Service Divorce

Any document you file with the Court (and some others) will need to be "served" on the other party or parties to the matter. Please note that the process and forms are different for Divorce than other family law matters.

Address for Service

Application forms and Affidavits have your essential contact information on the front page. This is taken to be your address for service. It can be your details or your lawyer's contact details if you're represented.

If this address for service ever changes throughout the course of your matter, for example if you started off represented by a lawyer and then have to self-represent, you will need to file a completed *Notice of Address for Service* form with the Court and serve this on the other party(s).

If you include an email address in addition to a physical address (street or P.O. Box) on your Address for Service, then you are consenting to having documents served on you by being sent to this email address instead of by hard copy post.

Personal / Special Service

Personal service (also known as Special service) is required at the beginning of a Court proceeding, including Divorce. This is to ensure that the Respondent (the other person involved in the matter) is aware of the Court proceedings and can participate.

Personal / Special service may be achieved **either by hand or by post**.

IMPORTANT NOTE: You cannot personally serve your spouse with your *Application for Divorce*.

By Hand

1. **Using a Process Server.** These are people whose job is to serve documents. They charge a fee for this service, the price varying by where they have to go to find the other party and by how many attempts to serve the documents are included or needed to effect service.

   You will need to provide them with enough information to get the job done including:

   a. the other party's name and any aliases;
   b. date of birth or at least their age (to aid identification);
   c. their home and work addresses;
   d. any details known to you of when they are likely to be at these places or if other adults are likely to be there who can accept service;
   e. a recent photograph of the person; and
   f. date by which service must be completed.

2. **A person over the age of 18**. Any adult can serve documents on your behalf, provided that they are prepared to complete and sign a witnessed *Affidavit of Service*. This requires them to keep good notes of their service attempts, times and dates and how they know the person they are serving is the correct person. Often the other party is known to the person serving the documents for you - they might be a friend, family or neighbour, but you should still provide them with whatever information (above) that they do not know to help them get it done.

3. Whoever does the personal service for you will need to take the following things:

    a. **Documents to be served.** A sealed copy (with the Court seal stamped on it) of the filed *Application for Divorce* and any Affidavits filed (if applicable) to be handed to the Respondent or a person over the age of 18 at their home or work address. You do not have to provide a copy of your Marriage Certificate, Citizenship Certificate or any Application for reduced Fees you may have filed;

    b. ***Marriage, Families and Separation*** court brochure. This is a mandatory brochure for all parties in a family law matter;

    c. ***Acknowledgement of Service*** form filled out with the Respondent's details. This is to be signed on the spot by the Respondent or the person over the age of 18 who has accepted service.

4. The person serving the documents will need to be sure that they are serving the right person, or if the Respondent is unavailable, to find out the identity of a person over the age of 18 at the Respondent's known address. This may be a simple as recognising the Respondent if they are known, or may be established by asking them their full name and if they are the spouse of the Applicant.

5. The server must hand the documents to the Respondent and tell them what they are. If the Respondent refuses to take the documents, the server can put them down and tell them what they are and the date and place for the hearing.

6. The server must ask the Respondent to sign the *Acknowledgement of Service (Divorce)* form.

7. When the server returns to you, they must provide you with the following:

    a. **Signed *Acknowledgement of Service*** form. Signed by the person accepting service (see 3(c) above);

    b. ***Affidavit of Service by Hand (Divorce)*** form. To be completed by the server and properly witnessed by a qualified person (a JP or a lawyer). This witness must also sign the ***Annexure Note*** on the *Acknowledgement of Service (Divorce)*; and

    c. If the server does not personally know the Respondent, then they need to attach the photo and/or identifying information you gave them about the Respondent to their *Affidavit of Service by Hand (Divorce)*.

8. If your spouse has been personally served and signed the *Acknowledgement of Service* form, and the server does not know them personally, you will also need to look carefully at your spouse's signature and decide whether it appears to be genuine or not to the best of your knowledge. If you recognise their signature, you must complete an ***Affidavit Proving Signature (Divorce)*** form.

9. Take these documents to be witnessed by a JP or lawyer.

10. Then scan and file both documents with the Court using the Commonwealth Courts Portal.

11. If you cannot eFile them through the Portal, then photocopy each and either post or personally deliver these to the Court registry where you filed the *Application for Divorce*.

Serving your Spouse's Lawyer

If your spouse already has legal representation and they have agreed in writing to accept service, you may serve the documents on them instead of your spouse directly. If this is the case, a completed *Acknowledgement of Service* form signed by the lawyer is all that is required to be filed with the Court as proof of service.

There are no fees for filing of Service documents.

