



FEDERAL CIRCUIT
AND FAMILY COURT
OF AUSTRALIA

Service Kit



www.fcfcoa.gov.au

Use this kit when you need to serve documents on another person in a case

This kit comprises:

- Information (pages A-C)
- Form: *Acknowledgment of Service*
- Form: *Affidavit of Service*

Service – what you need to know

What is 'service'?

Service is the legal term used to describe the giving or delivering of court documents to another person in a way that satisfies the Court that the person has received them. This is particularly important if the person served does not attend court. If the Court is satisfied that the person has received the Court documents the case may proceed without that person being present and orders may be made.

When do you serve documents?

Whenever you file a document a copy of that document must be served unless the document is a joint application, an application without notice, a copy of a marriage certificate, an Affidavit of Service or a document which has been signed by all parties (see Part 2.6 of the Rules).

TIME LIMITS

There are rules about when documents must be served. In most proceedings these documents should be served as soon as practicable after filing. The Rules and the Practice Directions provide specific times for service of some documents. You should check with court staff as special conditions can apply to certain documents.

A document cannot be served 12 months after the date of filing without permission of the Court.

Who do you serve with the documents?

A copy of the document filed must be served on the other party or parties to the proceeding and on the independent children's lawyer if one has been appointed and any other person required to be served by an order of the Court or legislative provision (see Rule 2.27(3)). If the other party has a lawyer, that lawyer may accept service on behalf of his/her client. If the other party has an address for service then the documents should be served at that address.

Service of documents on persons who are not parties

There are some documents that must be served on persons who are not parties. For example, if you are applying for an order for property settlement and either party has a superannuation interest, you may need to serve a copy of the application on the trustee of the superannuation plan in which the interest is held.

Other examples include the service of subpoena and the service of documents on the Child Support Registrar. You should seek legal advice about what needs to be done in these circumstances.

About the words used in this Kit

Affidavit is a written statement which is sworn or affirmed by you before a Justice of the Peace, Notary Public or lawyer or other person authorised to witness affidavits.

Applicant means the person who has started a case in a court by filing an application.

Litigation guardian means a person appointed by the Court to manage and conduct a case for a child or person with a disability and includes a person who is the manager of the affairs of the party, next friend, guardian ad litem, tutor or litigation guardian (see Part 3.5 of the Rules).

Conduct money means money paid by a party to a witness, before the witness appears at a court event to cover travel costs, and if necessary reasonable accommodation expenses.

Contact address (address for service) means the address that a party in a proceeding nominates as being the place in Australia where documents are to be left for them, or posted, or emailed to them.

Court date means the date on which the application is listed. The Court date, time and location appear in the box in the top right corner of the application.

Electronic communication as the context permits includes transmission of information in the form of speech, data, text or images for example by telephone, or videoconferencing, closed circuit television, or email.

Filing is the procedure of you lodging an application or other document with a registry of the Court. You can do this by hand, post or electronic means.

Party means a person involved in a proceeding before the Court. Once the application is filed, both you and the other person/s named in the application become parties.

Person with a disability means a person who, because of a physical or mental disability, does not understand the nature and possible consequences of the proceeding or is not capable of adequately conducting, or giving adequate instructions for the conduct of, the proceeding.

Registry is how Federal Circuit and Family Court offices are known, for example, the Melbourne registry is in the Commonwealth Law Courts building on William Street.

Respondent means a person who is named as a respondent to an application made to the Court.

Service can be by personal service or ordinary service.

Personal service

Certain documents must be served by personal service. They are:

- an Initiating Application (Family Law)
- an Application – Enforcement
- an Application – Contravention
- an Application – Contempt
- Order made on application without notice

If a document is required to be served by personal service, the person on whose behalf the document is served must satisfy the Court that the person served actually received the document (see Rule 2.35). An Affidavit of Service can be filed to prove that personal service has been effected.

METHODS OF PERSONAL SERVICE

- **By hand.** You may arrange for a process server (for a fee) or any other person over 18 to hand deliver the documents for you. Process servers are listed in the Yellow Pages. The Subpoena, the Application-Contravention and the Application-Contempt must be served this way. The parties to an application are not able to personally serve each other.
- **By service on a lawyer**
A document is taken to be served by special service on a person if:
~ a lawyer representing the person agrees, in writing, to accept service of the document for that person, and
~ the document is personally given to the lawyer.

Special service on persons with a disability and prisoners

There are special requirements when a document is required to be served by special service on a person with a disability or a prisoner.

