

**Bankruptcy Information Sheet 5:**

**Substituted Service Applications**

**About this information sheet**

This information sheet explains how to apply for a substituted service order and provides a brief guide on the affidavit evidence that should accompany these applications.

Applications for orders for substituted service of bankruptcy notices or creditor’s petitions will ordinarily be dealt with by a Judicial Registrar online by hearing in eCourtroom. eCourtroom is a virtual courtroom that assists in the management of pre-trial matters by allowing directions and other orders to be made online. Further information on eCourtroom and the Court’s online services is set out at sections [7] and [8] of this information sheet.

It is important to note the following information.

* This information sheet is published as part of a series of information sheets and practical guides and contains links to the most commonly used forms approved or prescribed by the relevant legislation or court rules.
* This information sheet contains general information only and is not a substitute for the *Bankruptcy Act 1966* or the *Bankruptcy Rules 2016*. To the extent that there is any inconsistency or discrepancy, the Bankruptcy Act and Bankruptcy Rules as interpreted by the Courts prevail. Links to the legislation and court rules are set out below.
* While Registry staff can provide practical assistance to litigants they cannot provide legal advice or assist with the content of any document. The onus is on the party presenting the petition to undertake their own enquiries and assessment of the legal issues.

References and links to legislation, court rules and approved forms:

* + [*Bankruptcy Act 1966*](https://www.legislation.gov.au/Series/C1966A00033) (the Bankruptcy Act)
	+ [*Federal Court (Bankruptcy) Rules 2016*](https://www.legislation.gov.au/Series/F2016L00386)(the Bankruptcy Rules)
	+ [*Bankruptcy Regulations*](https://www.legislation.gov.au/Series/F2021L00261) *2021* (the Regulations)
	+ [*Federal Court of Australia Act 1976*](https://www.legislation.gov.au/Series/C2004A01586) (the Court Act)
	+ [*Federal Court Rules 2011*](https://www.legislation.gov.au/Series/F2011L01551)(the Court Rules)
	+ [Prescribed forms](https://www.legislation.gov.au/Series/F2021L00261) under the Regulations
	+ [Approved forms](http://www.fedcourt.gov.au/forms-and-fees/forms/bankruptcy-rules) under the Bankruptcy Rules.
1. **Nature of application**
	1. Service of a bankruptcy notice on a debtor must ordinarily be effected in accordance with the methods provided in Regulation 102 of the Bankruptcy Regulations. And service of a creditor’s petition on a respondent must ordinarily be effected by way of personal service within the meaning of r 10.01 of the Court Rules.
	2. Where appropriate, a creditor may apply to the Court for orders for substituted service. These orders dispense with the ordinary requirements for service and provide that service is to be deemed on condition that alternative requirements are complied with.
	3. Substituted service applications are not appropriate where service in the ordinary course is merely inconvenient or less efficient.  Rather, substituted service is appropriate where:
2. personal service is impracticable or delivery cannot be effected and
3. the proposed alternative means of service will, in all reasonable probability, be effective in bringing the documentsto the attention of the respondent debtor.
4. **How to make an application for substituted service**

*Substituted service of a bankruptcy notice*

* 1. An application for substituted service of a bankruptcy notice must be filed by way of application using [Bankruptcy Form B2](http://www.fedcourt.gov.au/forms-and-fees/forms/bankruptcy-rules#B2). The applicant should include in Form B2 the orders they are seeking. The [standard form of orders for substituted service](https://www.fedcourt.gov.au/law-and-practice/guides/guides-bankruptcy/REGISTRARS-BANKRUPTCY-MATTERS-STANDARD-ORDERS-1-June-2016-3.docx) of a bankruptcy notice is also available. The applicant should tailor the orders sought as appropriate to the circumstances.

