



Service of foreign civil legal documents in Australia (“incoming requests”)

November 2018

This document provides information on the following options for service of foreign documents in Australia:

1. [Hague Service Convention](#)
2. [Bilateral treaties with other countries](#)
3. [Diplomatic Channels](#)
4. [Private process servers](#)

1. Hague Service Convention

Australia is a party to the *Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters 1965* ([Hague Service Convention](#)). The Hague Service Convention allows the transmission of judicial and extrajudicial documents for service to countries which are party to the Convention. The full list of these countries is available on the Service section of The Hague Conference on Private International Law's [website](#).

The Hague Service Convention ensures that the foreign litigant will receive a certificate or affidavit confirming service or attempted service. This can be used as evidence of service, or the reasons for non-service.

Preparing the Request for Service

In order to serve a document in Australia using the Hague Service Convention, a foreign litigant must provide:

- a Letter of Request, Summary of Documents to be Served and blank Certificate of Service (the Service section of The Hague Conference on Private International Law's [website](#) contains a template but each country may also have particular requirements and templates)
- two copies of the documents to be served, and
- certified English translations, where necessary.

The request must also take into account Australia's reservations, declarations and notifications relating to the operation of the Hague Service Convention. Practical information about Australia is available on the Service section of the Hague Conference [website](#).

Please see the below checklist on preparing a request for service in Australia via the Hague Service Convention. This checklist should be used as a resource to prevent unnecessary delays in processing service requests:

Incoming Hague Service Requests – Checklist

| Step 1: Letter of Request | Done |
|--|------|
| The Letter of Request must be filled out in English or French. The Letter of Request and documents to be served do not need to be legalised (or apostilled). | |
| The identity and address of the forwarding authority requesting service is legible and correct. This should contain the contact details of the requesting authority and not the lawyer or client in the legal matter. Providing an email address will assist Australian authorities to contact the court quickly if defects in the request need to be resolved. | |
| The address of the receiving authority is legible and correct. This is the Australian Central Authority or relevant additional authority. Details can be found on the Hague Authorities page for Australia: https://www.hcch.net/en/states/authorities/details3/?aid=878 | |
| The address of the person to be served is legible and correct. Please ensure the full street address is valid. A search using Google maps may assist. <u>Service will not be made to PO Box addresses.</u> | |
| A method of service is selected (if known): <ul style="list-style-type: none"> • Option a): This option should be selected if the documents are to be served by a method prescribed by the internal law of the requested country (formal service) and chosen by that country. The most common methods of service are personal service or service by post. Costs may be incurred if a judicial officer or a person competent under the law of the receiving country is employed to effect service (Hague Service Convention Art. 12(2)(a)). • Option b): This option should be selected if the documents are to be served by a particular method. The specific method should be clearly described in this section and costs may also be incurred when a particular method is chosen (Hague Service Convention Art. 12(2)(b)). • Option c): This option should be selected if the documents are to be served by delivery to an addressee who accepts it voluntarily (informal delivery). The available methods of effecting informal delivery vary among countries and may include postal service, personal service by the court or sheriff’s office in response to summons to attend for service, or service by agents engaged by the court. Documents do not need to be translated if voluntary service is selected. | |
| The List of Documents is filled out. | |
| A signature or stamp from the relevant forwarding authority requesting service must be affixed. | |

| Step 2: Translations | Done |
|---|------|
| The documents are translated and certified Australian court rules require documents to be drafted or translated into English. The translation must be verified by a Certificate of Translation that includes the following: <ul style="list-style-type: none"> • that the translation is an accurate translation of the documents; • the translator’s full name and address; and • the translator’s qualifications for making a translation. Translations will not be required if service is to be voluntary. | |

| Step 3: Certificate | Done |
|--|------|
| A blank copy of the Certificate is attached. | |

| Step 4: Summary of Documents to be Served | Done |
|--|------|
| The Summary of Documents to be served is completed and attached. This document distinguishes between judicial and extrajudicial documents and parties should provide as much detail as possible. | |

| Step 5: Two copies of all documents | Done |
|---|------|
| Two copies of all documents to be served are provided. Please note that some Australian court rules may require three copies be provided. | |

Service using postal channels

Australia has made reservations to Article 10 of the Hague Service Convention with respect to the use of postal channels for the service of documents. Australia does not object to service by postal channels as a method outside the Hague Service Convention, provided the documents are sent via registered mail. The Attorney-General's Department does not have any involvement in other methods of service outside the Convention (e.g. service by post) and so you should refer to the relevant Australian court rules to determine whether service by registered post will be sufficient.

Transmission to Australia

Judicial documents can be sent to either Australia's Central Authority or Australia's additional authorities (as allowed by Article 18 of the Hague Service Convention). The process may be expedited by transmitting the request directly to the relevant additional authority.

