

Serving divorce documents when your spouse is in prison

Special rules for giving divorce documents to your partner when they are in prison



DIVORCE FACTSHEET 5

Serving the divorce documents

How do I serve the documents?

If your spouse is in prison, there are special rules about serving divorce documents. Before you can serve the documents, you will need to know:

- the name of the correctional centre or prison where your spouse is located, and
- your spouse's Master Index Number (MIN).

You are not allowed to personally hand the divorce documents to your spouse. Instead, you must have the divorce documents mailed to the person in charge of the prison where your spouse is located along with a letter requesting they forward the documents to your spouse.

Does my spouse have to sign the divorce papers?

Your spouse does not have to sign anything for you to get divorced, but before the court will grant your Application for Divorce you must prove the papers were served according to the rules.

Can my spouse attend the divorce hearing?

Your spouse is not required to attend the divorce hearing, but they can ask to attend the divorce hearing by electronic means. When you serve your divorce documents on your spouse, you must give them a copy of rule 15.18 of the *Federal Circuit and Family Court of Australia (Family Law) Rules 2021* which states how a prisoner can attend the court.

What if I don't know which prison my spouse is in?

If your spouse is in prison in NSW, you will need to contact Corrective Services on **02 8346 1000** (8.30 am to 4.30 pm) or email sentence.admin@justice.nsw.gov.au

If your spouse is in prison in another state, you will need to contact the corrective services department in that state.

What documents do I serve?

You will need to serve the following documents:

- Application for Divorce and any other sealed documents. You must not make any changes to these documents once they have been sealed (stamped) by the court.
- Acknowledgement of Service for the person in charge of the prison to sign and return to you. This is proof that the documents have been served to your spouse.
- The court brochure *Marriage, Families and Separation*.
- A cover letter to the person in charge of the prison (see page 4 of this factsheet).
- Notice of Court Attendance (see page 5 of this factsheet).
- A copy of Rule 15.18 of the *Federal Circuit and Family Court of Australia (Family Law) Rules 2021* (see page 5 of this factsheet).
- A stamped self-addressed envelope for the Acknowledgement of Service document to be returned to you.

You must make sure the required documents are served at least 28 days before the divorce hearing date if your spouse is in Australia.

Filing the documents in court

Once you have received the signed Acknowledgement of Service, you will need to file this proof of service document with the court by uploading it onto the Commonwealth Courts Portal. See *Factsheet 4: Filing your divorce application online* for instructions on how to upload documents to the portal.

Preparing the cover letter to the prison

This is a sample cover letter to the person in charge of the prison. If you do not want your spouse to know where you live, state this in your letter and make sure your address is not on your Application for Divorce.

[General Manager]

[Name of Correctional Centre]

[Postal address of Correctional Centre]

[DD Month YYYY]

[Your name]

[Your address]

Dear General Manager,

RE: SERVICE OF DIVORCE DOCUMENTS, [Your spouse's name], MIN [MIN number]

I am writing to request that the enclosed divorce documents are served on [your spouse's name], MIN [MIN number].

Please hand the following enclosed documents to [your spouse's name]:

1. Application for Divorce.
2. *Marriage Families and Separation* brochure.
3. Notice of Court Attendance.
4. Copy of rule 15.18 of the *Federal Circuit and Family Court of Australia (Family Law) Rules 2021*.

Once you have handed the documents to [your spouse's name], please sign and return the enclosed form: Acknowledgement of Service (Divorce).

I have enclosed a stamped self-addressed envelope for the return of the signed Acknowledgement of Service (Divorce).

The matter is next listed at the [Location e.g. Sydney, Parramatta] Registry of the Federal Circuit and Family Court of Australia on [Date Month Year] at [time]. [Your spouse's name] does not have to attend the divorce hearing but may do so in accordance with rule 15.18 of the *Federal Circuit and Family Court of Australia (Family Law) Rules 2021* (enclosed).

Please note that my address is to be kept strictly confidential and is not to be shared with my spouse. [Include this if relevant.]

Thank you for your assistance with this matter.

