

Questionnaire relating to the *Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (Service Convention)*

Responding State:	Australia
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I. General Feedback

1. How does your State rate the general operation of the Service Convention?
(c) Satisfactory.
2. How does your State rate the useability of the HCCH [Practical Handbook on the Operation of the Service Convention](#)?
(b) Good.
3. Does your State's Central Authority have a manual or electronic case management register or system that is used to track incoming requests under the Service Convention?
(a) Yes – electronic for incoming only.
4. If your State's Central Authority has oversight for all outgoing requests, please indicate if there is a system used to track the progress of these.
(d) Other.
"The Australian Central Authority does not have oversight of outgoing requests."

II. Scope of the Convention

5. In the previous five years*, has your State experienced any difficulties in interpreting the scope of the Service Convention?

*If your State has become a Party to the Convention during the previous five years, responses to this questionnaire should reflect the period of time, commencing from when the Convention entered into force in your State.

(d) No.

A. Extrajudicial documents

6. Is the concept of "extrajudicial documents" (Art. 17) defined in the internal law of your State?
(b) No.
7. What types of extrajudicial documents are **transmitted** under the Service Convention by your State?

"Under Australian law, the instances in which an extrajudicial document would need to be transmitted for service under the Convention are, in practice, very limited. Unfortunately, the Australian authorities do not have oversight of these instances."

III. Operation of the Convention

Requesting State refers to the State from which a request for service is, or will be, issued.

Requested State refers to the State to which a request for service is, or will be, addressed.

8. As the **requested State**, does your State provide assistance to locate a person to be served under the Service Convention?

(The Special Commission, at its 2014 meeting, encouraged Contracting Parties to provide such assistance consistent with their legal and structural capabilities, when able to do so, see C&R No 23.)

- (a) Yes.

“The lack of formal address registration in Australia makes it difficult for authorities to provide assistance to locate a person. Generally, requesting authorities are advised to consult publicly available registers, such as the Australian Electoral Commission (for natural persons), and the Australian Business Register or the registers of the Australian Securities and Investments Commission Registers (for legal persons). Some jurisdictions are able to provide limited assistance, for example, where the addressee has moved, a bailiff or process server may make enquiries with the new resident or neighbours in relation to a forwarding address.”

9. As the **requesting State**, how would your State transmit a document for service upon another State, a State official, or a State-owned company?

- (c) Other.

“In such a situation, diplomatic channels would likely be used, but the question of whether this use of diplomatic channels would be under the Hague Convention has not yet been considered.”

10. As the **requested State**, how is a request for service on your State, State official or State-owned company executed?

“Such a request would ordinarily be transmitted either via diplomatic channels or to the Central Authority, before being forwarded to the relevant Australian authority for execution”

11. Does your State serve judicial and extrajudicial documents in the same way?

- (b) No.

“Service of judicial documents is effected by a Sheriff’s Officer, bailiff, or other process server, generally on the request of the Supreme Court of the requested jurisdiction or other relevant authority; Extrajudicial documents are received by the Central Authority and forwarded to a private service provider to arrange service.”

A. Main Channel of Transmission (Art. 5)

12. In your State, what are the authorities or who are the persons competent to forward a request for service to a foreign Central Authority?

- (a) Courts / Tribunals.
 (c) Registrars.
 (e) Process servers.
 (f) Central Authority(ies).
 (g) Other.

“Any court official, or any other person or entity authorised by the rules of the relevant court.”

13. Do outgoing requests for service have to be transmitted through your State’s Central Authority?

- (b) No.

14. As the **requested State**, when no particular method is requested by the applicant, what is the primary / default method of service? (Art. 5(1)(a))

(b) Personal service.

15. In the previous five years*, as the **requested State**, has your State **received** a request with a particular method of service requested by the applicant? (Art. 5(1)(b))

*If your State has become a Party to the Convention during the previous five years, responses to this questionnaire should reflect the period of time, commencing from when the Convention entered into force in your State.

(a) Yes.

15.1. If yes, what method of service was requested?

(d) By e-mail.

