

Serving your divorce documents

How to give your divorce documents to your partner



DIVORCE FACTSHEET 2

Getting ready to serve the divorce documents

After you file your Application for Divorce on the [Commonwealth Courts Portal](#), the [Federal Circuit and Family Court of Australia \(FCFCOA\)](#) will send you an email with a link to a PDF attachment of the divorce documents stamped with a red court stamp (called a 'seal').

The sealed documents are also available as a PDF on the portal in your electronic file.

The sealed documents will be stamped with the hearing date and location. You will need to print the PDF file to serve the sealed divorce documents on your spouse. 'Service' is the legal term for giving the documents to your spouse.

Once the FCFCOA has sealed your divorce documents, you are not allowed to make any changes to them.

Serving the divorce documents on your spouse

Do I have to arrange service of the divorce documents?

Yes. The court will not serve your spouse for you. You must arrange service of the sealed divorce documents on your spouse unless the FCFCOA gives you special permission (called a service order).

If you and your spouse have applied jointly for a divorce, you do not need to serve the divorce documents on each other.

When do I need to serve the Application for Divorce?

The divorce documents must be served at least **28 days** before the divorce hearing date if your spouse is in Australia, or at least **42 days** before the divorce hearing date if they are overseas.

Can I serve the divorce documents on my spouse myself?

No. There are strict rules about serving divorce documents. You must arrange service by hand or by post on your spouse or your spouse's lawyer. **You are not allowed to personally serve the divorce documents on your spouse.**

If you want to serve the divorce documents in a different way, you will have to ask the FCFCOA for special permission by filling in an Application in a Proceeding and an Affidavit to seek an Order for Substituted Service or Dispensation of Service (see page 3 of this factsheet).

What documents do I serve on my spouse?

Unless you have a special service order, you must serve on your spouse:

- your Application for Divorce and any other sealed document, such as an Application in a Proceeding or Affidavit
- the Acknowledgement of Service (Divorce) for your spouse to sign and return to you (if possible) and

- the FCFCOA brochure *Marriage, Families and Separation*. You can get this brochure from the court registry or online at:
<https://www.fcfoa.gov.au/fl/pubs/marriage-families-separation>.

Does my spouse have to sign the served papers?

No. Your spouse does not have to sign anything. Even if your spouse refuses to sign any documents, the FCFCOA can grant a divorce order. But you must prove your spouse was served according to the rules.

How do I prove the forms were served correctly?

You must fill in the proof of service forms carefully, otherwise the court might order you to serve your spouse again. If you think the court may have questions for you about service, you should attend your divorce hearing. If service is not proved, the court could delay or cancel your Application for Divorce.

Serving the divorce documents by hand

Who can serve the divorce documents by hand?

You can ask anyone over 18 (not yourself) to serve the divorce papers. Your server may be a friend, family member, the local sheriff or a professional process server.

If you are asking a friend or family member to serve the documents, make sure the person is familiar with the rules of special service. These rules can be found in the Divorce Service Kit.

The sheriff and professional process servers will charge a fee to serve your spouse. They will need an address and a description or photograph of your spouse.

How do I arrange service of the divorce documents?

1. **Give a hard copy of the court documents, the Divorce Service Kit and your spouse's address to your server.**

The server must hand the papers directly to your spouse. They must not leave the papers with someone other than your spouse.

2. **The person who serves the divorce documents must complete the Affidavit of Service by Hand (Divorce).**

The server must sign an affidavit to prove they have served your spouse within the time limit of **28 days** before the divorce hearing if your spouse is in Australia, or **42 days** before the divorce hearing if they are overseas. The server must have the completed affidavit signed and witnessed by a Justice of the Peace (JP) or a lawyer.

If your divorce documents were served overseas, the server can have the affidavit witnessed in the way affidavits are witnessed in that country. All words must be in English or translated into English. Alternatively, the witness can be an Australian consulate official, Justice of the Peace (JP) or lawyer who lives or works in that country.

