

# Serving an application for Recovery of Money

## Employer is a Business

After issuing an Application for Recovery of Money, you must “serve” (that is deliver) a copy of the Application to the Respondent named in the Application (your employer or former employer). The person who serves the Application must be over the age of 16 years.

You should do this as soon as possible.

The Uniform Civil Procedure Rules 2005 (in absence of any service rules in the Industrial Relations Commission Rules 2009) stipulate how Applications may be served.

If the application is not served in accordance with those rules, service may be considered invalid. This can delay the finalisation of your matter.

This pamphlet tells you how you can serve your application upon a respondent who is a BUSINESS. This includes where your employer was a person trading under a business name (for example *John Span trading as Spic ‘n Span Cleaning Services*).

If you only know your employer by its business name (for example -

Spic ‘n Span Cleaning Services) it is important that you find out if your employer is a company (e.g. *Spic ‘n Span Cleaning Services Pty Ltd*) or a person trading under a business name (e.g. *John Span trading as Spic ‘n Span Cleaning Services*).

If you cannot work out which it is from any paperwork you have (such as payslips, group certificates, letters etc) you can inquire with the Australian Securities and Investments Commission (ASIC) Telephone number 1300 300 630). ASIC can tell you if it is a company. If the Respondent is a company you should ask the Court registry for a pamphlet on serving companies.

### **An Application for Recovery of Money can be served upon an “Unregistered” Business by:**

#### **Posting the claim to the unregistered business:**

This is perhaps the easiest way to serve your application.

You may post the Application addressed to the Respondent, to any place at which business is carried on under that name, whether or not the place concerned is within New South Wales - by ordinary post.

It does not need to be by registered mail although you may send it by registered mail if you wish.

### **Giving the Application to the Respondent directly:**

If the Respondent is a person trading under an unregistered business name, you may deliver the application to that person at any place, anytime.

If you see the Respondent in the street, even at the supermarket, you may hand the application to that person. If the respondent refuses to take the document you may put it down in their presence ( for example at their feet) and tell them what the document is.

However you cannot give it to any other person like this. This will not be valid service.

### **Leaving the application with another person:**

You may leave the application with any person who is apparently engaged in the business, and apparently of or above the age of 16 years, at any place at which business is carried on under that name.

### **An Application for Recovery of Money can be served upon a person trading as a “Registered” Business by:**

#### **Leaving the Application with a person:**

By leaving it with a person who is apparently engaged in the business, and apparently of or above the age of 16 years, at any place at which business is carried on under that name, or

#### **Posting the Application to the Registered Business**

By sending it by post,

- (a) Addressed to the Respondent;
- (b) To any place at which business is carried on under that name, or
- (c) To the address for service of any person in whose name the business name is registered under the Business Names Act 2002.

In the case of a document sent by post, the document is taken to have been served at the end of 7 days after the day on which it was sent.

### **Completing and Filing an Affidavit of Service**

After serving your application, an ‘Affidavit of Service’ form should be filed at the Court Registry.

An ‘Affidavit of Service’ is a document which tells the Court when, how and to whom your application was served. If the respondent (your employer or former employer) does not appear at Court, the Court will look to see if the respondent was aware that

they were required to attend Court. The Court will generally look to the Affidavit of Service for proof that the application was correctly served upon the respondent.

Completing an Affidavit of Service correctly can be a little tricky. Don't hesitate to ask for assistance from the Court Registry staff.

Examples of Affidavits of Service are shown on the next page.

### **Some handy hints**

- Immediately after serving the Application, jot down some notes about the date and time you delivered it, exactly where you delivered it to. If you delivered it to a person, record the words the person said when you handed it to them. This makes it a little easier when you go to prepare the Affidavit of Service.
- Prepare the affidavit of service as soon as you can after serving the application.
- Send the Affidavit of Service to the Court registry or bring it to Court with you - as the Court may require proof that the Application was served.

Example of Affidavit of Service where served upon the person trading as a **Business**

On 31st May, 2012 I, **Jane Doe** say on oath

I am the applicant

On 29th May, 2012, I served the attached Application for Recovery of Money on

**John Span trading as Spic and Span Cleaning Services**

By: **delivering it to him personally**

At: **16 Melrose Place, Cremorne Point. He said "I'll sort it out"**

Sworn by me at Sydney **Jane Doe**

Before me:

Justice of the Peace

Example of Affidavit of Service posted to a **Registered Business**

On 31st May, 2012 I, **Jane Doe** say on oath

I am the applicant

On 29th May, 2012, I served the attached Application for Recovery of Money on

**John Span Pty Ltd trading as Spic and Span Cleaners**

**By: posting it by ordinary post to the Respondent's registered address for service under Business Names Act 2002**

**At: 16 Melrose Place, Cremorne Point, NSW.**

Sworn by me at Sydney **Jane Doe**

Before me:

Justice of the Peace