(e) By other electronic means.

(f) Other.

“Request for addressee to sign an acknowledgement of service from the State of Origin.”

15.2. If yes, was the requested method of service able to be executed?

(a) Yes.

16. In the previous five years*, as the **requesting State**, has your State’s forwarding authorities requested a particular method of service? (Art. 5(1)(b))

*If your State has become a Party to the Convention during the previous five years, responses to this questionnaire should reflect the period of time, commencing from when the Convention entered into force in your State.

(c) Unknown.

16.1. If yes, what particular method of service was requested?

N/A

16.2. If yes, was the requested method of service able to be executed?

N/A

16.3. If yes, were there costs associated with this method of service?

N/A

B. Alternative Channels of Transmission (Arts 8, 9 & 10)

State of origin refers to the State in which proceedings are commenced and where the document to be served originates.

State of destination refers to the State where service is, or will be, effected.

1. Model Form

Use of the Model Form is mandatory for the main channel of transmission. The Special Commission, at its 2009 meeting, urged State Parties to widely encourage the use of the part of the Model Form containing the “Summary”, accompanied by the “Warning” (see C&R No 31).

17. As the **State of origin**, does your State use the “Warning” and “Summary” sections of the Model Form when transmitting a request through alternative channels?

(d) Unknown.

18. As the **State of destination**, does your State use the “Certificate” section of the Model Form when informing whether documents have been served (in response to a request received through alternative channels)?

(b) Sometimes.

“Usage differs between Australian jurisdictions, though in most cases the Certificate section is not used, as the requested jurisdiction either provides its own certificate or an equivalent proof of service, such as an affidavit.”

2. Diplomatic and Consular Agents (Art. 8)

19. In the previous five years*, have the diplomatic or consular agents of your State directly effected service of judicial or extrajudicial documents upon a person abroad? (Art. 8(1))

*If your State has become a Party to the Convention during the previous five years, responses to this questionnaire should reflect the period of time, commencing from when the Convention entered into force in your State.

(b) No.

20. In the previous five years*, has service by diplomatic or consular agents of your State been rejected by the addressee? (Art. 8(1))

*If your State has become a Party to the Convention during the previous five years, responses to this questionnaire should reflect the period of time, commencing from when the Convention entered into force in your State.

(b) No.

3. Diplomatic and Consular Channels (Art. 9)

21. In the previous five years*, has your State used consular channels to forward documents? (Art. 9(1))

*If your State has become a Party to the Convention during the previous five years, responses to this questionnaire should reflect the period of time, commencing from when the Convention entered into force in your State.

(b) No.

22. In the previous five years*, under exceptional circumstances, has your State used diplomatic channels to forward documents? (Art. 9(2))

*If your State has become a Party to the Convention during the previous five years, responses to this questionnaire should reflect the period of time, commencing from when the Convention entered into force in your State.

(c) Unknown.

4. Postal Channel (Art. 10(a))

23. Has your State (as the **State of destination**) objected to service under Article 10(a)?

(b) No.

23.1. If an objection has been made under Article 10(a), does your State continue to use postal channels for service as the State of origin, despite the objection?

N/A

23.2. If no objection has been made, does your State, as the **State of destination**, accept the use of postal channels for service from other States of origin that have made an objection under Article 10(a)?

(a) Yes.

23.3. If no objection has been made, which of the following categories does your State recognise as a “postal channel” under Article 10(a)?

(b) Registered (tracked) post, with receipt.

(c) Private courier, such as FedEx.

(f) Other.

“Please note that Australia has also declared that service by post must be permitted in the jurisdiction where process is to be served.”

23.4. If no objection has been made, more specifically, would your State consider service by e-mail to be analogous to service by postal channels under Art. 10(a)?

(c) Unknown.

“While the principle of functional equivalence is generally accepted in Australian law, this particular question has not yet been formally considered.”

23.5. If no objection has been made, does your State require the documents served to be translated into one of your State’s official languages?

(b) No.

5. Judicial Officers, Officials or other Competent Persons (Art. 10(b))

24. Has your State objected to service under Article 10(b)?

(b) No.