- Special service on a person with a disability (Rule 2.37)
The document must be served:
(a) on the person's litigation guardian
(b) on the person's guardian appointed under a State or Territory law, or
(c) if there is no one under paragraph (a) or (b) – on an adult who has the care of the person.
Note: the person in charge of a hospital, nursing home or other care facility is taken to have the care of a person who is a patient in the hospital, nursing home or facility.
- Special service on a prisoner (Rule 2.38)
The document must be served on the person in charge of the prison.
Note: that when serving an application, subpoena or notice of appeal on a prisoner, the prisoner must be informed in writing about the requirements to attend court by electronic communication under Rules 13.33 or 15.18, as applicable.

Ordinary service

If a document is not required to be served by special service, it may be served on a person by ordinary service. This means the documents can be served:

- by personal service;
- at a person's contact address (address for service) in Australia by delivering it, posting it or sending it by electronic communication to that address, or
- if a person does not have a contact address (address for service), by delivering it, posting it or sending it by electronic communication to their last known address.

You may need to prove ordinary service by filing an Affidavit of Service.

What you will be serving

You may need to serve a range of documents. The most likely documents required to be served are listed at Item 3 of the Affidavit of Service contained in this kit. In the case of a subpoena, it is necessary at the time of service to provide 'conduct money' to cover the cost of the person travelling to and from the Court and home (or workplace).

Overseas service

If you need to serve documents overseas please ask registry staff about the special requirements.

Trans-Tasman Cases

Proceedings issued by an Australian court may only be served in New Zealand in accordance with the provisions of the *Trans-Tasman Proceedings Act 2010*.

Dispensing with service

If you cannot find the other party to serve the documents on them, it is possible to apply to the Court to dispense with service of the application. You should obtain legal advice about how to do this.

Specific service requirements

Certain documents have specific service requirements. They are:

- Application for Divorce (see Division 2.6.4 of the Rules)
- A subpoena or a copy of a subpoena (see rules 2.30 and 6.30)
- Third Party Debt Notice (see Division 11.1.4 of the Rules)
- Notice of Appeal (see rule 13.05)
- Documents to be served with a Form (see rule 2.28(4))
- Brochures required to be served with a Form (see rule 2.28(4))

Refer to the specific rules or the relevant Practice Directions for more information.

The stages of personal service

SERVICE BY HAND

Step 1

Obtain from the Court registry or website any relevant Family Court brochures, including:

- *Marriage, Families and Separation*.
- Any other brochure relevant to your application.

Step 2

The person who is going to serve ('the server') will need the following documents:

- The application and any other documents to be served, and
- The Court brochures you obtained at Step 1.

The person can also be provided a copy of the *Acknowledgment of Service*.

If the server does not know the other party, it is helpful to provide a recent photograph of the other party.

Step 3

The server should hand the documents to the person to be served. If the server does not know the person, he or she needs to seek sufficient information to be satisfied about the identity of the person. This information needs to be recorded at Part D of the Affidavit of Service stating, for instance:

'I had the following conversation with the person at the time of service

Question: Are you 'X'?

Answer: Yes

Question: Are you the person named as the respondent in the application?

Answer: Yes

The server can ask the person being served to sign the *Acknowledgment of Service*.

If the person being served refuses to take the documents the server may put them down in the person's presence and tell the person what the documents are.

Step 4

The server completes the *Affidavit of Service* including Part D. If the *Acknowledgment of Service* was signed by the person being served, attach it. If a photograph was used to identify the person, attach it to the back of the Affidavit of Service.

Step 5

The server must swear of affirm the *Affidavit of Service* before a Justice of the Peace, notary public or lawyer or another person authorised to witness affidavits.

Step 6

File the completed *Affidavit of Service* and any attachments at the Court registry before the next court date.

Please note: You should make a photocopy of ALL documents and bring them to court.

Legal advice

You should seek legal advice before deciding what to do. A lawyer can help you understand your legal rights and responsibilities and explain how the law applies to your case. A lawyer can also help you reach an agreement with the other party without going to court. You can seek legal advice from a legal aid office, community legal centre or private law firm. Court staff can help you with questions about court forms and the court process, but cannot give you legal advice.

Hearing impaired clients

The National Relay Service is a free telephone service that allows deaf, or hearing and/or speech impaired clients with a TTY machine, to make telephone calls to a registry.

- Telephone: 133 677 (clients who are deaf or hearing impaired)
- 1300 555 727 (clients who are both deaf/hearing impaired and speech impaired).

www.relayservice.gov.au

Acknowledgment of Service

Federal Circuit and Family Court of Australia (Family Law) Rules 2021 – RULE 2.32

Please type or print clearly and mark [X] all boxes that apply. Attach extra pages if you need more space to answer any question/s.

Filed in:

- Federal Circuit and Family Court of Australia
 Family Court of Western Australia
 Other (specify) _____

File number _____

Filed at _____

Filed on _____

Court location _____

Next Court date (if known) _____

Filed on behalf of:

(NAME OF PARTY)

This form is used to acknowledge that documents have been served.

