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# Time waits for no man, except perhaps for Australia Post.

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The unstoppable expansion of the use of electronic methods of communication has had, and will continue to have, many ramifications for the community generally and for legal practice in particular. A recent, high-profile example of this is the decision by Australia Post to not only increase the cost (from 70¢ to \$1) of posting an ordinary pre-paid letter but also to change – from 4 January 2016 – the time frames within which letters will be delivered.

Australia Post's delivery speeds for letters are now as follows:-

- Express Post - guaranteed next business day delivery;
- Priority Post - 1 to 4 business days (depending on the location); and
- Regular Post – up to 2 business days longer than it would take taken if sent by priority post.

Practitioners should take care to think through the ramifications of the recent changes in the Australia Post delivery times so as to avoid any mistakes as to serving documents by post.

Delivery of a normal pre-paid letter could therefore now take **between 3 and 6 business days**. If service needs to take place more quickly the Priority Post or Express Post options will need to be used – obviously at a greater fee.

Whilst service of documents by more modern methods (e.g. facsimile, electronic mail) is now common in legal practice, there are still instances where service by post is not only appropriate but necessary, for example when a party has not agreed to service by facsimile or electronic mail or where a contract requires it.

The ramifications of this change by Australia Post for practitioners therefore arise in two main areas:

- Service by post under Court Rules; and
- Notice provisions in contracts.

### Service by post under Court Rules

In respect of proceedings in the Supreme and District Courts service of documents by pre-paid post (apart from documents such as originating proceedings where personal service is required) is, of course, still allowed, notwithstanding that service by DX, facsimile or electronic mail is also allowed in many circumstances.

The effect of Rules 68 (2) and 71 (1) of the *Supreme Court Rules/District Court Rules 2006* is that where a document which is allowed to be served by post is sent by pre-paid post in an envelope addressed to the party, at the party's postal address for service, it is taken to be served *when the document would, in the ordinary course of post, reach the address to which it was posted*.

The change of *the ordinary course of post* brought about by Australia Post from 4 January 2016 will therefore need to be borne in mind by practitioners when making an assessment as to when service has occurred, for example when preparing affidavits of service and the like. A period of 6 business days will need to be allowed where service is by ordinary pre-paid post where previously an allowance of only 2 business days was necessary.

The position in respect of proceedings in the Magistrates Court is slightly more problematic and may require an amendment to the Rules so as to encompass the changes wrought by Australia Post. This is because the combination of Rules 47 (1) and 52 (1) of the *Magistrates Court Rules 2013* provide, in effect, that where documents are sent by pre-paid post addressed to the person the person will be taken to be served *2 business days after sending*.<sup>i</sup> No doubt these Rules were drafted with the then current (but now superseded) Australia Post delivery standard of 2 business days for the delivery of ordinary pre-paid letters.

The Law Society's Civil Litigation Committee has written to the Chief Magistrate seeking an urgent review of Rules 47 and 52 so as to avoid the situation where the Rules deem the position to be something which was but is no longer reflective of the real situation as to delivery.

It should also be noted that Section 33 of the *Acts Interpretation Act 1915 (SA)* also provides that where any Act authorises or requires any document to be served by post then the Act will be taken to provide that service is effected by properly addressing, prepaying and posting a letter containing the document. Unless the contrary is proved, service will be taken to have been effected at the time at which the letter or packet would be delivered *in the ordinary course of post*.

The position under legislation generally is therefore the same as in the Supreme and District Courts: no change in Rules of those Courts or any particular legislation would seem to be required, it is just that when making an assessment of whether service has occurred a period of 6 business days will need to be allowed for ordinary pre-paid post.

### [Notice provisions - contracts](#)

As far as notice provisions in contracts are concerned, practitioners should be aware that the Australia Post delivery standards and existing contractual notice requirements (which may have been drafted based on earlier Australian Post delivery times) may no longer align. Practitioners who are preparing contracts will therefore need to bear the new delivery standards in mind when drafting notice provisions.

Practitioners could also consider providing advice to clients who are parties to existing contracts as to the effect of these new delivery times and advice as to whether the notice provisions in existing contracts should be amended to align with the new time-lines.

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<sup>i</sup> *MCR Rule 52(1) (d)* actually states that service will be taken to occur “... 2 business days after the documents is served in accordance with these Rules”, and *MCR Rule 47(1)* allows service by “sending it [the document] by pre-paid post...”