

# Serving an application for Recovery of Money

## Employer is a Company

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).

You should do this as soon as possible.

The Corporations Act 2001 stipulates 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.

If you are uncertain whether your employer is a company or you have little information about the company, you should enquire with the AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION (ASIC): Telephone number 1300 300 630 or search the website.

The ASIC can perform a search of its records and provide you with important and useful information about the company such as;

- the address of the ‘registered office’ of the company
- the names and addresses of the current company office holders (such as Director, Secretary)
- the names and addresses of previous company office holders

This information, particularly the address of the registered company, is very important when it comes to serving your application correctly. You should not assume that the registered office is the place where you worked or where the company carries on its business. Often times the registered office is an accountant’s office or even a Solicitor’s office.

## Completing and Filing an Affidavit of Service

After serving your application you should fill out an ‘Affidavit of Service’ form and file it with 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.

### **Some handy hints**

- If the person you are trying to serve refuses to accept the application, you may put it down in their presence (e.g. at their feet) after explaining what the document is.
- Immediately after serving the application, jot down some notes about the date and time you served 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. Either post it to the Court Registry or take it to Court with you. The Court may require proof that the Application was served.

### **An Application for Recovery of Money can be served upon a COMPANY by:**

**Posting the application to the registered office of the company**, this is perhaps the easiest way to serve your application on a company:

You may post the application to the company by posting the application to the company's registered office by ordinary post. It does not need to be by registered mail, but it **MUST** be sent to the official 'registered office' of the company.

### **Leaving the application with the Director of the company:**

If you know the Director of the company, you may deliver the application to that person at any place.

Just hand the application to the person and tell them what the document is.

### **Leaving the application with a person at the registered office of the company:**

You may go to the "registered office" of the company and give the application to any person employed at the registered office.

You can do this even if the registered office is an accountant's or solicitor's office.

If a liquidator of the company has been appointed--leaving it at, or posting it to, the address of the liquidator's office in the most recent notice of that address lodged with ASIC; or

If an administrator of the company has been appointed--leaving it at, or posting it to, the address of the administrator in the most recent notice of that address lodged with ASIC.

Example of Affidavit of Service where served upon a **Director**

On **31st May, 2001** I, **Jane Doe** say on oath

I am **the applicant**

On **29th May, 2001**, I served the attached Application for Recovery of Money on

**Spic 'n Span Cleaning Services Pty Ltd**

By: **delivering it to Mr John Span, Director of the respondent company**

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 where posted to **Company**

On **31st May, 2001** I, **Jane Doe** say on oath

I am **the applicant**

On **29th May, 2001**, I served the attached Application for Recovery of Money on

**Spic 'n Span Cleaning Services Pty Ltd**

By: **posting it by ordinary post to the company's registered office**

At: **2/34 Johnson Street, North Sydney,**

Sworn by me at Sydney **Jane Doe**

Before me:

Justice of the Peace