*Substituted service of a creditor’s petition*

* 1. An application for substituted service of a creditor's petition must be filed in accordance with [Bankruptcy Form B3](http://www.fedcourt.gov.au/forms-and-fees/forms/bankruptcy-rules#formB3). Form B3 is the form for an interim application to the Court and must be filed in the creditor’s petition file. The applicant should include in Form B3 the orders that they are seeking. The standard form of orders for substituted service of a creditor’s petition is also available. The applicant should tailor the orders sought as appropriate to the circumstances.
	2. In either case, the application must be accompanied by an affidavit giving evidence of certain matters set out below.
1. **Evidence in support of the application**
	1. All evidence in support of the application should be given on affidavit by someone with personal knowledge of the facts.
	2. An affidavit filed in the Federal Court should be in accordance with the prescribed [Form 59](http://www.fedcourt.gov.au/forms-and-fees/forms/federal-court-rules#form59).
	3. The applicant must prove to the Court, by evidence given on affidavit, that:
2. personal service is impracticable; and
3. the proposed alternative means of service will, in all reasonable probability, be effective in bringing the documentsto the attention of the respondent debtor.
	1. The affidavit evidence in support of an application for a substituted service order must be in proper and admissible form from someone who has personal knowledge of the enquiries made, searches undertaken and investigations conducted. Annexing a report from a process server will not be considered sufficient evidence.
	2. Applications for substituted service of bankruptcy notices and creditor’s petitions should be supported by evidence of:
4. the respondent debtor’s last known residential address (and/or place of employment);
5. previous attempts to serve the respondent debtor, including direct evidence of actual conversations with residents, neighbours or work colleagues;
6. the respondent debtor’s responses to attempts to serve or contact him or her; and
7. investigations made to locate the respondent debtor, including independent documentary evidence to suggest a nexus between the respondent debtor and the address in question.
	1. The investigations referred to in subparagraph (d) above may include searches or inquiries of the following:
* Australian Electoral Office;
* Australian Securities and Investment Commission;
* Registers for professional groups or organisations;
* Telephone listings (such as White Pages Online);
* Local Council land rates enquiries; and
* Land title searches (with the search result clearly showing the link between the street address and the volume / folio number of the property in question).
	1. Evidence establishing a link between the debtor and the address at which documents are to be sent and/or delivered ought to show that the link existed no later than 6 weeks prior to the hearing of the application. Parties are encouraged to obtain recent evidence of the link as close as possible to the hearing date.
	2. In certain circumstances, the Court may consider making an order for substituted service which includes communication sent to the respondent debtor via email or mobile phone (SMS).  If an applicant wishes to include such a method of service in an application they should provide details of:
* the email address or mobile phone number;
* evidence that the relevant email or mobile phone accounts are owned by and regularly used by the respondent debtor (including evidence of what contact has previously been made with the respondent debtor via either of these means); and
* evidence of whether the relevant accounts remain current (i.e. whether a ‘disconnected message’ has been received, a voicemail message confirms ownership of a mobile phone number, or email messages have been returned without delivery by a provider).
1. **Filing the application and accompanying affidavit**
	1. The application and accompanying affidavit must be filed in the Federal Court of Australia or the Federal Circuit and Family Court of Australia.
	2. The applicant may lodge all required documents electronically through the Court’s eLodgment facility. For more information on eLodgment and the Court’s online services, refer to section [8] of this information sheet.
	3. Practitioners must ensure that when an application is lodged, the full name and email address of the practitioner who will be conducting the eCourtroom hearing is provided at the foot of the first page of the application. More than one practitioner’s name and email address may be provided. The relevant practitioner or practitioners must ensure that they are registered for eCourtroom.
2. **Related materials**
	1. Debtors are also referred to the following related material:
* [Guide for Practitioners and Parties in Bankruptcy Matters listed before a Judicial Registrar](http://www.fedcourt.gov.au/law-and-practice/guides/guides-bankruptcy/guide)
* [Bankruptcy Information Sheet 1](http://www.fedcourt.gov.au/law-and-practice/guides/guides-bankruptcy/information-sheet-1): Presenting a Creditor’s Petition
* [Bankruptcy Information Sheet 2](http://www.fedcourt.gov.au/law-and-practice/guides/guides-bankruptcy/information-sheet-2): Creditor’s Petition Checklist
* [Bankruptcy Information Sheet 3](http://www.fedcourt.gov.au/law-and-practice/guides/guides-bankruptcy/information-sheet-3): Opposing a Creditor’s Petition
* [Bankruptcy Information Sheet 4](https://www.fedcourt.gov.au/law-and-practice/guides/guides-bankruptcy/information-sheet-4/_nocache): Setting aside a Bankruptcy Notice
* [Bankruptcy Information Sheet 6](http://www.fedcourt.gov.au/law-and-practice/guides/guides-bankruptcy/information-sheet-6): Consequences of a Sequestration Order
1. **Other resources**
	1. Debtors who are self-represented litigants will be supported by the Registry to assist them through the court process efficiently. Refer to [Information for Litigants](https://www.fedcourt.gov.au/going-to-court/i-am-a-party) for further information.
	2. A self-representation service is available to litigants in each Registry. The service provides free, confidential and impartial legal advice and assistance with Federal Court and Federal Circuit and Family Court proceedings for individuals and community groups. For further details contact the nearest [Registry](https://www.fedcourt.gov.au/contact).
	3. In addition, debtors can also approach various ‘not for profit’ bodies for assistance and guidance and access free online information on bankruptcy and opposing a creditor’s petition including:
* [LawRight](http://www.lawright.org.au/) (Queensland)
* [Justice Connect](http://www.justiceconnect.org.au/get-help/self-representation-service/resources-and-fact-sheets/bankruptcy-factsheets)
* [Financial Rights Legal Centre](https://financialrights.org.au/factsheets/help-im-being-made-bankrupt-factsheet/)
* [Australian Financial Security Authority](https://www.afsa.gov.au/insolvency) (AFSA)
1. **eCourtroom**

