

GUIDANCE NOTES ON PROCEDURE FOR SERVICE OF DOCUMENTS UNDER THE FSI ACT

OVERVIEW

Periodically the Department of Foreign Affairs and Trade receives requests from Attorney-General's Department (AGD) to serve legal documents on foreign missions through diplomatic channels under the [Foreign States Immunities Act 1985](#) ('FSI Act').

s 22(1)(a)(ii)

Delegation under section 40(2)

In accordance with the Administrative Arrangements Order (AAO), Government Ministers administer a wide range of legislation which vests in them certain powers and functions. Ministers are able to devolve certain powers and functions to office-holders in the department. This devolution of power ensures administrative efficiency as it would not be possible for an individual to personally exercise all the powers and functions required for effective government.

Under section 40(2) of the FSI Act, the Minister of Foreign Affairs has delegated the power to certify service of a specified document (the section 40 certificate) to the following positions:

- Chief Legal Officer
- Legal Adviser (Corporate)/Assistant Secretary, LLB
- Legal Adviser (International)/ Assistant Secretary, ILB

In practice, it is the Legal Adviser (Corporate) who certifies service in the first instance, with the Legal Adviser (International) or Chief Legal Officer only approached if unavailable.

EXB maintains a central register for the department's key instruments of delegation and authorisation signed by Ministers, the Secretary and relevant senior executive staff. D Enquiries or notifications of changes (such as seeking an update in the event of a change of Minister) should be directed to [s 47E\(d\)](#) @dfat.gov.au.

Current Delegation

[s 47E\(d\)](#)



[Foreign States Immunities Act 1985 Delegation \[PDF 88KB\]](#)

Guidance Notes – FSI Act Service

s 22(1)(a)(ii)

Procedures following successful service of documents on Mission**Package for AS Corporate Law Branch**

- Finalise Section 40 certificate [s 47E(d)] – change FSI Act references as required. Prepare package for signature by Assistant Secretary, Corporate Law Branch, containing:
 - Section 40 Certificate (with ‘sign here’ tab)
 - **pre-stamp certificate with DFAT official seal**
Delegate will sign across the seal.
s 47E(d)
 - Signed Acknowledgement of Service form
 - Copy of the relevant pages of FSI Act:
 - s24 or s28 as appropriate
 - s40, and
 - s40(2) Delegation for information.
- Once signed, scan Section 40 Certificate to file.

November 2020

Service of Documents – Sample Third Person Note (TPN) Wording**FOREIGN STATES IMMUNITIES (FSI) ACT SERVICE****TPN to Embassy for Service of Documents under FSI Act**

The Department of Foreign Affairs and Trade presents its compliments to the ^{s 47E(d), s 33(a)(iii)} and has the honour to refer to proceedings commenced in the ^{s 47E(d), s 33(a)(iii)}

The Department of Foreign Affairs and Trade has been requested to serve the enclosed documents on the ^{s 47E(d), s 33(a)(iii)} through the diplomatic channel in accordance with the provisions of the *Foreign States Immunities Act 1985* (FSI Act). The department is legally obliged to serve these documents under the terms of the FSI Act. The FSI Act provides for service through the diplomatic channel where a legal matter involves a foreign state or a separate entity of the foreign state. The concept of service through the diplomatic channel creates a method for service on sovereign entities in a dignified manner. It precludes the ability of private process servers to intimidate or harass foreign heads of State and other protected persons while ensuring that notice of legal proceedings against the individual are brought to their attention in a timely manner. The department advises that the Australian Government has no involvement with, and makes no judgement about, the substantive merits of any legal proceedings.

Please find enclosed the initiative process and attached documents. A copy of the FSI Act and information paper on its operation are also enclosed for the ^{s 47E(d)} information.

The Department of Foreign Affairs and Trade avails itself of this opportunity to renew to the ^{s 47E(d), s 33(a)(iii)} the assurances of its highest consideration.

FSI Act service - issue with service (private legal matter)

The Department of Foreign Affairs and Trade presents its compliments to the Embassy of the ^{s 47E(d), s 33(a)(iii)} and has the honour to refer to the ^{s 47E(d), s 33(a)(iii)} regarding proceedings commenced in the ^{s 47E(d), s 47F(1), s 33(a)(iii)}

The department notes that under cover of ^{s 47E(d), s 33(a)(iii)} returned the enclosed documents in the case of ^{s 47E(d), s 47F(1)}. The reason given for returning the documents related to the form of the documents.

The department wishes to inform the Embassy that issues related to the proper form for the documents would need to be taken up by the ^{s 47E(d), s 47F(1)}

The department wishes to further inform the Embassy that as this is a private legal matter, ^{s 47E(d)} may wish to seek independent legal advice of the options, including under the *Foreign States Immunities Act 1985* (Cth), available to the ^{s 47E(d), s 33(a)(iii)} in relation to these court proceedings.

The Department of Foreign Affairs and Trade avails itself of this opportunity to renew to the ^{s 47E(d), s 33(a)(iii)} the assurances of its highest consideration.

