

**Questionnaire of July 2008 relating to the
Hague Convention of 15 November 1965 on the Service Abroad
of Judicial and Extrajudicial Documents in Civil or Commercial Matters
(Service Convention)**

Non-Contracting States to the Service Convention are invited to respond to Questions 1) to 3), as well as to Questions 60, 61 and 67 I. Questions for non-Contracting States

1) Please indicate why your State is not a Contracting State to the Service Convention (select as many answers as are relevant):

The availability of possibilities for transmission of documents for service abroad, proof of service abroad and protection of the interests of plaintiffs and defendants under domestic law, bilateral or regional agreements, treaties or instruments means that so far it has not appeared to your authorities that there would be added value in becoming a Party to the Service Convention

The number of cross-border cases that require the service abroad of judicial or extrajudicial documents has so far been limited and has not required a global framework

There are legal obstacles in your domestic legal system that prevent your State from becoming a party to the Convention – if so, please specify what these are:

Your State considers that there are specific issues arising out of the Service Convention (*e.g.*, costs, the absence of specific deadlines for the transmission and execution of requests for service, the absence of a specific provision on how to determine the date of service, the need, where requested, to translate documents to be served in accordance with Art. 5(3), etc.) which dissuade your State from joining the Service Convention – please explain:

Your State does not have the means or resources to properly implement the Service Convention

The question of becoming a Party to the Convention has never been examined in detail

Other reason – please explain:

[While Australia is not yet Party to the Hague Service Convention, it is currently establishing domestic arrangements to enable accession to the Convention. See response to Q3\) for more detail.](#)

2) Please forward a list of any bilateral or regional agreements, treaties or instruments to which your State is a party and that provide rules for the transmission of documents to be served abroad, for proof of service, and for the protection of the interests of plaintiffs and defendants:

[A list of agreements to which Australia is party that relate to the service of judicial documents abroad is at **Attachment A**.](#)

3) Is your State currently studying the Service Convention or does your State envisage studying it with a view to becoming a State Party in the near future?

YES – please specify (status of considerations in your State, etc.):

Australia is currently taking final steps necessary to enable accession to the Hague Service Convention, with a view to beginning formal accession processes in early 2009. Australia has already completed many of the actions necessary to enable this. These include:

- agreement between Australian Commonwealth, States and Territories on the model of implementation and authorities to be designated as the Central Authority and Additional Authorities under the Convention
- development of model court rules to be adopted by Australian State and Territory courts which provide procedures for service of court documents in line with Convention requirements
- development of Guidelines to be used by authorities to assess foreign requests for service, and
- agreement about reservations and declarations to be made under the Convention.

Australia looks forward to accession to the Convention and considers that it will establish streamlined and effective channels of transmission for documents for service.

NO

II. E-service

A. In strictly domestic situations

60) Does the law of your State, in strictly domestic situations, allow for documents to be served by fax, e-mail, SMS, the posting of a message on a website, or by a similar modern technology?

NO – are there plans to introduce service by using such technologies?

YES – please specify:

NO

Australia does not have a standard process to allow for electronic service of documents. However, e-service may be allowed in circumstances where the court considers that standard means of service will not be effective and e-service will be an effective means of service.

YES – please specify:

- a. the legal framework and practical circumstances in which such technologies may be used (please describe for each if necessary):
- b. whether a secured transmission has to be used for any / each of these technologies, and if so, which kind of secured transmission is used in practice:
- c. if and how service upon the addressee is acknowledged or proven in such circumstances:

B. In cross-border situations outside of the Service Convention

61) Have the relevant authorities of your State served documents by fax, e-mail, SMS, the posting of a message on a website or by a similar modern technology in cross-border situations that did not fall within the scope of the Service Convention?

YES – please specify:

- a. the legal framework and practical circumstances in which this occurred – in particular, whether the terms of a regional or bilateral instrument provided for or otherwise allowed this (please describe for each if necessary):
- b. whether a secured transmission has to be used for any / each of these technologies, and if so, which kind of secured transmission is used in practice:
- c. if and how service upon the addressee was acknowledged or proven in such circumstances:

NO - not to our knowledge.

E. Miscellaneous

67) Have there been any other recent developments in your State in relation to the service of documents by fax, e-mail, SMS, the posting of a message on a website or by using a similar modern technology (including in situations involving one of the alternative channels of transmission under the Service Convention where applicable)? Please describe below and provide the citations for and / or a copy of any relevant decision or article in this regard (if this information is not in English or French, a summary into one of these languages would be appreciated):

There have not been any developments in Australia in relation to e-service. However, Australia will consider this matter in greater detail as part of, and following, its preparations for accession to the Hague Service Convention.

ATTACHMENT A

AGREEMENTS TO WHICH AUSTRALIA IS PARTY ON THE SERVICE OF FOREIGN PROCESS

Bilateral Treaties Australia is party

1. *Agreement on Judicial Assistance in Civil and Commercial Matters and Co-operation in Arbitration between Australia and the Kingdom of Thailand*, done at Bangkok, 1-29 June 1998.
2. *Treaty on Judicial Assistance in Civil and Commercial Matters between the Government of Australia and the Government of the Republic of Korea*, done at Canberra on 17 September 1999.