*Registering for eCourtroom*

* 1. The practitioner who intends to participate in the eCourtroom hearing should ensure that they are registered for [eLodgment and eCourtroom](https://www.elodgment.fedcourt.gov.au/eLodgment/Register.aspx?ref=eCourtroom).
	2. The user will receive an email from the Court notifying them when their registration has been accepted.

*Administrative matters*

* 1. After an application is filed, Registry staff will set up the matter in eCase Administration. This cannot be completed until the participating practitioner has successfully registered for eCourtroom. If a practitioner has not registered, they should do so as soon as possible and inform the Court Registry when their registration has been accepted.
	2. The participating practitioner will receive email notification once the matter has been set up for eCourtroom.

*General notes*

* 1. Judicial Registrars will endeavour to respond to eCourtroom applications for substituted service within 10 working days, although this will depend on the particular workload of the Judicial Registrar presiding over the application.  Practitioners are expected to respond reasonably promptly to any message posted by a Judicial Registrar in eCourtroom.  Applicants risk the possibility of dismissal of their application if they do not diligently prosecute the application by failing to respond to messages or deadlines for the filing of material.
	2. With respect to substituted service applications concerning creditor’s petitions, practitioners should consider the return date on the petition prior to making the application.  Practitioners may need to seek to have the return date extended to allow for:
* The 10 working day anticipated response period by the Judicial Registrar; and
* The proper hearing of the application (including possible adjournments for the provision of further evidence); and
* A 4 week timeframe for any substituted service order to be carried out and to take effect; and
* Rule 4.05 of the Bankruptcy Rules, which requires service of the petition (and other documents) at least 5 days before the first return of the petition.

*The hearing*

* 1. The presiding Judicial Registrar will commence the eCourtroom hearing at their convenience on the date of the hearing or shortly after. The applicant will receive email notification when the hearing has commenced.
	2. The Judicial Registrar will consider the filed evidence, draft orders, and any communication made by the applicant through eCase Administration.
	3. If the Judicial Registrar is satisfied that the substituted service orders should be made, they will notify the applicant through eCourtroom and advise that a sealed copy of the orders will be made available through the Commonwealth Courts Portal.
	4. If the Judicial Registrar is not satisfied that the substituted orders should be made, they may dismiss the application or adjourn the proceedings with a direction that the applicant file further evidence.
	5. The Judicial Registrar may also request that the applicant provide further draft orders (to be sent in Microsoft Word (.doc or .docx format). These orders should be uploaded through eCase Administration and not through eLodgment.
1. **Information on the Court’s online services**

 *eLodgment*

* 1. The Court provides an electronic lodgement ([eLodgment](http://www.fedcourt.gov.au/online-services/elodgment)) facility through which a document that commences a proceeding or is relevant to an existing proceeding may be lodged for filing online.
	2. The use of eLodgment provides many benefits to court users. It is available from each user’s computer at any time and provides a complete record of all lodgement transactions with the Court.
	3. eLodgment also allows court users to lodge other documents regarding a proceeding, for example: a draft order, terms of consent and case management correspondence.
	4. A party must be registered to use eLodgment. The [eLodgment page](http://www.fedcourt.gov.au/online-services/elodgment) includes information about registering, preparing and lodging documents.

*eCourtroom*

* 1. [eCourtroom](http://www.fedcourt.gov.au/online-services/ecourtroom) is a virtual courtroom that assists in the management of matters by allowing directions and final orders to be made online.

*Commonwealth Courts Portal*

* 1. Filed documents in a matter can be viewed by parties or those authorised by a party on the [Commonwealth Courts Portal](http://www.fedcourt.gov.au/online-services/commonwealth-courts-portal). The Commonwealth Courts Portal (CCP) provides web-based services for court users to access information about cases before the Court. Parties may register for the CCP to gain access to documents which have been eLodged, as well as orders of the Court, judgments and listing events (past or future). More information about the CCP can be found in [Online Services](https://www.fedcourt.gov.au/online-services).

*Federal Law Search*

* 1. Alternatively, stamped court orders are also available online via [Federal Law Search](http://www.fedcourt.gov.au/online-services/federal-law-search). The Federal Law Search facility provides selected information on cases to members of the public.