The Affidavit of Service by Hand (Divorce) is essential to prove the documents have been served.

3. File your Proof of Service.

Fill in the Proof of Service forms (in the Divorce Service Kit). If your spouse has signed the Acknowledgement of Service (Divorce) you will also need to complete an Affidavit Proving Signature (Divorce). If your divorce papers were served by hand, you don't need to file these two forms.

Once you have completed the Proof of Service, scan the forms and upload them onto the Commonwealth Courts Portal. For instructions on how to upload documents to the portal, see *Factsheet 4: Filing your divorce application online*.

If you are using a paper divorce application, you can mail or hand the documents to the registry at the court that is hearing your divorce.

Serving the court documents by post

Where do I post the divorce documents?

You can post the divorce documents to your spouse's address. If you post the divorce documents, your spouse must sign and return to you the Acknowledgement of Service (Divorce) as proof of service. You will need to file this document at the court.

If you post the documents but do not get the Acknowledgement of Service (Divorce), you must try to serve your spouse in another way.

1. Post the divorce documents to your spouse

Include the sealed court documents and the court's brochure *Marriage, Families and Separation*, the Acknowledgement of Service (Divorce) and a stamped, self-addressed envelope.

2. Complete and compile all the documents

When you receive the signed Acknowledgement of Service (Divorce) signed by your spouse:

1. Complete the form Affidavit of Service by Post (Divorce)
2. Attach the Acknowledgement of Service (Divorce)
3. Complete the Affidavit Proving Signature (Divorce)
4. Sign the Affidavit of Service by Post (Divorce) and Affidavit Proving Signature (Divorce) in front of a Justice of the Peace (JP) or lawyer. The same witness must also sign the annexure note on the Acknowledgement of Service (Divorce).

You will find these forms in the FCFCOA's Divorce Service Kit.

3. File your forms at the court as proof of service

Upload a scanned copy of all documents onto the Commonwealth Courts Portal.

For instructions on how to upload documents, see *Factsheet 4: Filing your divorce application online*.

If you are doing a paper divorce application, mail or take the documents to the registry at the court that is hearing your divorce.

If your spouse does not sign and return the Acknowledgement of Service (Divorce), the court will not accept any other proof of service unless you get special permission. A signed, registered post delivery receipt will not be acceptable.

Serving the court documents on your spouse's lawyer

Do I need to contact the lawyer first?

Yes. If your spouse has a lawyer, call or write to the lawyer first to check if they will agree to accept service of your divorce documents on behalf of your spouse.

If the lawyer agrees to accept service, you can post or hand deliver all the sealed court documents, the court's *'Marriage, Families and Separation'* brochure, and the Acknowledgement of Service (Divorce) to the lawyer's office address.

Make sure the lawyer signs the Acknowledgement of Service (Divorce). This is your proof of service which you will need to file with the court.

What if the lawyer does not agree to accept service or does not reply?

If the lawyer says "No" or does not reply, you **must not** send your divorce documents to the lawyer. You will have to find another way to serve your spouse.

Applying for a different form of service if you can't serve your spouse

What if I am unable to serve my spouse by hand or by post?

The rules of service are strict. In special circumstances, the court may give permission for a divorce to be granted without the usual service requirements.

You can ask for a Substituted Service Order to allow you to serve your spouse an alternative way, such as posting the divorce documents to a stated address, or to a friend or family member. You can even ask to serve your spouse by email, Facebook Messenger private message, social media (e.g. WhatsApp or WeChat), through their workplace, or by publishing an advertisement in the newspaper.

What if my spouse is in prison?

There are special service requirements for people in prison. For further information, see *Factsheet 5: Serving divorce documents when your spouse is in prison*.

What if I haven't been able to find my spouse?