Service of Documents – Sample Third Person Note (TPN) Wording

FSI Act service – no involvement with service of additional legal documents

The Department of Foreign Affairs and Trade presents its compliments to the
 s 47E(d), s 33(a)(iii) and has the honour to refer to the s 47E(d), s 33(a)(iii)
 regarding the direct service of legal
 documents on the s 47E(d), s 33(a)(iii) in the matter between s 47E(d), s 47F(1), s 33(a)
 (iii)

The department wishes to inform the s 47E(d) that under the *Foreign States Immunities Act 1985* (Cth) (FSI Act), only the initiating process, or a default judgement, is required to be served through diplomatic channels. There is no requirement under the FSI Act for additional legal documents to be served through diplomatic channels.

The department notes that the initiating process in the matter between s 47E(d), s 47F(1), s 33(a)(iii) was successfully served on the s 47E(d) on the s 47E(d). Therefore, the department advises it has no involvement with the service of additional legal documents in this matter and is unable to provide assistance. Accordingly, the department encloses the documents provided under cover of the s 47E(d).

The department wishes to further inform the s 47E(d) that as this is a private legal matter, the s 47E(d) may wish to seek independent legal advice of the options, including under the *Foreign States Immunities Act 1985* (Cth), available to the s 47E(d), s 33(a)(iii) in relation to these court proceedings.

The Department of Foreign Affairs and Trade avails itself of this opportunity to renew to the s 47E(d), s 33(a)(iii) the assurances of its highest consideration.

Service of Documents – Sample Third Person Note (TPN) Wording

FSI Act service – advice to Fair Work Commission following inappropriate application advice sent directly to foreign mission

On **s 47E(d), s 33(a)(iii)** received the
Application for **s 47E(d)** (Form F2 application) from the Fair Work
Commission (see attached and below).

A Form F2 application constitutes an initiating process for the purposes of the *Foreign States Immunities Act 1985 (FSI Act)*, and is therefore required to be served on the **s 47E(d), s 33(a)(iii)** via diplomatic channels after review by the Attorney-General's Department. The FSI Act applies to proceedings involving diplomatic missions and is administered by the Attorney General. An Information Paper on this Act can be accessed by the link below:

<https://www.ag.gov.au/Internationalrelations/InternationalLaw/Documents/Information%20paper%20-%20Operation%20of%20the%20Foreign%20States%20Immunities%20Act%201985.pdf>

You will see that an application for service through the diplomatic channel should be sent to:

Attorney-General
Parliament House
Canberra ACT 2600

However, in order to facilitate service, a copy of the application and enclosures also could be sent to the following address:

Assistant Secretary
International Law, Trade and Security Branch
Office of International Law
Attorney-General's Department
Robert Garran Offices
3-5 National Circuit
BARTON ACT 2600

We note that a **conciliation** on the application has been scheduled for **s 47E(d)**

Under the FSI Act, the time for the foreign State to enter an appearance under the relevant court rules does not begin to run until two months after service was effected. As service has not yet been effected this timing is invalid under the FSI Act. Grateful if FWC would reschedule accordingly.



I, **s 47F(1)**, Legal Adviser (Corporate) of the Legal Division, Department of Foreign Affairs and Trade, having been duly authorised by the Minister for Foreign Affairs, DO HEREBY CERTIFY, pursuant to Section 40 of the *Foreign States Immunities Act* 1985 (“the Act”), that in the matter of **s 47F(1)** against the **s 47E(d)** **s 33(a)(iii)** in the **s 47E(d)**, service of the **Originating Process in the Proceeding** and accompanying documents was effected in accordance with Section **24** of the Act by **s 47F(1)**, **Paralegal** of the Department of Foreign Affairs and Trade, on **XX Month YYYY**.

GIVEN under my hand and the seal of the Department of Foreign Affairs and Trade
this day of 2023.

s 47F(1)
Legal Adviser (Corporate)
Corporate Law Branch
Department of Foreign Affairs and Trade



I, **s 47F(1)** Assistant Secretary and Corporate Counsel of the Legal Division, Department of Foreign Affairs and Trade, having been duly authorised by the Minister for Foreign Affairs, DO HEREBY CERTIFY, pursuant to Section 40 of the *Foreign States Immunities Act* 1985 ("the Act"), that in the matter of **s 47F(1)** **s 47F(1)** against the **s 47E(d), s 33(a)(iii)** of the Australian Capital Territory, service of the Originating Process in the Proceeding and accompanying documents was effected in accordance with Section 24 of the Act by **s 47F(1)** Paralegal of the Department of Foreign Affairs and Trade, on 2 March 2023.

GIVEN under my hand and the seal of the Department of Foreign Affairs and Trade this **s 47E(d)** day of **s 47E(d)** 2023.



s 47F(1)

Assistant Secretary and Corporate Counsel
Corporate Law Branch
Department of Foreign Affairs and Trade