



## Are you having trouble serving your divorce application?

If you are having trouble serving your divorce application on your spouse, this fact sheet may help you. It explains the two options you have when you cannot serve your divorce application on your spouse – seeking an order to serve the other party in a way other than personal service or seeking to ‘dispense with service’. A Court order is required for both options.

APPLICANT – a person who has made an application to the Court.

PARTY – each of the people involved in a case is known as a party.

ORDER – a set of directions made by the Court that must be followed by each party.

RESPONDENT – a person who responds to an application.

### What is service?

Service is the process of sending or giving court documents to a party. The documents must be filed with the Court before service can take place.

Service ensures that all parties have received the documents filed with the Court.

### What can I do?

If after making all reasonable attempts you cannot serve your divorce application on your spouse, you can apply to the Court for:

- an order to serve the document in a way other than personal service, or
- dispensation of service.

### What is substituted service?

Allows you to serve court documents on a third person who the Court is satisfied will bring the court documents to the attention of your spouse.

### What is dispensation of service?

You do not need to serve court documents on your spouse if the Court is satisfied that you have made all reasonable attempts to find your spouse and orders that the requirements for personal service are dispensed with (or waived).

The Court can make an order dispensing with service with or without further conditions.

## Legal advice

You should seek legal advice before applying for an order to serve another party in a different way or dispensation of service. You can seek legal advice from a:

- legal aid office
- community legal centre, or
- private law firm.

Court staff can help you with questions about court forms and the court process, but cannot give you legal advice.

## Applying to the Court

To apply to the Court for an order to serve the document in a way other than personal service or dispensation of service, you need to complete an *Application in a Proceeding* and an *Affidavit*, which are available at [www.fcftoa.gov.au](http://www.fcftoa.gov.au).

You need to explain all the steps you have taken to locate your spouse (the respondent) in your affidavit, for example:

- What attempts, efforts and enquiries you made to find the respondent.
- When you last saw, spoke to or communicated in any way with the respondent, and the circumstances of that sighting or communication.
- The last known address of the respondent.
- Who are the respondent's nearest relatives and friends, what enquiries you made of these people about the respondent and any replies received.
- What employment, if any, the respondent had.
- What enquiries you made with the respondent's last known employer and any replies received.
- Details of any current child support or maintenance arrangements or orders. If correspondence has been received from the Department of Human Services (Child Support), attach a copy to your affidavit.
- Details of any property, bank accounts or businesses jointly owned.
- If the respondent lives overseas, details about the country they are living in, how long they have lived there and if they plan to travel or move back to Australia.
- Any reasons why the respondent may not be contactable.
- The costs of trying to locate the respondent and whether such costs are creating financial difficulties for you.
- Any other relevant information that may help the Court.

## Other points:

- An application for an order to serve the document in a way other than personal service or dispensation of service related to a divorce application will usually be listed on the same day and time as the divorce hearing.
- If you have applied for substituted service or dispensation of service, you should attend the court hearing. You may be required to give more information to the Court. This applies even if you have chosen not to attend the hearing on your Application for Divorce.
- The Court may adjourn your case and direct you to take extra steps to find the respondent. For example, to send a letter to the respondent's relatives or friends, search the electoral roll or advertise in a local, national or overseas newspaper.

This fact sheet provides general information only and is not provided as legal advice. If you have a legal issue, you should contact a lawyer before making a decision about what to do or applying to the Court. The Federal Circuit and Family Court of Australia cannot provide legal advice.