



Service Kit

www.familycourt.wa.gov.au

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

This kit comprises:

- Information (pages A-E)
- Acknowledgment of Service ~ Form 6
- Affidavit of Service ~ Form 7
- Where to file

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.

TIME LIMITS

There are rules about when documents must be served. For example:

- **APPLICATION FOR DIVORCE**
At least 28 days before the hearing if it was served in Australia.
At least 42 days before the hearing if it was served overseas.
- **OTHER DOCUMENTS**
These should be served as soon as practicable after filing. However, you should check with Court staff as special conditions can apply to certain documents.

If you are unable to serve an application within the time limits your application may be delayed or it may proceed on the hearing date if the other party agrees.

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 case and on the Child Representative if one has been appointed. 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 subpoenae 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.
- **Applicant** means the person who has started a case in a Court by filing an application.
- **Case 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 next friend, guardian ad litem, tutor or litigation guardian (see Part 6.3 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 case nominates as being the place in Australia where documents are to be left for them, or mailed, posted or faxed 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, facsimile 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 or post.
- **Party** means a person involved in a case 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 case or is not capable of adequately conducting, or giving adequate instructions for the conduct of, the case.
- **Registry** is how Family Court offices are known, for example, the Melbourne Registry is in the Commonwealth Law Courts building on William Street. The services of both the Family Court and the Federal Magistrates Court are provided through the Family Court Registries.
- **Respondent** means a person who is named as a respondent to an application made to the Court.

Service can be by special service or ordinary service

Special service

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

- an Application for Final Orders (Form 1);
- an Application in a Case (Form 2) filed at the same time as a Form 1;
- a Form 2 fixing an enforcement hearing;
- an Application for Divorce (Form 3);
- a Subpoena (Form 14);
- an Application – Contravention (Form 18);
- an Application – Contempt (Form 19);
- an affidavit or other document that must be filed with a Form mentioned above;
- a brochure required by the Rules to be served with a form that must be served by special service (see Rules 2.03, 4.13 and 4.23 (2), sub rules 15.28(1)(ii) and 20.11(3)(b));
- an order made on Application without notice (see Rule 5.12).

If a document is required to be served by special service, the person on whose behalf the document is served must satisfy the Court that the person served actually received the document, unless this is admitted (see Rule 7.05).

METHODS OF SPECIAL SERVICE

- **By hand.** You may arrange for a process server (for a fee) or any other person other than yourself 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.
- **By post or electronic communication (fax or email).** Do not use this method of service unless you are confident that the other party will sign the Acknowledgment of Service (Form 6) and return it to you. If you choose to serve by electronic communication, you must include a cover sheet (see Step 2 on page D of 'Service by post and electronic communication' for the details of what information is required on the cover sheet).

If you attempt service by post, fax or email and the Acknowledgment of Service is not returned to you, your application may be delayed and it may be necessary to arrange for further copies of the documents to be served on the person. If service is by post you must include a self-addressed, stamped envelope (for the return of the Acknowledgment of Service).

- **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 served on the lawyer and the lawyer acknowledges service.

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 7.09)

The document must be served:

- (a) on the person's case 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 7.10)
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 5.07, 12.12(4), 16.10 or 22.41, 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 all the methods of special service, but you *do not* need to obtain a signed Acknowledgment of Service (Form 6) from the other party; or
- 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.

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 (Form 7) 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.

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.

The stages of special service

SERVICE BY HAND

Step 1

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

- *Marriage, Families and Separation.*
- *Mediation – Pathway to Agreement.*
- 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.
- The Court brochures you obtained at Step 1.
- The Acknowledgment of Service (Form 6).

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 (Form 7) 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 should ask the person being served to sign the Acknowledgment of Service (Form 6).

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 (Form 7) including Part D. If the Acknowledgment of Service (Form 6) 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.

Step 5

The server must swear or affirm the Affidavit of Service (Form 7) before a Justice of the Peace, notary public or lawyer.

Step 6

File the completed Affidavit of Service (Form 7) 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.

The stages of special service CONTINUED

SERVICE BY POST AND ELECTRONIC COMMUNICATION

Do not use this method of service unless you are confident that the other party will sign the Acknowledgment of Service (Form 6) and return it to you. If the Acknowledgment of Service is not signed, you will not be able to prove service.