24.1. If no objection has been made, which of the following categories does your State recognise as a “judicial officer, official or other competent person” under Article 10(b), either for sending or receiving?

(a) Attorney or solicitor.

(b) Bailiff.

(c) *Huissier*.

(d) Court official.

(e) Notary.

(g) Process server.

(h) Other.

“Any court official, or any other person or entity authorised by the rules of the relevant court.”

24.2. If no objection has been made, how does this channel of transmission operate in practice?

“The Australian authorities do not have oversight of the practical operation of this channel of transmission.”

24.3. If no objection has been made, are there costs associated with this channel of transmission?

(c) Unknown.

6. Person Interested in a Judicial Proceeding (Art. 10(c))

25. Has your State objected to service under Article 10(c)?

(b) No.

25.1. If no, which of the following categories does your State recognise as “any person interested in a judicial proceeding” under Article 10(c), either for sending or receiving?

(a) Attorney or solicitor.

(b) Bailiff.

(c) *Huissier*.

(d) Court official.

(e) Notary.

(g) Other – *please specify*.

“Any court official, or any other person or entity authorised by the rules of the relevant court. In some circumstances this may include the parties to the proceedings (or their representatives).”

25.2. If no, how does this channel of transmission operate in practice?

“The Australian authorities do not have oversight of the practical operation of this channel of transmission.”

25.3. If no, are there costs associated with this channel of transmission?

(c) Unknown.

C. Refusal to Execute Request (Art. 13)

26. In the previous five years*, has your State refused a request for service on grounds of infringing “sovereignty or security”?

*If your State has become a Party to the Convention during the previous five years, responses to this questionnaire should reflect the period of time, commencing from when the Convention entered into force in your State.

(b) No.

27. In the previous five years*, has a request from your State been refused on grounds of infringing “sovereignty or security”?

*If your State has become a Party to the Convention during the previous five years, responses to this questionnaire should reflect the period of time, commencing from when the Convention entered into force in your State.

(c) Unknown.

IV. Use of Information Technology

In 2019, the PB circulated a questionnaire on the use of information technology in relation to the operation of the Service Convention. That survey was concluded prior to the COVID-19 pandemic. The questions below seek information from Contracting Parties on the use of technology and in light of the pandemic.

28. Has your State taken any steps (including through legislation) to enable or increase the use of technology to facilitate the operation of the Service Convention, including in response to the COVID-19 pandemic?

(a) Yes.

“Increasing acceptance of requests received electronically; in urgent cases transmitting requests electronically between the Central Authority and relevant Australian jurisdiction; encouraging electronic means of communication with foreign authorities.”

29. Do the forwarding authorities of your State transmit requests under the Service Convention electronically?

(a) Yes.

29.1. If yes, what methods of transmission do the forwarding authorities of your State use?

(a) E-mail (regular).

(b) E-mail (secured / encrypted).

(c) Electronic transmission via online platform administered by the government.

(d) Electronic transmission via online platform administered by a private service provider.

(f) Other.

“Please note that while nothing legislatively precluding Australian jurisdictions from doing so, it is not yet common practice.”

30. Does your State’s Central Authority accept requests under the Service Convention transmitted electronically in circumstances where **only** an electronic copy is provided (and where a paper copy is not subsequently provided)?

(a) Yes.

30.1. If yes, what methods of transmission does your State accept?

(a) E-mail (regular).

(b) E-mail (secured / encrypted).

(c) Electronic transmission via online platform administered by the government.

(d) Electronic transmission via online platform administered by a private service provider.

(f) Other.

“Please note that not all jurisdictions in Australia will be able to accept electronic transmission of requests, so in some cases the Central Authority may need to assist. The Australian Central Authority will accept requests received electronically. To assist with execution, it is useful if the requesting authority provides written confirmation that it is sufficient to serve a copy of the document/s that have been transmitted electronically according to their internal law.”

30.2. If no, please provide further information about why this is not yet possible.

N/A

31. Does your State permit execution of service via electronic means?

(g) Other.