It's very important that you try to find your spouse. If, after all your best efforts, you have been unable to locate them, you can ask the court for a dispensation of service if you have:

- proof that you have tried to find them, and
- checked they are not dead.

What information do I need for a substituted service or dispensation of service?

When asking the court for a substituted service or a dispensation of service, you will need to describe all the recent and historical searches you have made to find your spouse.

Keep a record of the times and dates, as well as the efforts you have made to locate your spouse including:

- calling any phone number you have for your spouse, including any places they may work
- contacting any of your spouse's family or friends to ask if they know where your spouse is – if they refuse to tell you, or say they will give the divorce documents to your spouse for you, write down the time you had the conversation and what you remember each person said
- if your spouse is an Australian citizen, contacting the Australian Electoral Commission office on **132 326** and searching for your spouse on the electoral roll
- searching for your spouse on Google and in the White Pages® (www.whitepages.com.au) and
- searching for your spouse on social media, e.g. Facebook, Instagram, Twitter.

You may be able to get permission to serve your divorce documents an alternative way. You will have to explain to the court how you know that the alternative way is an active, current connection to your spouse. For example, if you have found your spouse on Facebook, is their profile active? When did they last post something? Does it have a photograph of a person you recognise?

Asking for a substituted service or dispensation of service could delay your divorce hearing.

How do I complete an Application in a Proceeding form?

On the Application in a Proceeding form, you can seek an order for **substituted** service such as:

That the rules for service be dispensed with and service be deemed effected provided that the Applicant send the Application for Divorce and the Marriage, Families and Separation brochure to

- *the Respondent at his/her email address, _____ (your spouse's email address) or*
- *by post to the Respondent's brother/sister/father/mother/friend etc. _____ (full name of the person) at his/her address, _____ (full address of the person) with a letter requesting that he/she forward the documents to the Respondent or*
- *by post to the Respondent at his/her address _____ (your spouse's address).*

If you have evidence in your affidavit to show you are unable to find your spouse or anyone or anything connected with your spouse, you can apply for dispensation of service by writing:

That the rules for service be dispensed with.

How do I complete an affidavit?

An affidavit is your sworn evidence to the court about your attempts to locate your spouse. You must tell the court how you have tried to find your spouse and why the order you have asked for in your Application in a Proceeding is the best way to make sure your spouse knows they are going to be divorced.

Sample affidavit:

1. I am the Applicant *husband/wife* in these divorce proceedings. I make this affidavit in support of my application in a proceeding for *substituted/dispensation of service*.
2. I was born on *DD Month YYYY* in (place of birth) and I am *__* years old. *(If you were born overseas, include details of your immigration/citizenship status).*
3. The Respondent *husband/wife* is *(your spouse's full name)*. The Respondent was born on *DD Month YYYY* in (place of birth) and is *__* years old. *(If your spouse was born overseas, include details of their immigration status).*
4. The Respondent and I were married on *DD Month YYYY* in *(place of marriage)*.

5. There are no children of the marriage.

OR

There is *one child/are (number)* children of the marriage, being (child's full name) born on *DD Month YYYY* and aged *__* years old. *(Include names and dates of birth of any other children, including children of either of you from previous relationships).*

6. The Respondent and I separated on *DD Month YYYY*. *(Insert details about why you say this date is the date of separation, e.g. was there a conversation?)*
7. I do not know where the Respondent lives or works at present.
8. *(Insert details about the last time you saw your spouse.)*
9. *(If there are children of the marriage, insert details about the time your spouse has spent with the children, and where this took place.)*

10. *(Insert details about the last time you spoke to your spouse, or their family/friends.)*
11. *(Insert details about your spouse's last known address and explain how you know your spouse does not live there anymore. Do the same in a new paragraph for their old workplace, social groups or other locations.)*
12. *(Insert details about what contact details you have for your spouse, e.g. phone number, email address, Facebook account, WhatsApp; last time you used those details to contact your spouse; and how you know they are still the current details for your spouse.)*
13. *(If you do not have any current contact details for your spouse, but you know of family, friends or colleagues who are in touch with your spouse, explain how you know they are still in contact with your spouse and how you found their details.)*
14. I ask this Honourable Court to grant the orders I seek in my application in a proceeding for *substituted/dispensation of service* by *(describe proposed method of service)*.

