

A. Jurisdiction

Personal jurisdiction depends on [the D] being amenable to service of [the court's] initiating process either at CL due to presence or submission, or due to an applicable 'long-arm provision' ...

1) D present in jurisdiction

Individuals

NSW

1. Personal jurisdiction is established at CL when D is served within the forum's territorial limits: *Laurie*. Issue of initiating process is only an inchoate exercise of jurisdiction, which is perfected upon valid service on D: *Laurie*; *Close*.
2. **Service to solicitors**: sufficient that D was present in the jurisdiction (NSW) even if service was made to D's solicitors in another jurisdiction (Vic) who were authorised to accept service at the time: *Re Mustang Marine*
3. **Length** of presence is irrelevant: *Laurie*
4. **Was D is fraudulently enticed [or coerced] into the jurisdiction solely for the concealed purpose of being served**
 - a. **Cf not concealed purpose**: D willingly drove to Qld for sole purpose of accepting service (voluntary submission to jurisdiction): *Perrett*
 - b. **Cf not sole purpose**: D would have gone to NY anyway to visit son: *Close*
 - c. **Result**: Service will be set aside as an 'abuse of process': *Close*
5. **Timing**
 - a. **If D leaves before the OP is issued**, the court has no jurisdiction: *Laurie* (left one day before OP issued)
 - b. **If D is present when OP is issued, but leaves before service**, generally no jurisdiction: *Joye* – unless
 - i. D knew writ had been issued, or
 1. *Joye* knew of issue (left to evade service) — P's lawyers asked D's lawyers beforehand whether they had instructions to accept of summons; D's lawyers received summons on 13 Dec and *Joye* left on same day; on 16 Dec, D's solicitors told P they had no instructions to accept service: *Joye*
 - ii. D left the jurisdiction to **evade** service (even without knowing writ was issued)
 - c. **Note**: if D is in jurisdiction when OP issued but leaves before service, but then returns, service can still perfect the establishment of jurisdiction: *Laurie*

Interstate

1. OP issued in NSW may be served in another state, and service on individual must be effected as in NSW: *SEPA s 15(1)–(2)*
2. Nb service only effective if prescribed **notice** is attached to the process: *s 16*
3. See also stay 'in the interests of justice' → **go to FNC section**

New Zealand

1. Per *TTPA s 9(1)*, OP can be served in NZ without leave, but it must be served as required in NSW (→ **go to UCPR**) (*s 9(2)*) and contain the prescribed information (*s 11*).
2. Such service will have the **same effect** as if OP had been served in the place of issue: *s 10*
3. **But** D may apply to Aus Ct to **stay** the proceedings if NZ Ct is 'the more appropriate forum': *s 17(1)* → **go to FNC section**
 - a. Application must be made within **30 working days** of service (Ct may adjust period upon application): *s 17(2)*

Was service properly effected?

1. **OP must be personally served unless UCPR provides otherwise**: *r 10.20(2)(a)*
2. Personal service is effected by leaving a copy of the doc with the person or, *if the person does not accept the copy*, by putting the copy down in their presence and telling them the nature of the doc: *r 10.21(1)*
 - a. If violence or threats prevent approach, the document may be left as near as practicable: *r 10.21(2)–(3)*
3. If Local Court, it may be
 - a. Personally served: *r 10.20(2)(b)(i)*
 - b. Left, addressed to D, at D's business or residential address, with a person who is apparently of or above the age of 16 years and apparently employed or residing at that address: *r 10.20(2)(b)(ii)*
 - c. Served by the LC, sent by post, addressed to D, to D's business or residential address in an enveloped marked with a return address (being the address of the LC but not so identified): *r 10.20(2)(b)(iii)*
4. **Substituted service (if D not present)**: *r 10.14*
 - a. (Nb subject to the jurisdictional constraints above: *Laurie*)
 - b. Ct may order that, instead of service, certain steps be taken to bring a doc to the notice of a person if it cannot otherwise **practicably** be personally served, and this constitute personal service *rr 10.14(1), (4)*
 - i. Mere inconvenience, cost, fact D is overseas in itself insufficient
 - ii. Consider: urgency (interlocutory relief; risk of asset dissipation; need to join 3rd party); significant delays would frustrate proceedings; extensive but unsuccessful attempts to locate D; D actively evading service
 - c. Ct may order that the doc be taken to have been served:
 - i. On the happening of a specified event or on the expiry of a specified time: *r 10.14(2)*
 - ii. On a date specified if steps have been taken for purpose of bringing the doc to person's notice: *r 10.14(3)*
 - d. **Service effected by posting a sealed copy of summons to D's solicitors** because D left Australia shortly after his solicitors were notified that the originating process had been issued and thus likely did so to **evade** service: *Joye*