“Some authorities may allow the execution of service requests via electronic means in specific circumstances and where it is authorised by the Court, however this is not yet common practice across Australian jurisdictions.”

31.1. If no, what are your State’s reasons for refusing to execute the requests for service to be performed by using information technology?

N/A

32. What challenges, if any, has your State faced regarding the use of information technology under the Service Convention?

(b) Internal law limitations.

(d) Implementation challenges (e.g., lack of resources, lack of infrastructure).

(e) Cost.

(g) Security concerns.

33. In your State’s opinion, what further work could the PB do on the use of information technology under the Service Convention?

(c) Other.

“Australia agrees that additional guidance and information about the practical experience of Contracting Parties in this area would be useful, however in our view, this information would better be incorporated into the new edition of the Handbook than a standalone a Guide to Good Practice.”

34. In addition to the Service Convention, is your State a Party to any bilateral, regional, or multilateral agreements that provide rules for the service of documents abroad?

(a) Yes.

For Parties that answered “yes” to Q34 above:

34.1. Do any of these agreements provide for the use of electronic means (e.g., e-mail) to transmit or execute requests for service?

(a) Yes.

“Bilateral treaties with New Zealand, the Kingdom of Thailand, and the Republic Korea. Australia is also a party to a number of bilateral treaties between the UK and some European countries. These treaties were then extended to Australia due to its place in the Commonwealth of Nations. Although they do not expressly provide for the use of electronic means, there is also nothing to prohibit their use.”

V. 2023 Meeting of the Special Commission & Monitoring

35. What are the three key topics or practical issues related to the Service Convention that your State would like discussed at the 2023 meeting of the Special Commission?

1. *“Use of technology, in particular in the execution of service requests.”*

2. *“Use and operation of the alternative channels of transmission.”*

3. *“Standardisation in the collection of data and statistics.”*

35.1. Please indicate whether the information provided in Q35 above may be published.

(a) Yes.

36. Does your State have any suggestions that could assist in the promotion, implementation, or operation of the Service Convention?

(a) Yes.

“Some suggestions under consideration in Australia that may be useful for other Contracting Parties include: information on combatting fraud (incl. assessing whether a forwarding authority is legitimate); whether certified translations are required (and if so, any form requirements); guidance on address formats for different jurisdictions; and practical factsheets for foreign authorities in multiple languages. We would also suggest strongly encouraging requesting authorities to provide email addresses with their requests, to facilitate follow-up and clarification. Processing delays and recovery of costs to be reimbursed also continue to be problems for Australian authorities.”

36.1. If the answer to Q36 above is “yes”, please indicate whether the information provided may be published.

(a) Yes.

37. The PB is in the process of revising the Service Handbook. Are there any specific topics, suggestions for presentation or formatting, or any other proposals you recommend for inclusion?

(b) No.

37.1. If the answer to Q37 above is “yes”, please indicate whether the information provided may be published.

N/A

DATA & STATISTICS FOR CONTRACTING PARTIES

I. Statistics under Main Channel of Transmission (Art. 5)

A. Incoming Requests

1. How many incoming requests for service did your State receive under the main channel of transmission (Art. 5) in each of the following years?

2017	-
2018	-
2019	270
2020	375
2021	465
2022	426
Unknown – please explain. <i>“Please note that these figures are approximate and cover only those requests received by the Central Authority; rejected requests and requests sent directly to Australian State and Territories are not captured. Data has only been provided from 2019, as the electronic database used to record and manage requests received by the Central Authority was only implemented in 2018.”</i>	

2. Which three States made the most requests?

Requesting State	Number
France	248
Poland	168
USA	159

3. If possible, please provide a breakdown of how long (in months) it took to execute incoming requests.

	< 1	1-3	3-6	6-12	> 12
2017	-	-	-	-	-
2018	-	-	-	-	-
2019					X
2020					X
2021					X
2022 (if data available)					X

Unknown – *please explain.*
“Please note that these figures are approximate and cover only those requests received by the Central Authority; rejected requests have not been included; requests sent directly to Australian State and Territories are not captured. Data has only been provided from 2019, as the electronic database used to record and manage requests received by the Central Authority was only implemented in 2018.”