Australia is also party to the following bilateral service conventions as a result of extension of a convention made between the United Kingdom and each of these countries (as they then were):¹

3. *Convention between the United Kingdom and Austria on Legal Proceedings in Civil and Commercial Matters*, done at London, 31 March 1931.
4. *Convention between the United Kingdom and Belgium on Legal Proceedings in Civil and Commercial Matters*, done at London, 21 June 1922.
 - a. A bilateral service convention between Australia and Belgium applies to the following countries by succession from Belgium: Burundi, Democratic Republic of the Congo, Rwanda.
5. *Convention between the United Kingdom and Czechoslovakia on Legal Proceedings in Civil and Commercial Matters*, done at London, 11 November 1924.
 - a. A bilateral service convention between Australia and Czechoslovakia applies to the following countries by succession from Czechoslovakia: Czech Republic, Slovakia.
6. *Convention between the United Kingdom and Denmark on Legal Proceedings in Civil and Commercial Matters*, done at London, 29 November 1932.
7. *Convention between the United Kingdom and Estonia on Legal Proceedings in Civil and Commercial Matters*, done at London, 22 December 1931.
8. *Convention between the United Kingdom and Finland on Legal Proceedings in Civil and Commercial Matters*, done at London, 11 August 1933.
9. *Convention between the United Kingdom and France regarding Legal Proceedings in Civil and Commercial Matters*, done at London, 2 February 1922.
 - a. A bilateral service convention between Australia and France applies to the following countries by succession from France: Algeria, Benin, Burkina Faso, Cambodia, Cameroon, Central African Republic, Laos, Lebanon, Morocco, Syria, Vietnam.

¹ Please note that these bilateral treaties were concluded during the 1920s and 1930s. Many of the countries extended the treaty to their external territories at the time, even though those territories are now independent states in many instances the treaty continues in force.

10. *Convention between the United Kingdom and Germany regarding Legal Proceedings in Civil and Commercial Matters*, done at London, 20 March 1928.
11. *United Kingdom and Greece regarding Legal Proceedings in Civil and Commercial Matters*, done at London, 27 February 1936.
12. *Convention between the United Kingdom and Hungary regarding Legal Proceedings in Civil and Commercial Matters*, done at Budapest, 25 September 1935.
13. *Convention between the United Kingdom and Iraq regarding Legal Proceedings in Civil and Commercial Matters*, done at Baghdad, 25 July 1935.
14. *Convention between the United Kingdom and Italy regarding Legal Proceedings in Civil and Commercial Matters*, done at London, 17 December 1930.
15. *Convention between the United Kingdom and Lithuania regarding Legal Proceedings in Civil and Commercial Matters*, done at Kaunas (Kovno), 24 April 1934.
16. *Convention between the United Kingdom and the Netherlands regarding Legal Proceedings in Civil and Commercial Matters*, done at London, 31 May 1932.
 - a. A bilateral service convention between Australia and the Netherlands applies to the following countries by succession from the Netherlands: Antilles and Aruba, Indonesia, Suriname.
17. *Convention between the United Kingdom and Norway regarding Legal Proceedings in Civil and Commercial Matters*, done at London, 30 January 1931.
18. *Convention between the United Kingdom and Poland regarding Legal Proceedings in Civil and Commercial Matters*, done at Warsaw, 26 August 1931.
19. *Convention between the United Kingdom and Portugal regarding Legal Proceedings in Civil and Commercial Matters*, done at London, 9 July 1931.
 - a. A bilateral service convention between Australia and Portugal applies to the following countries by succession from Portugal: Angola, Cape Verde, Mozambique.
20. *Convention between the United Kingdom and Spain regarding Legal Proceedings in Civil and Commercial Matters*, London, 27 June 1929.
21. *Convention between the United Kingdom and Sweden regarding Legal Proceedings in Civil and Commercial Matters*, done at London, 28 August 1930.
22. *Convention between the United Kingdom and Turkey regarding Legal Proceedings in Civil and Commercial Matters*, done at London, 28 November 1931.
 - a. A bilateral service convention between Australia and Turkey applies to the following countries by succession from Turkey: Botswana, Cyprus.
23. *Convention between the United Kingdom and Yugoslavia on Legal Proceedings in Civil and Commercial Matters*, London, 27 February 1936.

- a. A bilateral service convention between Australia and Yugoslavia applies to the following countries by succession from Yugoslavia: Bosnia Herzegovina, Croatia, Macedonia (FYR), Serbia and Montenegro (FRY), Slovenia.

Copies of the relevant treaties are available on the Austlii 'treaties library' website (<http://www.austlii.edu.au/au/other/dfat/treaties>) and specifically from this link http://www.austlii.edu.au/au/other/dfat/treaty_list/bilist/.