Corporations

Australian corporation

1. Ct has jurisdiction

2. Service

- a. **Registered in NSW:** service may be effected by:
 - i. Personally serving the doc on a **principal officer** of the corporation: **UCPR r 10.22(a)**
 1. *person with general management of the company's affairs (eg CEO) or*
 2. *an officer responsible for receiving correspondence (eg secretary)* **UCPR Dictionary**
 - ii. In any other manner authorised by law: **UCPR r 10.22(b)**
 - iii. Leaving it at, or posting it to, the Co's registered office: **CA s 109X(1)(a)**
 - iv. Personally delivering it to a director of the Co residing in Aus/an external Territory: **CA s 109X(1)(b)**
- b. **Registered in another State:** **service must be effected in accordance with SEPA s 9: s 15(3)**
 - i. Leaving it at, or posting it to, the Co's registered office: **SEPA s 9(1)**
 - ii. Personally delivering it to a director residing in Aus: **SEPA s 9(2)**
 - iii. **But** service only effective if the prescribed **notice** is attached to the process: **SEPA s 16**
 - iv. CA s 109X does not apply: **SEPA s 9(9)**. UCPR does not apply: **s 8(4)**

Foreign corporation

Foreign corporations 'carrying on business' in Australia must be registered (**CA s 601CD(1)**) and have a local agent and registered office kept open during business hours (**ss 601CT, 601CG**)

Local agent: *natural person/company resident in this jurisdiction and authorised to accept on co's behalf service of process and notices*

Local office: *to which notices may be addressed*

If not → unregistered

If incorporated in NZ → TTPA!

Registered:

1. A foreign company registered as such is taken to conduct business in Australia and is amenable to jurisdiction of all courts even if they do not conduct business in a particular state forum
2. **Service may be effected by:**
 - a. **Registered in NSW:**
 - i. Personally serving the doc on a **principal officer** of the corporation: **UCPR r 10.22(a)** (if applies – 'corporation' not defined)
 1. **(a)** chairman or president of the governing body of the corporation;
 2. **(b)** general manager, CEO or other person having general management of co's affairs; or
 3. **(c)** secretary, treasurer or other person having general function of accepting corro on co's behalf **UCPR Dictionary**
 - ii. Leaving it at, or posting it to,
 1. **Co's registered office:** **CA s 601CX(1)(a); UCPR r 10.22(b);**
 2. address of a **local agent** of the foreign co: **CA s 601CX(1)(b); UCPR r 10.22(b)**
 - iii. If 2+ directors reside in Australia: **personal service** to 2 of them: **CA s 601CX(3); UCPR r 10.22(b)**
 - iv. If proprietary company with only 1 director: **personal service** to dir: **CA s 601CX(3A); UCPR r 10.22(b)**
 - b. **Registered in another State:**
 - i. A foreign corporation registered anywhere in Aus is considered present in the jurisdiction of the NSWSC, and may be served in that other state: **SEPA s 15(1)**
 - ii. Service must be effected in accordance with SEPA s 9: **s 15(3)**
 1. Leaving it, or by posting it to
 - a. The registered office of the body: **s 9(5)**
 - b. The address of a local agent of the foreign Co: **s 9(6)**
 2. If 2+ directors reside in Aus: personal service to 2 of them: **s 9(7)**
 - iii. **But** service only effective if the prescribed **notice** is attached to the process: **SEPA s 16**
 - iv. CA s 601CX does not apply: **SEPA s 9(9)**. UCPR does not apply: **s 8(4)**

Unregistered:

1. **Jurisdiction:** In order to be 'present in the jurisdiction' the non-registered corporation must carry on business in Australia, which is generally established in accordance with the 3 criteria in *Wimborne*
 - a. **First: By local agent with authority to make binding contracts on behalf of the Co with persons in the forum**
 - i. **Cf 'mere ministerial agent':** Saudi bank had arrangement with NSW bank by which NSW bank collected proceeds and remitted them back to NCB in Saudi Arabia → 'mere ministerial service for the NCB as part of its own banking business' - merely *notified* beneficiaries in NSW of the NCB's establishment of a credit in their favour, without any commitment or role in its creation (created between NCB and its customer in Saudi Arabia): *Wimborne*
 1. No evidence of transaction in which the local bank had acted for the NCB
 - ii. **Cf carrying on own business** and not of the foreign corporation: *Wimborne* → not exhaustive but relevant: *Adams*
 1. Was rep's place of business originally acquired for purpose of acting on Co's behalf
 2. Has Co has directly reimbursed them for the cost of accommodation or staff
 3. Has Co provided financing for business carried on by rep
 4. Is rep remunerated by transaction, commission, fixed regular payments or in some other way
 5. Degree of control Co exercises over the running of the business conducted by the rep
 6. Does rep reserve part of his (i) accommodation or (ii) staff for conducting business related to Co
 7. Does rep display Co's name at premises/on stationery in a way that indicates being rep of Co
 8. Nb must still have **authority to bind co!**
 - iii. Nb each **subsidiary** must be regarded as a separate entity: *Adams* (see factors above)
 1. Presence of subsidiary in the jurisdiction does not mean its parent is present: *Adams*
 2. Illinois subsidiary carried on its own business (responsible for marketing & sale of asbestos → incorporated to parent group's marketing), had no authority to bind the UK parent, rented its own offices, and employed its own staff – also use of the corporate structure to shield group from liability did not justify piercing the corporate veil: *Adams*
 - iv. **Cf merely that foreign corporation appointed a local solicitor for legal proceedings in the jurisdiction:** *Wimborne; AG v Bailey*
 - v. **Nb agent must be in the forum**
 - b. **Second: At some fixed and definite place within the forum**
 - i. Cf transient
 - ii. Consider whether: *Wimborne*
 1. name of the foreign corporation is displayed at the agent's place of business
 2. it owns or leases the premises or pays the rent
 3. it employs staff or particular staff are allocated by the agent to its business
 4. it pays their wages or pays office expenses
 5. *anything one would expect to find if a person doing business had established or maintained a place or office for doing it in a particular territory*
 - iii. Co had no fixed place of business; subsidiary was not carrying on parent co's business *Cape*
 - iv. NCB bank had no branch office, agency, or place of business in NSW; occasionally used Sydney bank to collect and remit proceeds from NSW importers, but this evidence was given little weight *Wimborne*
 - c. **Third: And continued for a sufficiently substantial period of time**
 - i. Exhibition stand maintained for nine days in England was sufficient: *Dunlop in Nygh*
2. **Service may be effected by:**
 - a. **Within NSW:**
 - i. Personally serving the doc on a **principal officer** of the corporation: **UCPR r 10.22(a)** (if applies – 'corporation' not defined)
 1. (a) chairman or president of the governing body of the corporation;
 2. (b) general manager, CEO or other person having general management of co's affairs; or
 3. (c) secretary, treasurer or other person having general function of accepting corro on co's behalf*UCPR Dictionary*
 - ii. Any other manner in which service of such a document may, by law, be served on the Co **UCPR r 10.22(b)**
 - iii. **If agent is separate natural person:**
 1. Personal service is effected by leaving a copy of the doc with the person or, *if the person does not accept the copy*, by putting copy down in their presence and telling them nature of doc: **r 10.21(1)**
 2. If violence or threats prevent approach, the doc may be left as near as practicable: **r 10.21(2)–(3)**
 - b. **In another State:**
 - i. Service must be effected in accordance with SEPA s 10: **SEPA s 15(4)**
 1. If State law provides for particular place for service (e.g. UCPR), then leaving the doc at that place or sending it to that place by post: **SEPA s 10(2)(a)–(b)**
 2. If State law does not provide a place for service, then leaving the doc at the head office, a reg office or principal place of business, or posting the doc to that place: **SEPA s 10(3)(a)–(b)**
 - ii. **But** service only effective if the prescribed **notice** is attached to the process: **SEPA s 16**