5 notice in accordance with the time requirements in the relevant governing statute.

- For example, the VI must serve a witness summons in accordance with section 56(1) or (2) of the VI Act.

What if leave to serve interstate is not sought under the SEP Act?

Service will not be effective if a summons is not served in accordance with the statutory requirements set out above.

This means that a Victorian body would not be able to enforce the summons or prosecute the interstate body corporate for a failure to produce the documents or attend to give evidence.

⁶ Section 3 of the SEP Act defines 'tribunal', 'subpoena' and 'investigative function'.

⁷ Section 58(2) *Service and Execution of Process Act 1992* (Cth), as applied by section 77(1) of that Act.

Complaints

Complaints can be made to the VI regarding the exercise of coercive information gathering powers by IBAC or an IBAC officer, the Chief Examiner or an Examiner, a VAGO officer, a VO officer or an OVIC officer.⁸

Complaints can be made via the online form on the Victorian Inspectorate's website (www.vicinspectorate.vic.gov.au/make-complaint-about-victorian-integrity-body).

In limited circumstances, a complaint about the VI may be made to the Integrity and Oversight Committee of the Victorian Parliament (IOC). Further information about what complaints the IOC can consider about the VI can be found in the IOC Complaint Fact Sheet on the Parliament of Victoria's website (www.parliament.vic.gov.au/images/stories/committees/IOC/IOC_Complaint_Fact_Sheet.pdf).

Disclaimer: Please note that the advice provided in this guidance note is general in nature and does not constitute legal advice.

⁸ Section 43 *Victorian Inspectorate Act 2011*.