

Serving an application for Recovery of Money

Employer is a Person

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 Industrial Relations Commission Rules 2009 and Part 10 of Uniform Civil Procedure Rules 2005 (in absence of any service rules in the Industrial Relations Commission Rules) 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 PERSON.

An Application for Recovery of Money can be served upon an INDIVIDUAL by:

Giving the application to the Respondent directly, it may be personally served on the Respondent.

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. So if you see the Respondent’s spouse at the supermarket, you cannot give it to the spouse at the supermarket. This will not be valid service.

Leaving the application with another person:

It may be left, addressed to the Respondent, at the Respondent’s business or residential address, with a person who is apparently of or above the age of 16 years and apparently employed or residing at that address,

You may leave the application with any other person who appears to be over 16 years old but ONLY at the Respondent’s residence (home) or their usual place of business.

If the person 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.

If the person refuses to open the door (or if someone appears to be home but won't answer the door), you might consider serving the application another way, as per Part 10 of the Uniform Civil Procedure Rules 2005.

Service of an Application for Recovery of Money upon an INDIVIDUAL trading as an UNREGISTERED BUSINESS:

Please refer to Rule 10.9 of Uniform Civil Procedure Rules 2005 (in absence of any service rules in the Industrial Relations Commission Rules) which stipulates how Applications may be served on an unregistered business.

This includes where your employer was a person trading under an unregistered 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.

Rule 10.9 stipulates that an Application can be served on an unregistered business by

- a) 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
- b) by sending it by post, addressed to the defendant, to any place at which business is carried on under that name, whether or not the place concerned is within New South Wales.

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.

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 a **the person**

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

Spic 'n Span Cleaning Services Pty Ltd

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 where posted to a 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

Spic 'n Span Cleaning Services Pty Ltd

By: **posting it by ordinary post to the Respondent's address where business is carried on under that name.**

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

Sworn by me at Sydney **Jane Doe**

Before me:

Justice of the Peace