

My court documents are ready – what next?

This information is about what you need to do once your court documents have been prepared. It is important that you get legal advice about preparing your court documents. Depending on the type of application you are making, and the stage of the proceedings, there are a number of different forms that you may need to complete. A lawyer can tell you what forms you need to fill out.

Read the documents

Regardless of whether you prepared the documents yourself or had a lawyer do it for you, make sure that you read the documents carefully. You are responsible for the content of anything you submit to the Court. You have an obligation to make full and frank disclosure to the Court of any information relevant to your case.

Many court documents require you to complete an affidavit. It is an offence to knowingly complete a false affidavit, so make sure that the contents are truthful. Check any facts (dates etc.) that you are unsure about.

Sign the documents

If the form you are completing is not an Affidavit, or if it doesn't contain an Affidavit, you simply need to read the form and sign it where it asks for your signature.

If the form is an Affidavit, or contains an Affidavit, you will need to swear or affirm the Affidavit in the presence of a Justice of the Peace (JP) or a lawyer. There is a JP available at most court registries. You will need to indicate on the form whether you are swearing the Affidavit (a religious oath) or affirming the affidavit (a non-religious oath). This is a personal decision for you to make.

When you swear or affirm the Affidavit you will need to sign the part of the form called the jurat, as well as the bottom of every other page (including the front page). If your Affidavit contains annexures the JP or lawyer will also need to certify the annexures. They do this by writing the following on the first page of each annexure: "This and the following [x] pages is the annexure marked with the letter [A] in the affidavit of [NAME] sworn [DATE] before me" and signing it.

Make copies

You will need to photocopy your documents so that each party in the case will get a copy (the Court will keep the original documents). Most cases have one "Applicant" and one "Respondent", which means that you will need to make two (2) photocopies. If there is an Independent Children's Lawyer (ICL) or multiple Applicants and/or Respondents, you need to make extra copies so that each party will get a copy. You can photocopy at most court registries for a fee.

File the documents

Filing means presenting your original completed forms to the staff at the Court Registry (after they have been signed and sworn as required), paying the filing fee, and having the documents stamped with the court stamp (this is called a "seal"). Your original documents will be placed on your court file, and the "sealed copies" will be returned to you to serve on the other parties.

You can also file documents on the Commonwealth Portal. To access the Portal, you will first need to register for the Portal. To do this, you will need an email address. Go to www.comcourts.gov.au to create your individual username and password.

If you have an existing case, you will need to link your Court file in the Portal. To link your Court file, you will need your:

- File number
- Client number

If you don't know your file number or client number, you should email registerme@comcourts.gov.au with your:

- Full name
- Date of birth
- Telephone number
- Name of the other party

The Court will then verify your identity and link your court file in the Portal.

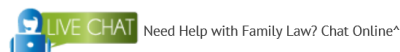
For more information, watch the YouTube video 'eFiling your family law matter in the Commonwealth Courts Portal' at www.youtube.com/watch?v=4jNC-VKgNPA&feature=youtu.be.

Filing fees are payable for many of the forms that you may need to file. In some cases, you may qualify for a fee exemption (or in the case of an Application for Divorce, a fee reduction).

Visit www.federalcircuitcourt.gov.au/wps/wcm/connect/fccweb/forms-and-fees/fees-and-costs/fees-fl

If you have any issues with using the Portal or would like information about fees you can contact the Family Law National Enquiry Centre (NEC) on 1300 352 000 or +61 2 8892 8578 (if you are overseas).

You can also contact the NEC using the LiveChat



Serve the documents

Once you have filed documents at the Court or on the Commonwealth Portal, you will need to serve the other party with the sealed (stamped) documents. Serving means giving the documents to the other parties or making them aware of the proceedings. There are specific rules about how to serve the documents, depending on the type of document you are serving. You should get a copy of the Service Kit available from www.familycourt.gov.au, www.federalcircuitcourt.gov.au, by calling 1300 352 000 or at your nearest family law registry.

The rules of service are strict but in special circumstances the Court can give permission for the other party to be served in a different way.

Any request for a special service order is likely to delay your application, so try to serve by hand, post or through the other party's lawyer before you make this application.

If the other party cannot be found, and you have proof that you have tried to find them, and you have checked they are not dead, you can apply to the Court for an order for **dispensation of service**.

If you have found some way of telling the other party about the court proceedings, then you should apply to the Court for an order for **substituted service**. An order for **substituted service** allows you to serve the other party in an indirect way. This could be by posting the papers to a stated address, or by sending the papers to their friends or family members. You can even ask for special permission to send the papers to the other party by email, Facebook Messenger private message, WhatsApp or WeChat or other social media, or through their workplace.

You must try find the other party

When asking for substituted service or dispensation of service, you will need to describe all the recent and historical searches you have made. Keep a record of the times and dates you have made to locate the other party, including:

- When you last called any phone numbers you have for the other party, including any places where they may work
- Contacting any of the other party's family or friends to ask if they know where the other party is. If they refuse to tell you, ask if they will give the Court documents to the other party for you. Write down what time the conversation happened and what you remember each person said.
- If the other party is an Australian citizen, go to an Australian Electoral Commission office (call 132 326 to find your local office) where you can search for the other party on the electoral roll.
- Search for the other party on Google and in the White Pages (www.whitepages.com.au)
- Search for the other party on social media e.g. Facebook, Instagram, Twitter

If you find a substitute way to serve the other party, you have to explain to the Court how you know that it is an active, current connection to the other party. For example, if you have found them on Facebook, is their profile active? When did they last post something? Does it have a photograph of a person you recognise?

Sample court orders

If you do not have an address for the other party, or will have difficulty serving them, 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 Initiating Application, the Affidavit of [YOUR FULL NAME] sworn/affirmed on DD Month YYYY and Notice of Risk/Financial Statement to

- the Respondent at his/her email address, _____ (the other party'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 _____ (the other party's address)

If you have evidence in your Affidavit to show you cannot find the other party or anyone or anything connected with the other party, you can apply for **dispensation of service** by writing:

1. That this application be heard on an ex parte basis.
2. That the rules for service be dispensed with.

What forms do I use?

Your application for substituted service or dispensation of service should be made as an application for procedural orders in your **Initiating Application**.

If you have already filed your Initiating Application, or the type of matter doesn't use an Initiating Application (e.g. Application for Divorce, Contravention Application), then you would make the application using an Application in a Case, you must complete an **Application in a Case** and an **Affidavit**.

You will need to explain your attempts to locate the other party in your Affidavit. You must also explain why the service order you are asking for in your **Initiating Application** or **Application in a Case** is the best way to make sure the other party is made aware of the court proceedings.

These forms are available from www.federalcircuitcourt.gov.au, by calling 1300 352 000 or at your nearest Family Law Registry.

This fact sheet is intended as a general guide to the law. It should not be relied on as legal advice and it is recommended that you talk to a lawyer about your particular situation. At the time of writing, the information shown is correct but may be subject to change. If you need more help, contact LawAccess NSW on 1300 888 529.

Family Law Early Intervention Unit: 1800 551 589 • Legal Aid NSW www.legalaid.nsw.gov.au