4. How many of these incoming requests for service did your State receive via **electronic transmission** in each of the following years?

2017	-
2018	-
2019	-
2020	-
2021	-
2022	-
Unknown – <i>please explain.</i> <i>“The Australian Central Authority does not currently record this data.”</i>	

5. How many incoming requests for service did your State **execute for service** via electronic means in each of the following years?

This is regardless of whether a paper copy of the documents was subsequently provided.

2017	-
2018	-
2019	-
2020	-
2021	-
2022	-
Unknown – <i>please explain.</i> <i>“The Australian Central Authority does not currently record this data.”</i>	

6. Are execution times for electronically transmitted requests for service generally faster than those transmitted by post?

(a) Yes, significantly faster.

B. Outgoing Requests

7. How many outgoing requests for service did your State make under the main channel of transmission (Art. 5) in each of the following years?

2017	-
2018	-
2019	-
2020	-
2021	-
2022	-
Unknown – please explain. “(c) The Australian Central Authority does not have oversight of outgoing requests.”	

8. Which three States were the subject of the most requests?

N/A

9. How many outgoing requests for service did your State make via electronic transmission under the main channel of transmission (Art. 5) in each of the following years?

2017	-
2018	-
2019	-
2020	-
2021	-
2022	-
Unknown – please explain. “(c) The Australian Central Authority does not have oversight of outgoing requests.”	

II. Statistics under Alternative Channels of Transmission

10. Does your State have statistics on incoming requests under alternative channels of transmission?

- (a) Yes, Article 8.
- (b) Yes, Article 9.
- (c) Yes, Article 10(a).
- (d) Yes, Article 10(b).
- (e) Yes, Article 10(c).
- (f) No, none of the above.

10.1. If yes, how many (total) incoming requests for service did your State receive under the alternative channels of transmission in each of the following years?

N/A

III. Refusals (Art. 13)

11. If applicable, please indicate how many incoming requests for service your State refused to comply with between 2017 and 2022?

“Approximately 370 requests between January 2019 and December 2022. Please note that this figure includes requests that were initially rejected, but were later re-submitted as an entirely new request. In addition, the figure covers only those requests received by the Central Authority; requests sent directly to Australian State and Territories are not captured. Data has only been provided from 2019, as the electronic database used to record and manage requests received by the Central Authority was only implemented in 2018.”

12. If applicable, please indicate how many outgoing requests for service transmitted by your State were refused between 2017 and 2022?

“The Australian Central Authority does not have oversight of outgoing requests.”

CASE LAW, ADDITIONAL INFORMATION & SUPPORTING DOCUMENTS

I. Case Law

Please list all your State's judicial decisions that have considered the Service Convention since 2014 and provide a link to, or upload the decisions (in PDF format only).

"The Australian Central Authority does not maintain a comprehensive list of judicial decisions that consider the Service Convention. Ahead of the Special Commission, the Australian Central Authority will continue to research relevant case law and legislative developments to assist the PB with the revision of the Handbook and preparation for the Special Commission meeting. The following cases were provided by the relevant States and Territories: • Kranz v Astora Women's Health LLC [2022] QSC 203 at [29] • Pilling v Shajahan Karmin LLB & Ors [2020] QDC 306 at [29]"

II. Additional Documents

Please provide links to and / or any additional information or documentation to support your response (in PDF format only). This may include:

- ⇒ resources for the general public or guidelines for Central or other Authorities' staff;
- ⇒ implementation legislations, recent legislative developments; or
- ⇒ books, articles, or other published work.

"Factsheets available to the general public: Service of Australian civil legal documents overseas (outgoing requests); Service of foreign civil legal documents in Australia (incoming requests). See also: <https://www.ag.gov.au/international-relations/private-international-law/frequently-asked-questions-faqs>"

2 files uploaded.

PUBLICATION OF RESPONSES

Please confirm whether your responses to this questionnaire can be published on the HCCH website.

- (a) Yes.