|  |
| --- |
| Affidavit of Service guidelines |
| **Commercial Registry** |

**CONTENTS**

[1. Background 3](#_Toc54176069)

[2. Personal service 3](#_Toc54176070)

[3. Service on a corporation 3](#_Toc54176071)

[4. Service effected by post 3](#_Toc54176072)

[5. Service on a solicitor 3](#_Toc54176073)

[6. Other important things to consider 4](#_Toc54176074)

[7. Affidavit of service of an amended statement of claim 4](#_Toc54176075)

[8. Filing the affidavit of service on Citec Confirm 4](#_Toc54176076)

# Background

When a plaintiff is applying for judgment in default of appearance against a defendant/s under the *County Court Civil Procedure Rules* 2018 (“the Rules”), an affidavit of service of that originating process is required - r21.02(3)(b)).

# Personal service

For personal service, the affidavit must:

* state the name of the person who served the originating process – r6.17(1)(a)
* state that the originating process was personally served upon the defendant and include the time, date and the place of service – r6.17(1) and r6.17(1)(c)
* provide an identification clause stating the manner of identification of the person served – 6.17(1)(d). This can be by a statement from that defendant as to their identity - r6.08
* exhibit a sealed copy of the originating process – r6.17(3) and r6.17(4).

# Service on a corporation

For service on a corporation, the affidavit must:

* state that the originating process was served upon the registered office of a defendant corporation – s109X(1)(a) of the *Corporations Act 2001* (Cth)
* state all other relevant facts constituting service – r6.17(2)
* exhibit a sealed copy of the originating process – r6.17(3) and r6.17(4).

# Service effected by post

If service has been effected by post:

* service of documents is taken to be effected the day delivered in the normal course of post – r6.07(5)(a)
* reliance may be placed on the presumption in s160(1) of the Evidence Act 2008 that an article sent by prepaid post addressed to a person at a specified address in Australia or in an external Territory was received at that address on the seventh working day after having been posted
* the type of postal delivery (i.e. regular, priority, express, or registered) and the suburb the documents are sent to and from must be considered when calculating time
* if delivery is prior to the normal course of post, affidavit material or exhibits proving the date of delivery must be provided.

# Service on a solicitor

The solicitor who accepts service must make a note on the originating process that they have accepted service for that defendant – r6.09(2).

The affidavit must:

* state that the solicitor has accepted service on behalf of the defendant – r6.09(2)
* state all other relevant facts constituting service – r6.17(2)
* exhibit the version of the sealed copy of the originating process which carries the solicitor’s note – r6.17(3) and r6.17(4)

# Other important things to consider

If the defendant was served interstate, a Form 1 Notice to defendant must also be served with the originating process – s16 of the *Service and Execution of Process Act 1992* (Cth). The affidavit of Service must state this Notice was served, and a copy of such is to be exhibited.

When the parties agree that an originating process may be served as per a written agreement, service in accordance with the agreement shall be sufficient service – r6.14. This agreement must also be exhibited to the affidavit.

If you have an order for substituted service, your affidavit must state all methods of service as per the order. You must also exhibit any documentary proof, for example, the email, text message, or letter sent to the defendant – r6.10.

The form of the affidavit must comply with r43.01.

# Affidavit of service of an amended statement of claim

If default judgment is sought on an amended statement of claim, an affidavit of service of the amended statement of claim must also be filed, exhibiting, the amended statement of claim.

# Filing the affidavit of service on Citec Confirm

The affidavit of service, including exhibits, is to be filed together as one scanned PDF document with your judgment, and search for appearance using the correct judgment filling code.

If your judgment is rejected, you will be required to re-file the judgment with the amendments requested, along with your affidavit.

NB: Affidavits of attempted service for default judgments are not required to be filed with Citec Confirm.