You can get these forms by downloading them from FCFCOA's website at www.fcfcqa.gov.au, calling **1300 352 000** or in person from your nearest FCFCOA registry.

Tips for writing an affidavit

- Divide the affidavit into numbered paragraphs.
- Keep each paragraph short and deal with one fact only.
- Be specific rather than general. Think about who, what, when, where, and how. Provide exact dates wherever possible. If you can't be exact, make your best estimate.
- Focus on the issues that are relevant to your application.
- When you are writing about a conversation, quote it exactly, or write: 'On or around [DATE and TIME], [NAME] said to me words to the effect of "I'm going to my Mum's. Don't call."'
- To attach a document, refer to it in your affidavit and then write 'Annexed to this affidavit and marked with the letter 'A' is a copy of [DOCUMENT NAME]'. Write the letter 'A' at the top of the front page of the document you are attaching to your affidavit. Each document you attach to your affidavit must be identified by letters A, followed by B, then C, and so on.
- Sign the bottom of each page of the affidavit in front of a Justice of the Peace (JP) or lawyer and complete and sign the 'jurat' at the end of the affidavit which sets out when/where/before whom you have signed the affidavit. Make sure to state if it was sworn or affirmed.
- If you have attached a document (annexure) to your affidavit, make sure the JP or lawyer who is witnessing the affidavit signs each annexure.
- If you need to correct any errors, cross out the error and put your initials next to the change. The JP or lawyer who is witnessing the affidavit must also put their initials next to the change.

Divorce service map

Application for divorce

Is this a **sole** or **joint** divorce application?

Sole application

The divorce application must be SERVED on the other party (Respondent), with the brochure *“Marriage, Families & Separation”* and any other documents filed.

Service can be by:

- post
- hand
- another method (only allowed if Court has given permission).

Documents can be served on the Respondent’s lawyer (if they agree). If the lawyer signs the ACKNOWLEDGEMENT OF SERVICE, no other service documents are required.

Joint application

No service documents are required.

Both parties signed the Application for Divorce, so they know about the divorce proceedings.

Service by post

The papers were posted to the Respondent, who signed the ACKNOWLEDGEMENT OF SERVICE

Proof of Service for the FCFCOA:

- ✓ AFFIDAVIT OF SERVICE BY POST (DIVORCE) signed by the Applicant
- ✓ AFFIDAVIT PROVING SIGNATURE signed by the Applicant
- ✓ ACKNOWLEDGEMENT OF SERVICE signed by the Respondent

Service by hand

The papers were handed to the other party by the SERVER

Proof of Service for the FCFCOA:

- ✓ AFFIDAVIT OF SERVICE BY HAND (DIVORCE) signed by the server – not the Applicant
- Non-compulsory, additional proof:
- ✓ AFFIDAVIT PROVING SIGNATURE (DIVORCE) signed by the Applicant, attaching
 - ✓ ACKNOWLEDGEMENT OF SERVICE signed by the Respondent

Service by another method

If the FCFCOA has given permission for a different (substituted) method of service, the Applicant must follow the service order

Proof of Service for the Court:

- ✓ AFFIDAVIT (not part of the Divorce Service Kit). Signed by the Applicant, and may include “Annexures” for JP to sign

How to get a service order?

The Applicant must file an APPLICATION IN A PROCEEDING and an AFFIDAVIT

The FCFCOA needs proof that the Respondent has been formally notified of the divorce hearing date and paperwork. The Applicant is responsible for organising service on the Respondent, and giving proof of service to the FCFCOA.

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 state wide 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 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

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