Step 1

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

- *Marriage, Families and Separation*
- *Mediation – Pathway to Agreement*
- any other brochure relevant to your application

Step 2

Decide which of the following methods you are going to use for service and follow the instructions:

POST

Send the following by post to the person to be served:

- The application and any other documents to be served.
- The Court brochures you obtained at Step 1.
- The Acknowledgment of Service (Form 6).
- A written request that the other party sign the Acknowledgment of Service (Form 6) and return it to you as soon as practicable.
- A stamped self-addressed envelope to enable the signed Acknowledgment of Service (Form 6) to be returned to you.

ELECTRONIC COMMUNICATION

Send the following by electronic communication to the person to be served:

- The application and any other documents to be served.
- The Court brochures you obtained at Step 1.
- The Acknowledgment of Service (Form 6)
- A request that the other party sign the Acknowledgment of Service (Form 6) and return it to you as soon as practicable.
- A cover sheet containing:
 - ~ the sender's name and address;
 - ~ the name of the person to be served;
 - ~ the date and time of transmission;
 - ~ the total number of pages, including the cover page, transmitted;
 - ~ a statement as follows: "The purpose of the transmission is for service of Court documents.";
 - ~ the name and telephone number of a person to contact if there is a problem with transmission;
 - ~ a return electronic address.

Step 3

The server completes the Affidavit of Service (Form 7) including Part E.

You may need to attach certain documents to the Affidavit of Service:

- If the server can recognise the signature on the Acknowledgment of Service (Form 6) the original of that document must be attached to the Affidavit of Service (Form 7).
- If you need to rely on the Acknowledgment of Service (Form 6) to prove service and the server cannot recognise the signature on the Acknowledgment of Service, then the document must be attached to an affidavit of a person who can recognise the signature with a statement which might, for example, say:

'I recognise the signature on the attached Acknowledgment of Service as that of [insert the name of the person served] because I have seen that person's signature on previous occasions.'

The stages of special service CONTINUED

Step 4

The server must swear or affirm the Affidavit of Service (Form 7) before a Justice of the Peace, notary public or lawyer.

Step 5

File the completed Affidavit of Service (Form 7) with any attachments and, if applicable, the affidavit identifying the signature or an affidavit attaching a photograph of the person served, 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

Family Court staff cannot provide legal advice, although they can help with questions about legal procedure and the Court process.

It is important that you understand the meaning and effect of the orders you seek.

Even if you have decided to make your application without the help of a lawyer, you should obtain independent legal advice about the effect and consequences of the orders you propose and the rules of evidence that may apply to your affidavit.

If you are unsure of how to seek legal advice or how to choose a lawyer, the Law Society or Institute in your State or Territory may be able to help you.

If you think you may be eligible for legal aid, contact your nearest Legal Aid office. If you are an Aboriginal or Torres Strait Islander you can also contact your local Aboriginal, or Aboriginal and Torres Strait Islander Legal Service.

You may also be able to obtain assistance from your nearest Community Legal Centre.

Acknowledgment of Service

FORM 6 Family Law Rules ~ RULE 7.13(2)

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:

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

Filed on behalf of: _____

(NAME OF PARTY)

File number _____

Filed at _____

Filed on _____

Court location _____

Next Court date (if known) _____

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
_____	_____

Part B About the documents being served

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

- Application for Divorce (Form 3)
- Application for Final Orders (Form 1)
- Financial Statement (Form 13)
- Court brochure/s (specify) _____
- Copy of affidavit of (FULL NAME) _____
sworn/affirmed on / /
- Other (give details) _____
- Application in a Case (Form 2)
- Application – Contravention (Form 18)
- Application – Contempt (Form 19)

Part C Acknowledgment

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

Signature of person served _____

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 of lawyer

Lawyer's name (PLEASE PRINT)

Lawyer's address

Code

Affidavit of Service

1

FORM 7 Family Law Rules ~ RULE 7.13

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:

- Family Court of Australia
- Family Court of Western Australia
- Federal Magistrates Court of 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

_____	_____
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_____	State	Postcode
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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

