



# ***PS LA 2002/4 - Service of documents***

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# Practice Statement Law Administration

**PS LA 2002/4**

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**FOI status: may be released**

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*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 Tax officers unless doing so creates unintended consequences. Where this occurs Tax officers must follow their Business Line's escalation process.*

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**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 Tax Office staff.

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## **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 Legal Services Branch (LSB) or, in those sites where there is no LSB presence, a nominated team leader in the relevant business line, may 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 a Tax 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 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 Tax Office 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 staff 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 showing an individually named officer of the Tax Office 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 a Tax Officer. Service cannot be accepted on behalf of another officer 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 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, 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 a Tax Officer or relate to a private matter, the documents should be served in person on the staff member named in the documents.
11. Staff at the security desks have been requested to contact an officer of the LSB or, in those sites where there is no LSB 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 LSB Business Managers 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 an individually named officer of the Tax Office, 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 LSB in your region. If not in the same site, immediately fax the documents to the LSB Business 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 LSB Business Manager. See Attachment 1 for details.

### **Conduct money**

15. Where the Commissioner is not a party to proceedings and conduct money (cash or cheque) is offered with a subpoena, it should generally be refused where this is practicable (this will not be practicable where service is by post). Where the Commissioner is a party to the proceedings, conduct money may be accepted. If conduct money is accepted it should immediately be forwarded, with the subpoena, to the LSB team in your region. 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
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 - Part 33
Related public rulings	
Related practice statements	
Case references	
Other references	
File references	2002/000772
Date issued	4 February 2002
Date of effect	4 February 2002
Other Business Lines consulted	

**Addresses for the ATO Legal Services Branch**

NSW:	<p>52 Goulburn Street SYDNEY NSW 2000</p> <p>GPO Box 4889 SYDNEY NSW 2001</p> <p>Phone: (02) 937 42457 Fax: (02) 937 42698</p>
Victoria:	<p>747 Collins Street, Docklands MELBOURNE VIC 3008</p> <p>GPO Box 1797 MELBOURNE VIC 3001</p> <p>Phone: (03) 928 51810 Fax: (03) 928 51702</p>
South Australia:	<p>26 Franklin Street ADELAIDE SA 5000</p> <p>GPO Box 2934 ADELAIDE SA 5001</p> <p>Phone: (08) 820 81794 Fax: (08) 820 81094</p>
West Australia:	<p>45 Francis Street PERTH WA 6003</p> <p>GPO Box C109 PERTH WA 6839</p> <p>Phone: (08) 926 85443 Alt: (08) 820 81794 Fax: (08) 926 85036</p>
Queensland:	<p>140 Creek Street BRISBANE QLD 4000 (To be delivered to the 13th floor.)</p> <p>GPO Box 869 BRISBANE QLD 4001</p> <p>Phone: (07) 321 35345 Fax: (07) 321 35005</p>
ACT:	<p>26 Narellan St Civic ACT 2601</p> <p>PO Box 900 Civic Square ACT 2608</p> <p>Phone: (02) 621 68653 Fax: (02) 621 62940</p>