

3. Personal Jurisdiction: Common-Law Foundations

Personal jurisdiction asks whether the defendant is amenable to the court's authority. In ordinary common-law analysis, jurisdiction is established principally through **valid service** or **submission**.

Common Law - Service

Territorial jurisdiction based on defendant's presence

Individuals

Personal service on an individual physically present in the forum ordinarily establishes jurisdiction, even if the presence is temporary. Presence must be real at the time of service; later departure does not undo jurisdiction already established. Fraudulent inducement into the jurisdiction may make service vulnerable. Substituted service is a method of bringing process to the defendant's attention; it does not itself create a jurisdictional basis that is otherwise absent.

Uniform Civil Procedure Rules 2005 (NSW) rr 10.14, 10.20-10.27

- **r 10.14 (Substituted service)**
- Court may order alternative service methods if personal service is impracticable, requiring proof of reasonable prior service attempts.
- Orders set tailored steps to bring documents to the respondent's notice; compliant steps count as valid service.

rr 10.20–10.27 (Personal service core rules)

- r 10.20: Originating process requires personal service, unless an exception applies.
- rr 10.21–10.23: Standard personal service on individuals—hand document directly to them; if refused, leave it near them.
- r 10.26: Special personal service for a person “keeping house” (unable to access premises): post/affix document + mail a follow-up notice within 24 hours; deemed personal service.
- r 10.27: Rules personal service on corporations via directors, secretaries, or registered office staff aged 16+.
- rr 10.24–10.25: Cover personal service on minors, protected persons, and represented parties via their legal guardian/representative.

- All compliant personal service creates procedural obligations to respond within statutory timeframes.

Laurie v Carroll

- **Fact and issues:** A writ was issued on 14 June 1957 by the Victoria Supreme Court. Laurie left Victoria on 13 June 1957. The travel was planned before he came to Australia, and he did not leave for the purpose of evading the writ. At the critical moment when the writ was issued, the defendant was not present in Victoria. Carroll sought to use substituted service to deliver the documents to Laurie.
- **Held and ratio:** Carroll cannot use substituted service. Substituted service is only allowed if the court has personal jurisdiction over the defendant. The jurisdiction is determined by the presence of the defendant on the date of the writ, not on the date of service. The timeline is important: originating process alone is necessary but not sufficient to establish the jurisdiction; service perfects the jurisdiction. The motive or purpose of leaving does not matter. The length or temporariness of the presence does not matter (*HRH Maharanee of Baroda v Wildenstein*). Only the physical presence at the critical moment of the issuance of the writ matters. Where the writ issued cannot be legally served upon the defendant, the court can exercise no jurisdiction over the defendant. Carroll should turn to international service outside Australia to pursue this case.
- **Takeaways:** Jurisdiction is established by presence at the date of the writ, not service. Substituted service cannot create jurisdiction where none exists.

Gosper v Sawyer

- **Fact and issues:** The Industrial Commission of NSW tried to serve a group of trustees who were all resident in Victoria. The question was whether the NSW commission could use substituted service to serve those trustees in Victoria.
- **Held and ratio:** No. Service outside NSW is not a substituted service, but an extension of the jurisdiction. Only Parliament can expand the power of the court to issue such a service. The court cannot use substituted service to extend its jurisdiction beyond the territorial limits established by law.
- **Takeaways:** Substituted service is purely procedural; it cannot extend the court's territorial jurisdiction.

Ainsworth v Redd

- **Fact and issues:** This case established the three critical elements of an effective personal service under the UCPR.
- **Held and ratio:** Three elements must be satisfied: (1) The documents must remain with the person served. It is not enough just to show the person the documents. (2) There must be an intention that the documents are to be left with the person served. Service by accident is not enough. (3) The documents must be left with the defendant or an agreed agent.
- **Takeaways:** Personal service requires intentional delivery of documents to the defendant or their agent.

Joye v Sheahan

- **Fact and issues:** The writ was posted to Joye's solicitor on 13 December 1994. On the same day, Joye left Australia. On 14 February 1995, the substituted service was effected. Mr Joye applied for an order to set aside the substituted service.
- **Held and ratio:** Substituted service is valid because the defendant was present at the issuance of the original letter of service. He knew the service was coming and left with the motivation to avoid the service. A person who left the place after initiating process was issued and who either knew that process had been issued or who left to evade service of process will be regarded as within the court's jurisdiction. The court may order substituted service on such a person.
- **Takeaways:** A defendant who leaves the jurisdiction to evade known service remains subject to the court's jurisdiction.