Yours sincerely,

[Your full name]

Preparing the Notice of Court Attendance

You must inform your spouse in writing about the option to attend the divorce hearing by electronic communication under rule 15.18 of the *Federal Circuit and Family Court of Australia (Family Law) Rules 2021*. As the Respondent to an Application for Divorce, your spouse does not need to attend the divorce hearing.

The following is a sample Notice of Court Attendance.

Dear [your spouse's name],

RE: NOTICE OF COURT ATTENDANCE, APPLICATION FOR DIVORCE, [COURT FILE NUMBER]

Please note that this divorce matter is next listed at [Location e.g. Sydney, Parramatta] Registry of the Federal Circuit and Family Court of Australia on [Date Month Year] at [time].

As the Respondent, you do not have to attend. However, if you wish to attend, you will need to do so in accordance with rule 15.18 of the *Federal Circuit and Family Court of Australia (Family Law) Rules 2021*.

A copy of that rule is attached for your information.

Including rule 15.18 of the *Federal Circuit and Family Court of Australia (Family Law) Rules 2021*

Include a copy of this rule with your divorce documents. You can get a copy of this rule online at www.legislation.gov.au. It is also printed below.

Attendance of party or witness in prison

1. A party who is in prison must attend a hearing by electronic communication.
2. A party who intends to adduce evidence from a witness in prison must:
 - a. arrange for the witness to attend and give evidence at the hearing by electronic communication; and
 - b. advise the court and the other parties about that arrangement at least 14 days before the date fixed for the hearing.
3. A party may seek permission from the court for a party or witness who is in prison to attend the hearing in person.

Example: A party may apply for an order under sub-rule (3) if a prison or court has no facilities for the hearing to proceed by electronic communication.

4. A request under sub-rule (3) must:
 - a. be in writing; and
 - b. be made at least 28 days before the date fixed for the hearing or trial to start; and
 - c. set out the reasons why permission should be granted; and
 - d. inform the court whether the other party objects to the request.
5. Subrules 15.16(5) and (8) apply to a request under this rule.

Need help?

LawAccess NSW

Provides free telephone legal information, advice and referrals to other services, including to your nearest Legal Aid NSW office, community legal centres, private lawyers and other organisations that can help.

1300 888 529

www.lawaccess.nsw.gov.au

Family Law Early Intervention Unit

The Family Law Early Intervention Unit (EIU) is a statewide specialist service of Legal Aid NSW. It provides free family law services in courts and community organisations throughout NSW. Call **1800 551 589** or see www.legalaid.nsw.gov.au/what-we-do/family-law/family-law-earlyintervention-service.

The Federal Circuit and Family Court of Australia (FCFCOA)

You can get further information about court processes, forms, publications and Do-It-Yourself kits on the FCFCOA website www.fcfcga.gov.au or by phoning the National Enquiry Centre (NEC) on **1300 352 000**.

Public libraries

Public libraries have computers and scanners. You will need to make an appointment. See www.nswnet.net/libraries.

There are five factsheets in the divorce series:



Factsheet 1

Applying for divorce

How to get started.



Factsheet 4

Filing your divorce application online

How to eFile your divorce application on the Commonwealth Courts Portal.



Factsheet 2

Serving your divorce documents

How to give your divorce documents to your partner.



Factsheet 5

Serving divorce documents when your spouse is in prison

Special rules for giving divorce documents to your partner when they are in prison.



Factsheet 3

Separation under the same roof

How to apply for a divorce if you've been living with your partner while separated.

This brochure is a general guide to the law. You should not rely on it as legal advice, and we recommend that you talk to a lawyer about your situation.

The information is correct at the time of printing, however it may change. For more information contact LawAccess NSW on **1300 888 529**.



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Order brochures online at: www.legalaid.nsw.gov.au/publications

Find us on social media:



Do you need help to contact us?



If you need an interpreter, call the Translating and Interpreting Service (TIS National) on **131 450** (9am – 5pm) and ask for LawAccess NSW.

Do you find it hard to hear or speak?



If you find it hard to hear or speak, call us through the National Relay Service (NRS) on **133 677** and ask for LawAccess NSW or visit: www.relayservice.gov.au