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

Application for Divorce (Form 3)

Application for Final Orders (Form 1)

Financial Statement (Form 13)

Application in a Case (Form 2)

Application – Contravention (Form 18)

Application – Contempt (Form 19)

Court brochure/s (specify) _____

Copy of affidavit of (FULL NAME) _____
sworn/affirmed at / / _____

Subpoena (Form 14) 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

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

State Postcode

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 (Form 6) 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)	

Justice of the Peace

Notary public

Lawyer

* 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	Fax
DX	
Email	

I recognise the signature on the attached Acknowledgment of Service (Form 6) 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

* delete whichever is inapplicable

Where to file your application

You can file your application in either the Family Court or the Federal Magistrates Court at the registries listed below. Remember to mark [X] the name of the Court in which you wish to file your application on the front of the form. The Federal Magistrates Court does not operate in Western Australia or the Sydney Registry.

ACT

Canberra Registry Cnr University Ave & Childers St, Canberra, ACT 2600 (02) 6267 0511
(PO Box 9991 Canberra ACT 2601)

NSW

Albury Registry Albury Registry 463 Kiewa St, Albury, NSW, 2640 (02) 6021 8944
(PO Box 9991 Albury NSW 2640)

Dubbo Registry Cnr Macquarie & Wingewarra Sts Dubbo, NSW 2830 (02) 6881 1555
(PO Box 1567 Dubbo NSW 2830)

Lismore Registry 29-31 Molesworth St, Lismore, NSW 2480 (02) 6621 8977
(PO Box 9 Lismore NSW 2480)

Newcastle Registry 61 Bolton St, Newcastle, NSW 2300 (02) 4926 1255
(PO Box 9991 Newcastle NSW 2300)

Parramatta Registry 1-3 George St, Parramatta, NSW 2150 (02) 9893 5555
(PMG CC10 Parramatta NSW 2123)

Sydney Registry 97-99 Goulburn St, Sydney, NSW 2000 (02) 9217 7111
(PO Box 9991 Sydney NSW 2001)

Wollongong Registry 43 Burelli St, Wollongong, NSW 2500 (02) 4253 6200
(PO Box 9991 Wollongong NSW 2500)

NT

Darwin Registry 80 Mitchell St, Darwin, NT 0800 (08) 8981 1488
(PO Box 9991 Darwin NT 0800)

Alice Springs Registry Centrepont Building, Hartley St, Alice Springs NT 0871 (08) 8952 8222
(PO Box 9991 NT 0871)

QLD

Brisbane Registry 119 North Quay, Brisbane, Qld 4000 (07) 3248 2200
(PO Box 9991 Brisbane QLD 4001)

Cairns Registry L-4 Commonwealth Centre, 104 Grafton St, Cairns, Qld 4870 (07) 4041 2377
(PO Box 9991 Cairns QLD 4870)

Rockhampton Registry Level 4, Cnr East & Fitzroy Sts, Rockhampton, Qld 4700 (07) 4921 2939
(PO Box 9991 Rockhampton QLD 4700)

Townsville Registry L-2, Commonwealth Centre, 43 Walker St, Townsville Qld 4810 (07) 4722 9333
(PO Box 9991 Townsville QLD 4810)

SA

Adelaide Registry 25 Grenfell St, Adelaide, SA 5000 (08) 8205 2666
(PO Box 9991 Adelaide SA 5001)

TAS

Hobart Registry 39-41 Davey St, Hobart, Tas 7000 (03) 6232 1725
(PO Box 9991 Hobart TAS 7001)

Launceston Registry Cnr Brisbane & George Sts, Launceston TAS 7250 (03) 6334 2111
(PO Box 9991 Launceston TAS 7250)

VIC

Dandenong Registry 53-55 Robinson St, Dandenong, Vic 3175 (03) 9767 6200
(PO Box 9991 Dandenong VIC 3175)

Melbourne Registry 305 William St, Melbourne Vic 3000 (03) 8600 3777
(PO Box 9991 Melbourne VIC 3001)

WA

Family Court of Western Australia 150 Terrace Rd, Perth, WA 6000 (08) 9224 8222
(PO Box 9991 Perth WA 6848)