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## LawTalk Blog



# Electronic service of legal documents in question!

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In South Australia service of legal proceedings are regulated by the Supreme Court Rules which in essence state that originating legal proceedings must be served personally upon an individual.

Accordingly any originating process cannot be served in any other way then personally upon a person. However if that person is represented by a solicitor and that solicitor has instructions from that person the service may be effected on via the solicitor.

Service by way of electronic mail (email) has been the subject of legal argument which centres on the issue of when the email is received and when it came to the notice of the person that it was supposed to be served upon. That is, there must be some evidence that the item purportedly served by email:

1. was successfully delivered to the solicitor for that party; and
2. the solicitor for that party sent it to the client.

The basis of this argument is that an email is transmitted to and electronically stored by a server which is not always located in the receiver's premises. Positive action is needed on the part of the receiver to read the email and to obtain a hard copy by printing the email.

If you are intending on serving documents on the other party by emailing the documents to that party' solicitor then it would be advisable to:

1. obtain consent from the other party to send by email;
2. request a read receipt;
3. request a return email confirmation;
4. call the other party to confirm that the email was received; and
5. send the document by fax or to the registered address for service, in addition to the email.

It is also important that you keep evidence of service, such as fax transmission reports or notes of time, date and place of delivery.

In a recent case of *Conveyor & General Engineering Pty Ltd v Basetec Services Pty Ltd* [2014] QSC 30, an engineering company, Basetec Services Pty Ltd (**Basetec**), served part of an adjudication application by email. The Supreme Court of Queensland held that email is not a valid method of serving documents unless it is consented to in advance. The consent must be given expressly by the other party or by provision of the contract.

However the Supreme Court Rules allow that where for any reason a document has not been served in the manner required by the Supreme Court Rules, but the document has come to the notice of the person to be served, the document shall be taken to have been served on the day it came to the person's notice.

While in business electronic service of documents may be convenient and efficient, parties should be cautious about the use of electronic facilities, including email until such time as the Courts catch up with common business practices. However in defence of the Courts, recent cases have also allowed the service of documents via Facebook and other electronic means in their willingness to keep up with commercial and technological developments.

If you found this content useful, you may like to have a look at:

[Be mindful of what you agree to by email; it might form a binding contract.](#)

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