Time Frames

You must serve your spouse with Divorce documents at least:

1. 28 days before the hearing date if they are in Australia; or
2. 42 days before the hearing date if they are overseas.

Be sure when arranging service by hand or by post that enough time is allowed for several attempts for personal service to occur by hand, or up to five business days for postal delivery in the ordinary course of business.

Normal Service

Normal service applies to the service of most documents after the first initiating application.

Service by post is an acceptable method of normal service. Remember it is always best to lodge postal articles over the counter for proof of posting and more reliable item tracking.

Posted documents are not deemed to have been received by the other party until five business days after you have posted them, even if you use Express Post or Priority post stamps.

Normal service by email is only acceptable if the other party has included an email address in their address for service. Email service is deemed to be received on the day it is sent. It's a good idea to include a "read receipt" when you serve documents by email so that you are notified when it is read by the recipient.

Normal Service by facsimile (fax) is acceptable if the other party has provided a fax number on their address for service, but this is not a popular option. When serving by fax, you must obtain a 'send receipt' which is attached to the *Affidavit of Service* form. Service by fax is deemed to be received on the same day it is sent.

Problems with Personal Service

It is possible to encounter problems with personal service, such as the recipient refusing or avoiding service or moving house without letting you know.

The following are some of the most common problems and possible solutions:

1. **Avoiding Service**. Sometimes Respondents try to avoid being served, perhaps thinking that the problem will go away or that by accepting service they will be agreeing to participate. This is unfortunate and untrue and only serves to prolong the process. In these cases, you can try to have them served at work instead of home (or visa versa) or at a different time of day. The documents may also be left with a person over the age of 18 at the home or workplace. Your server must keep details of all attempts to serve the Respondent (times, dates, location and any observations like the lights being on and the car being there, but no-one answering the front door). If repeated attempts are unsuccessful, you may have to apply to the Court for substituted service or to dispense with service (explained below).

2. **Refusing Service.** For similar reasons to avoiding service, Respondents may refuse service by not taking the documents your server is trying to hand them. In this instance, your server is required to place the documents down in front of the Respondent, state clearly what they are and that they are being served. They should also state the date and place for the Divorce hearing.

3. **Unable to be Located**. If you are unable to locate your spouse as they have moved away and/or changed jobs, then you must make all "reasonable efforts" to locate them. These efforts need to be documented. If you are still unable to locate the Respondent, you may apply to the Court for substituted service or to dispense with service (explained below).

In the event that you have made all reasonable efforts to locate and serve your spouse and all of these attempts have failed, you will have to apply to the Court for an order either for **Substituted Service** or **Dispensation of Service** (see Rules 6.14 and 6.15 *FCC Rules*).

In each case, this is done by filing an ***Application in a Case*** and a supporting ***Affidavit***. The *Application in a Case* can be completed using the form from the Court, or through the Commonwealth Courts Portal as an interactive online version. There is no Court fee for filing this particular Application.

The *Application in a Case* is usually listed to be heard on the same day as the Divorce hearing (although this is not always possible) and you should attend Court on this day to provide additional information if asked. Please note though that the Court may still adjourn your matter and make an order requiring you to undertake further attempts to serve or otherwise notify your spouse of the *Application for Divorce*, for example by advertising in a newspaper or website.

Substituted Service

Substituted Service applies when the usual methods of personal service have been repeatedly attempted but unsuccessful, and where the Court can be satisfied that a third person or another method can bring it to the Respondent's attention or it can be shown that the Respondent has already become aware of the proceedings. Usually, the other methods of service have been by advertising where your spouse is likely to see it, but more recently the Courts are recognising that social media accounts can be useful when other avenues fail.

Please see our sample Affidavit to see a typical example of the evidence required and our sample Application in a Case for the wording you might use to seek the Court's leave (permission) to either serve a third person or use another method to bring the proceedings to the attention of the Respondent including service by social media (your spouse's Facebook account for example).

Dispense with Service

In some very unusual cases where your spouse is unable to located, the Court has the power to dispense with service altogether - which means that service is not required at all.

In this circumstance, you will first have to make "reasonable attempts" to locate your spouse and these methods need to be documented. Keep a diary of when and how you have tried to find your spouse and any evidence of the results. Please see our sample Affidavit to see a typical example of the evidence required and our sample Application in a Case for the wording you might use to seek the Court's leave (permission) to dispense with service.

Abridgement of Time



Where there is a case of exceptional urgency for the Divorce to be heard, you can file an *Application in a Case* and a supporting *Affidavit* seeking order that the time for service and/or for the Divorce to made final be abridged.

Where you believe that your Divorce is of such urgency, we strongly urge you to seek legal advice from an experienced family lawyer before you file.