



# How do I serve divorce papers in Australia?

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When you make a [divorce application](#), you are required to deliver the application and other relevant court documents to your former spouse unless a joint application has been made. This is referred to as 'service' and may be completed in a number of different ways. Once service is completed, your former spouse will be required to complete and sign an 'Acknowledgment of Service' which you will then be required to file with the Court.

This blog explores the various considerations you may face in serving divorce papers in Australia.

## Joint applications vs. sole applications

The requirements for service of your divorce papers will vary depending on the individual circumstances of your matter.

### Joint applications

Joint applications for divorce are applications which are signed and filed by both parties together. For this reason, service is not required and your former spouse does not need to file any response documents.

### Sole applications

Sole applications for divorce are applications which are made by one spouse only. If a sole application has been made, you are required to serve the divorce papers on your ex-spouse so that they are aware of the application and have an opportunity to file response documents.

# What documents do I need to serve on my ex-partner?

There is more than one document which you are required to serve on your ex-spouse. The documents that must be served are:

- a copy of the Application for Divorce which has been sealed by the Court;
- a sealed copy of the Affidavit of eFiling;
- a copy of the Court-prescribed brochure "Marriages, families and separation", [available on the Federal Circuit and Family Court of Australia website](#); and
- an Acknowledgment of Service document.

You should also include a letter which contains signing instructions for the Acknowledgment of Service, as well as instructions on how to return that document to you.

## Ways you can serve family law court documents

There is more than one way you may serve divorce papers in Australia. You may rely on a range of factors and the method of service you choose will ultimately depend upon which is more appropriate for your circumstances.

- **By hand:** Someone other than yourself who is over the age of 18 can serve the documents on your ex-partner in person. You can engage the service of a professional process server to serve your divorce application if you are unable to find another person able to do so, or if you believe this is more appropriate.
- **By post:** If you are confident that your ex-partner will sign and return the Acknowledgment of Service, you may serve them via Australia Post. If, however, you are not confident that they will return the documents or that they will deny having received them, then service via post may not be appropriate.
- **Service on your ex-partner's lawyer:** You may also be able to serve your ex-partner's lawyer, provided that they have a lawyer who has indicated that they are willing to accept service on behalf of their client.

In certain circumstances, documents may need to be served by hand and with specific additional requirements. These include if your former spouse is disabled, in prison or overseas.

## Time limits for the service of divorce papers

There are time limits that apply to the service of divorce papers.

If your ex-partner is currently within Australia, you will need to have served all court documents on them by no later than 28 days prior to any court hearing.

If your ex-partner is not currently within Australia, you will need to have served all court documents on them by no later than 42 days prior to any court hearing.

# Applying for substituted service if you are unable to serve the divorce papers on your former spouse

In some circumstances, you may be unable to serve documents on your former spouse. For example, you may be unable to locate them, they may avoid service, or there may be no practical way for you to serve the documents on them.

If this is the case, you may be able to apply to the Court to make an order to dispense with the need to personally serve the documents or to allow you to serve the documents on a third party that the Court is satisfied will be able to pass the documents on to your spouse. This is called substituted service.

Prior to making such an application to the Court, it will be necessary to file an Affidavit with the Court outlining in detail all efforts made by you to try to personally serve the documents.

## What happens after you have served documents?

Once you have served the divorce papers on your former spouse, you will be required to file a completed Affidavit of Service or Affidavit Proving Signature which annexes the Acknowledgment of Service that your former spouse has signed.

For this reason, it is important to ensure that your former spouse signs and returns the Acknowledgment of Service so that the Court can be certain that they have received all appropriate documents and are aware of the Divorce Application.

## How a family lawyer can help

Initiating an application for divorce, including arranging service of the divorce documents on your ex-partner, and navigating Federal Circuit and Family Court of Australia requirements during divorce proceedings can be overwhelming.

Smith Family Law will be able to provide you with assistance to ensure the process is as seamless as possible.

## Contacting Smith Family Law

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