Items 1 and 2 must be completed by the person serving the documents before the form is sent to the person being served.

Part A About the person being served

1 What is the name of the person being served?

Family name as used now

Given names

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Part B About the documents being served

2 What documents were served? Mark [X] all boxes that apply

- | | |
|--|--|
| <input type="checkbox"/> Application for Divorce | <input type="checkbox"/> Application in a Proceeding |
| <input type="checkbox"/> Initiating Application (Family Law) | <input type="checkbox"/> Application – Contravention |
| <input type="checkbox"/> Financial Statement | <input type="checkbox"/> Application – Contempt |
| <input type="checkbox"/> Court brochure/s (specify) _____ | |
| <input type="checkbox"/> Copy of affidavit of (FULL NAME) _____
sworn/affirmed on / / | |
| <input type="checkbox"/> Other (give details) _____ | |

Part C Acknowledgment

I acknowledge that on ____ / ____ / ____ [date] the documents listed above were served on me.

Signature of person served

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or

I am the lawyer for the person served. On behalf of my client I acknowledge service of the documents as listed on ____ / ____ / ____ [date]

Signature or lawyer

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Lawyer's name (PLEASE PRINT)

--

Lawyer's address

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Code

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Affidavit of Service

Federal Circuit and Family Court of Australia (Family Law) Rules 2021- RULE 2.32

Please type or print clearly and mark [X] all boxes that apply. Attach extra pages if you need more space to answer any questions.

Filed in:

- Federal Circuit and Family Court of Australia
 Family Court of Western Australia
 Other (specify) _____

Filed on behalf of:

(NAME OF PARTY)

Client ID _____

File number _____

Filed at _____

Filed on _____

Court location _____

Next Court date (if known) _____

Part A About the server

1 What is the name and address of the person who served the documents?

Family name as used now

Given names

State	Postcode

Part B About the person and the documents being served

2 What is the name of the person on whom the documents were served?

Family name as used now

Given names

3 What documents were served? Mark [X] all boxes that apply

Initiating Application (Family Law)

Financial Statement

Application in a Proceeding

Application – Contravention

Application – Contempt

Court brochure/s (specify) _____

Copy of affidavit of (FULL NAME) _____

sworn/affirmed on / /

Subpoena and conduct money of \$ _____

Other (give details) _____

Part C About how service was carried out

- 4 How were the documents served?
- By hand GO TO PART D
 - By post or by electronic means GO TO PART E

Part D Service by hand

- 5 I swear* / affirm* that (mark [X] all boxes that apply):
- The facts set out in Items 1-4 are true
 - I served the documents listed in Item 3 by handing them to the person named in Item 2
on ____/____/____ at _____ AM/PM at:

State	Postcode
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 - I attempted to hand the documents listed in Item 3 to the person named in Item 2
on ____/____/____ at _____ AM/PM at:

State	Postcode
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The person refused to accept them. I put them down and left them in the presence of the person and told the person what the documents were.

 - I am able to identify the person served because (mark [X] all boxes that apply):
 - I know the person
 - The person is shown in the attached photograph
 - I saw the person sign the Acknowledgment of Service attached
 - I had the following conversation with the person at the time of service
(set out the conversation relating to the person's identity) _____

PLEASE DO NOT SIGN UNTIL YOU ARE WITH A PERSON WHO IS LEGALLY ABLE TO WITNESS YOUR SIGNATURE IN YOUR STATE OR TERRITORY

Signature of person serving documents	Place	Date / /
Before me (signature of witness)	Full name of witness (please print)	
<input type="checkbox"/> Justice of the Peace	<input type="checkbox"/> Notary public	<input type="checkbox"/> Lawyer
<input type="checkbox"/> Authorised Staff Member of the Court		

* delete whichever is inapplicable

Part E Service by post or electronic communication

6 I swear* / affirm* that (mark [X] all boxes that apply):

- The facts set out in Items 1-4 are true
- I served the documents listed in Item 3 by posting them* / by electronic communication* **[delete whichever is not applicable]** on / / (date of posting or sending) to the person being served at:

State	Postcode
Phone	
DX	
Email	

- I recognise the signature on the attached Acknowledgment of Service as that of
[insert name of person served]

_____ because I have seen that person's signature on previous occasions.

PLEASE DO NOT SIGN UNTIL YOU ARE WITH A PERSON WHO IS LEGALLY ABLE TO WITNESS YOUR SIGNATURE

Signature of person serving documents	Place	Date	/	/
Before me (signature of witness)		Full name of witness (please print)		

- Justice of the Peace Notary public Lawyer
- Authorised Staff Member of the Court

delete whichever is inapplicable