Contact details for Australia's additional authorities are available on the Service section of the Hague Conference [website](#).

Australia's Central Authority is the Attorney-General's Department. Please use the following address if you are sending documents to the Central Authority:

Private International Law Section
Australian Government Attorney-General's Department
3-5 National Circuit
BARTON ACT 2600
Australia

Extrajudicial documents should be sent directly to the Central Authority.

The Australian authorities will then process the request and attempt service in accordance with Australian laws. The Australian authority will provide formal confirmation that service was successful or unsuccessful and the certificate/affidavit will be forwarded to the foreign forwarding authority.

Costs

There may be costs associated with the execution of the request. Generally, Australian authorities will forward an invoice for service fees with payment instructions to the foreign litigant.

However, please note that currently the Australian Capital Territory requires prepayment of the foreign service fee by the foreign litigant. Foreign litigants should include a cheque with the correct amount with the request. See the website of the Supreme Court of the Australian Capital Territory for the relevant foreign service fee: https://www.courts.act.gov.au/supreme/fees_and_costs.

Time for execution of request

Service in Australia generally takes 3 months but it can sometimes be longer. It varies according to the state or territory that the request is sent to as they may have different ways of processing service requests. It also depends on where in Australia the person resides. If the person is in a remote location, the time for execution of the service request will be longer than if the person lives in a capital city.

2. Australia's bilateral treaties with other countries

Republic of Korea and Thailand

Australia has bilateral treaties on judicial assistance with the Republic of Korea (South Korea) and the Kingdom of Thailand:

- *Treaty on Judicial Assistance in Civil and Commercial Matters between Australia and the Republic of Korea 1999*¹
- *Agreement on Judicial Assistance in Civil and Commercial Matters and Co-operation in Arbitration between Australia and the Kingdom of Thailand 1998*²

In order to serve a document using these treaties, foreign litigants must refer to the terms of the treaty.

A request for service can be sent to Australia's Central Authority:

Private International Law Section
Australian Government Attorney-General's Department
3-5 National Circuit
BARTON ACT 2600
Australia

Bilateral convention with other countries

Australia is also a party to a number of bilateral treaties entered into by the United Kingdom and by virtue of its membership of the British Commonwealth, the rights and obligations under those treaties also extend to Australia. These treaties entered into force in the 1920s and 1930s. One example is the *Convention between the United Kingdom and Germany regarding Legal Proceedings in Civil and Commercial Matters*. It should be noted that many of the countries now use the Hague Service Convention.

Updated information about bilateral service treaties and the full text of these instruments can be found on the [Australian Treaties Database](#), which is maintained by the Department of Foreign Affairs and Trade.

Once completed, please send the letter of request and documents to be served to the Australian authority listed in the relevant bilateral treaty.

Costs

There may be costs associated with the execution of the request. Generally, Australian authorities will forward an invoice for service fees with payment instructions to the foreign litigant after service has been successful or attempted.

¹ Although the Republic of Korea is party to the Hague Service Convention, the above agreement is still used by both parties for the service of documents.

² Thailand is not a party to the Hague Service Convention.

3. Service using Diplomatic Channels

Australia accepts service via diplomatic channels.

Diplomatic channels are used for the transmission of information between diplomats and foreign states. In Australia these communications are sent and received by the Australian Government Department of Foreign Affairs and Trade.

Transmission of documents via diplomatic channels is usually only used where bilateral treaty or multilateral Convention arrangements do not exist. Service through diplomatic channels can be subject to delays.

Preparing the request for service

The request for service via diplomatic channels must include:

- A Letter of Request. If the relevant foreign country does not prescribe a form for making the request, we recommend the litigant model the request on the form available on the Service section of the Hague Conference [website](#)
- certified translations where required
- the documents to be served, and
- duplicates of all documents.

Transmission to Australia

Please send the Letter of Request and documents to be served to the Department of Foreign Affairs and Trade at the following address:

Paralegal Unit, Corporate Law Branch
Department of Foreign Affairs and Trade
R.G. Casey Building
John McEwen Crescent
Barton ACT 0221
Australia

Costs

There may be costs associated with the execution of the request. Generally, Australian authorities will forward an invoice for service fees with payment instructions to the foreign litigant after service was successful or attempted.

Time for execution of request

The average timeframe for requests to be processed and for service to be effected is approximately 4 – 6 months.

4. Service using private process servers

Private process servers and local agents may also be used in some circumstances to serve documents in Australia. Please refer to the relevant Australian court rules to ensure service via this method is permitted. Using a private process server must also be a permissible form of service in the relevant foreign country that is requesting service.

The Attorney-General's Department cannot provide information about private process servers' costs, or their contact details.

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