


PS LA 2002/4 - Service of documents

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 This document has changed over time. This version was published on *4 February 2002*



ATO Practice Statement

Law Administration

PS LA 2002/4

FOI status: may be released

This Practice Statement is issued under the authority of the Commissioner and must be read in conjunction with Law Administration Practice Statement PS LA 1998/1. It must be followed by ATO officers unless doing so creates unintended consequences. Where this occurs ATO officers must follow their Business Line's escalation process.

SUBJECT: Service of documents

PURPOSE: To advise staff of their obligations if required to accept service of documents on behalf of the Commissioner, Deputy Commissioners or other ATO staff.

STATEMENT

1. With the exception of taxation appeals, all staff may accept service of documents served on the Commissioners and Deputy Commissioners. For taxation appeals, the originating documents should be served on the Commissioners and Deputy Commissioners at the address of the Australian Government Solicitor (AGS). In all other cases, it is desirable that an officer of the ATO Legal Practice (ATOLP) or, in those sites where there is no ATOLP presence, a nominated team leader in the relevant business line, accept service of documents on behalf of the Commissioners or Deputy Commissioners.
2. Service of documents on an individual staff member may be accepted by another staff member where the person being served consents to that action and the documents being served relate to their duties as an ATO officer.
3. When accepting service of documents you must record the time and date of service on the front of the document.

EXPLANATION

4. A court has no jurisdiction in respect of a matter unless a defendant has been served with the appropriate documents. The originating process for litigation varies depending on the rules stipulated by the court. For example in the Federal Court the originating process is by way of an application which must be accompanied by either an affidavit or a statement of claim. The general rule is that service of the originating process must be personal service and not served on the defendant's solicitor. However, all jurisdictions allow for service on the defendant's solicitor provided they are instructed to accept service.
5. The originating documents must include the plaintiff's address for service of notices and, if represented by a solicitor, must give their solicitor's address. If an address for service is not included then staff should refuse to accept service of documents.

Federal Court

6. The rules of the Federal Court specifically provide that for taxation appeals the originating documents must be served by the applicant at the office of AGS. The application must have also been filed in the Registry of the Court in the State or Territory in which the Taxation Office is located as per the written notice of the appealable objection decision. See Order 52B(4) of the Federal Court Rules. This is usually evidenced by the Court Seal having been stamped onto the document.

State Courts

7. Service of documents for both the originating process and other processes vary across jurisdictions so it is important to check the rules of the relevant jurisdiction.

Service outside jurisdiction

8. The Commonwealth *Service and Execution of Process Act 1992* allows for service of an originating process throughout Australia with service being governed by the rules in the place of issue. All jurisdictions have rules permitting service overseas.

Accepting service of documents

9. All staff may accept service of an originating process or other documents, e.g., subpoenas, where the Commissioners and Deputy Commissioners are named as defendants. This does not apply to a notice for a taxation appeal to the Federal Court. For these matters, the process server or person attempting to serve the documents should be told that only the AGS can accept service of such matters.
10. Documents showing an individually named officer of the ATO may be accepted by another staff member on their behalf, where the person being served consents to that action and the documents being served relate to their duties as an ATO officer. Service cannot be accepted on behalf of another officer where the service of documents relates to a private matter e.g., a motor vehicle accident during a family outing. If service is accepted on behalf of another staff member, then it is the responsibility of the staff member accepting service to ensure that the documents are given to the person named within a short time frame, e.g., 24 hours. Failure to do so may have serious legal consequences. If you are unsure of whether the documents relate to the other person's duties as an ATO officer or relate to a private matter, the documents should be served in person on the staff member named.
11. Staff at the security desks have been told to contact an officer of the ATO Legal Practice (ATOLP) or, in those sites where there is no ATOLP presence, a nominated team leader in the relevant business line, who will accept service of documents on behalf of the Commissioners or Deputy Commissioners. If the relevant business line cannot be identified then any Executive Level 2 officer in that site may accept service.

12. AGS may be instructed by Legal Practice Managers to accept service of an originating process where the Commissioners and Deputy Commissioners are named as defendants or when a notice is to be served on an individually named officer of the ATO, providing in the latter case that the instruction is authorised by the ATO Solicitor. This instruction does not automatically mean that AGS will act in the case on behalf of the Commissioner.
13. When accepting service of any documents, if asked by the person serving the document sign an acknowledgment of receipt of the document and provide your name to the process server. Always note the date and time the document was served and sign at the top of the first page of the document. Once you have accepted service of documents, except where they are accepted on behalf of an individual staff member, the documents should immediately be forwarded to the ATO Legal Practice in your region. If not in the same site, immediately fax the documents to the Legal Practice Manager and then forward the originals in the internal mail.
14. If staff have any concerns as to whether they should accept service of any document then they should contact their regional Legal Practice Manager. See Attachment 1 for details.

Conduct money

15. Where conduct money (cash or cheque) is provided with a subpoena it should be accepted. If there is no conduct money provided still accept the subpoena and make a file note. The conduct money should immediately be forwarded, with the subpoena, to the ATO Legal Practice team in your region.

Address for service

16. When requested, the addresses to be provided for service of an originating process or other documents, e.g., a subpoena, should be the regional team of the ATOLP. The addresses for the ATOLP are shown at Attachment 1.

subject references: AGS; conduct money; originating process; service of documents; subpoena; taxation appeals

legislative references: Service and Execution of Process Act 1992
Federal Court Rules Order 52B(4)

file references: 2002/000772

Date issued: **4 February 2002**

Date of effect: **4 February 2002**

Addresses for the ATO Legal Practice

NSW: 100 Market Street, SYDNEY NSW 2000
GPO Box 4889, SYDNEY NSW 2001

Phone: (02) 937 42508
Fax: (02) 937 42698

Victoria: 2 Lonsdale Street, MELBOURNE VIC 3000
GPO Box 1797Q, MELBOURNE VIC 3001

Phone: (03) 928 51218
Fax: (03) 928 51702

South Australia: 191 Pulteney Street, ADELAIDE SA 5000
GPO Box 2934, ADELAIDE SA 5000

Phone: (08) 820 83690
Fax: (08) 820 83937

West Australia: 45 Francis Street, PERTH WA 6003
GPO Box C109, PERTH WA 6839

Phone: (08) 926 85068
Fax: (08) 926 85036

Queensland: 140 Creek Street, BRISBANE QLD 4000
(To be delivered to the 13th floor.)
GPO Box 869, BRISBANE QLD 4001

Phone: (07) 321 35328
Fax: (07) 321 35005

ACT: 2 Constitution Avenue, CIVIC ACT 2601
PO Box 900 Civic Square ACT 2608
(Legal Policy & Co-ordination Unit, OCTC, National Office)

Phone: (02) 621 62519
Fax: (02) 621 61247