

PS LA 2002/4 - Service of documents

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Practice Statement Law Administration

PS LA 2002/4

This law administration 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](#). ATO personnel, including non ongoing staff and relevant contractors, must comply with this law administration practice statement, unless doing so creates unintended consequences or is considered incorrect. Where this occurs, ATO personnel must follow their business line's escalation process.

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

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STATEMENT

1. With the exception of taxation appeals (now referred to as AOD appeals),¹ all ATO personnel 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).² In all other cases, it is desirable that an officer from General Counsel or Review and Dispute Resolution (RDR) (formerly the Legal Services Branch (LSB)) or, in those sites where there is no General Counsel or RDR presence, a nominated team leader in the relevant business line, may accept service of documents on behalf of the Commissioners or Deputy Commissioners.

¹ See Rule 33.01 of the *Federal Court Rules 2011*.

² See Rule 33.02(4) of the *Federal Court Rules 2011*.

2. Service of documents on an individual staff member may be accepted by other ATO personnel where the person named in the documents consents to that course of action and the documents being served relate to the named officers duties as ATO personnel.
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 offices of AGS in the State or Territory in which the application was filed. The Application must first have been filed in the Registry of the Court. The filing is to occur in the State or Territory in which the ATO is located as per the written notice of the appealable objection decision, or where the person resides or, if a corporation, where the 'head' office is located or it carries on a significant part of its business. See Part 33 of the *Federal Court Rules 2011*. The filing of an Application at Court 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 ATO personnel may accept service of an originating process or other documents, for example, 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 that name an individual officer of the ATO may be accepted by other ATO personnel on their behalf, where the named person being served consents to that action and the documents being served relate to their duties as ATO personnel. Service cannot be accepted on behalf of other ATO personnel where the service of documents relates to a private matter for example, a motor vehicle accident during a family outing. If service is accepted on behalf of other ATO personnel, then it is the responsibility of the staff member who accepted service to ensure that the documents are given to the person named within a short time frame, for example, 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 ATO personnel or relate to a private matter, the documents should be served in person on the staff member named in the documents.
11. ATO personnel at the security desks have been requested to contact an officer from the General Counsel area) or, in those sites where there is no General Counsel 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. For non tax law matters any Legal Service Provider may be instructed by the General Counsel area to accept service of an originating process where the Commissioners or Deputy Commissioners are named as defendants. A Legal Service Provider can also be instructed to accept service of originating process where a notice is to be served on individually named ATO personnel, providing that the instruction is authorised by the ATO General Counsel. This instruction to accept service does not automatically mean that the Legal Service Provider will continue to act in the case beyond that point.
13. When accepting service of any documents, if asked by the person serving the document you should 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 nearest General Counsel unit. If not in the same site, immediately fax/scan/email the documents to the nearest General Counsel unit and then forward the originals in the internal mail.
14. If ATO personnel have any concerns as to whether they should accept service of any document then they should contact their nearest General Counsel unit for assistance. See Attachment 1 for details.

Conduct money

15. As a general approach it is preferable that conduct money is not accepted. If conduct money is accepted it should immediately be 'banked' in accordance with Financial Management Procedures and Instruction FMPI 2012/07/01 *Managing public money: Collecting and receiving money*. In every case you should also prepare a file note ensuring that reference is made to the time of service, whether or not conduct money was offered, and whether conduct money was accepted or refused.

Address for service

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

Amendment history

Date of amendment	Part	Comment
16 April 2014	Throughout	Updated due to ATO restructuring.
	Paragraph 1	Included references to 'AOD appeals'.
	Paragraph 15 and other references	Added FMPI 2012/07/01.
	Contact details	Updated.
18 April 2013	Paragraph 15	Refinement of conduct money process
	Attachment 1	Update contact details
21 September 2012	Paragraph 6	Update legislative references for Federal Court Rules
	Legislative References	Update legislative references for Federal Court Rules
	Attachment 1	Update contact details
21 October 2009	Generally	Update references of 'ATO Legal Practice' to 'Legal Services Branch'. Update references of 'ATO Officer' to 'Tax Officer'. Update to match Tax Office Style Guide.
	Table of Contents	Insertion of a Table of Contents.
	Paragraph 6	Reworded to ensure that original documents are lodged at offices of AGS in State or Territory in which application is filed.
	Paragraph 12	Update references of 'ATO Legal Practice' to 'Legal Services Provider'.
	Attachment 1	Update contact details.

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 2011 Pt 33 Federal Court Rules 2011 33.01 Federal Court Rules 2011 33.02(4)
Other references	FMPI 2012/07/01 Managing public money: Collecting and receiving money (link available internally only)
File references	2002/000772
Date issued	4 February 2002
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Authorised by	Iain Anderson, ATO Solicitor
Other Business Lines consulted	
Contact Officer	Ron Thompson
Business Line	ATO Corporate
Section	General Counsel
Phone	(02) 9374 2893

Addresses for the ATO Legal Services Branch

NSW:	52 Goulburn Street SYDNEY NSW 2000 GPO Box 4889 SYDNEY NSW 2001 Phone: (02) 937 42457 Fax: (02) 937 42277
Victoria:	747 Collins Street, Docklands MELBOURNE VIC 3008 GPO Box 1797 MELBOURNE VIC 3001 Phone: (03) 928 51810 Fax: (03) 928 51702
South Australia and Northern Territory:	26 Franklin Street ADELAIDE SA 5000 GPO Box 2934 ADELAIDE SA 5001 Phone: (08) 820 81794 Fax: (08) 820 81094
Western Australia:	45 Francis Street PERTH WA 6003 GPO Box C109 PERTH WA 6839 Phone: (08) 820 81794 (SA) Fax: (08) 820 81094 (SA)
Queensland:	55 Elizabeth Street BRISBANE QLD 4000 GPO Box 869 BRISBANE QLD 4001 Phone: (07) 321 35579 Fax: (07) 321 35005
ACT:	26 Narellan St Civic ACT 2601 PO Box 900 Civic Square ACT 2608 Phone: (02) 621 61057 Fax: (02) 621 62936