Perrett v Robinson

- **Fact and issues:** Robinson injured Perrett in a car accident in the Northern Territory. To claim for better damages, Perrett offered to drive Robinson to Queensland to serve the process on him. Robinson agreed because it would be the insurance company who would pay for the damages. The insurance company objected to the Queensland jurisdiction.
- **Held and ratio:** The court should not strike out the jurisdiction unless the service was vexatious, oppressive, or an abuse of process. There was no fraud because Robinson knew what was going to happen, and parties can agree on the jurisdiction. Unless the defendant was tricked, fraudulently enticed, or coerced

into the jurisdiction, the purpose of visiting the forum is irrelevant. The jurisdiction would be valid if the defendant came into the jurisdiction specially to be served. Also, in the insurance contract, the insurance company had agreed to be liable for damages in Queensland.

- **Takeaways:** Service is valid even if the defendant came to the forum solely to be served, provided there was no fraud or coercion.

Corporations

A foreign corporation may be present where it carries on business through a sufficiently fixed and substantial presence. The court examines the corporation's own activities and whether a local representative is truly conducting its business, rather than merely acting as an independent intermediary. Statutory registration and service rules supplement the common law.

Corporations Act 2001 (Cth): ss 601CD, 601CT, 601CX;

- **s 601CD – Foreign companies carrying on business in Australia**
- Bans foreign firms from conducting Australian business unless registered, or a registration application is pending.
- Defines relevant business activity to include offering or guaranteeing debentures regulated under Part 2L.1.
- Enforces registration as the primary gatekeeper for foreign corporate operations within Australian jurisdiction.
- **s 601CT – Registered body's Australian registered office requirements**
- Mandates a local registered office for all registered foreign bodies to receive official notices and correspondence.
- Default opening hours: minimum 10am–12pm each business day; bodies may lodge a notice setting custom 3+ hour windows between 9am–5pm.
- Updated lodged hours replace prior timetables and bind ongoing office accessibility obligations.
- **s 601CX – Change of registered office for foreign companies**
- Requires written ASIC notification within a fixed timeframe if a foreign-registered body relocates its Australian registered office.
- The new address must satisfy s 601CT's physical location and opening-hour rules immediately post-move.

- Failure to notify ASIC creates a regulatory offence and invalidates deemed service of official documents at the old address.

Service and Execution of Process Act 1992 (Cth) ss 9, 15.

- **Section 9 (Act to exclude inconsistent State laws)**
- The Act prevails over conflicting State statutes governing interstate civil initiating process service, barring State rules that restrict cross-State service scope/methods.
- Limited carve-outs apply: the Act does not override State laws regulating subpoena service requiring pre-service leave or longer minimum compliance notice periods.
- It preserves court powers to order substituted service and does not override separate Commonwealth prisoner transfer or family law regimes.
- **Section 15 (Interstate service of initiating process)**
- Authorises valid service of any State-issued initiating civil process across all other Australian States under this uniform federal scheme.
- Prescribes service follows either the originating State's local service rules or compliant SEPA procedures; strict attachment of mandatory prescribed notices is required for service to take legal effect (reinforced by s 16).
- Properly effected interstate service under s15 confers full jurisdiction on the issuing court, unaffected by State territorial jurisdiction limits (supported by s130).
- Failing to comply with s15 formalities renders service voidable, risking proceeding dismissal for defective cross-State service.

National Commercial Bank v Wimborne (1979)

- **Fact and issues:** This case concerned the service on an unregistered foreign corporation. The question was whether the company was "present" in the jurisdiction by carrying on business there.
- **Held and ratio:** The unregistered foreign corporation needs to be "present" in the jurisdiction, meaning that they are carrying on business in the forum. There are three elements in defining the presence of a corporation: (1) **Agent:** whether the company carries on business by an agent who has authority on behalf of the corporation to make contracts with persons in NSW binding on the corporation. (2) **Place:** whether the business is carried on at some fixed and definite place within