



FEDERAL CIRCUIT
AND FAMILY COURT
OF AUSTRALIA

Preparing an affidavit

This fact sheet explains what an affidavit is and when you need to file one in the Federal Circuit and Family Court of Australia. It also gives basic information about what you can and cannot include in an affidavit.



What is an affidavit?

An affidavit is a written statement prepared by a party or witness. It is the main way you present evidence (facts of the case) to a court. Any affidavit you file in court to support your matter must be served on all parties, including the independent children’s lawyer (if appointed).

When do I file an affidavit?

You need to file an affidavit with any application or response seeking interlocutory orders, or as otherwise directed by the Federal Circuit and Family Court of Australia (the Court). You may also need to file an affidavit in specific types of family law, migration or general federal law proceedings. You should refer to each Practice Direction relevant to your type of proceeding for further information.

The same form should be used by applicants and respondents in family law, migration or general federal law proceedings. You can get the Affidavit form from www.fcfoa.gov.au/form/affidavit, by calling **1300 352 000** or at a court registry.

Can I prepare my own affidavit?

Although you can prepare your own affidavit, it is often not easy. If you need help preparing your affidavit, you should seek legal advice. You can get legal advice from a:

- legal aid office
- community legal centre, or
- private law firm.

Court staff can help you with questions about court forms and the Court process, but cannot give you legal advice.

How do I structure an affidavit?

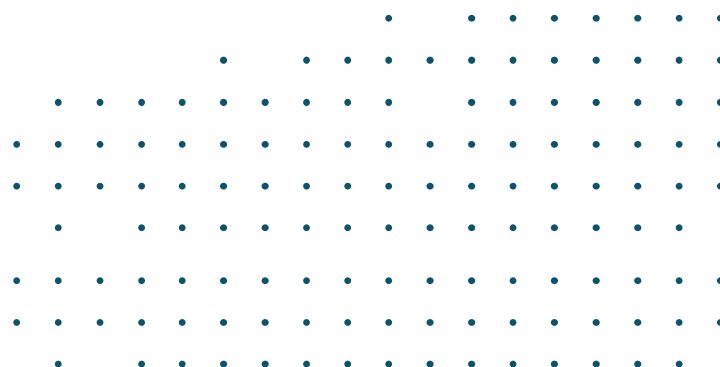
The affidavit should be typed in size 12 font, if printed on one side only of the paper, with each page numbered consecutively. The affidavit should be divided into paragraphs that are numbered. It is a good idea to create separate headings in your affidavit to break up topics or subject matter.

For example, the heading might be ‘Arrangements for the children after separation’ or ‘Property accrued during the marriage/de facto relationship’. Each paragraph should, if possible, cover one topic or subject matter.

Affidavits by other witnesses

If you are relying on evidence from a third party to support your case, such as a family member, friend or professional, you will need to file a separate affidavit on their behalf. You should only file an affidavit by a witness if the evidence is relevant to your case.

Unless the Court orders otherwise, a child (under the age of 18 years) should not prepare an affidavit to support your case.



What can I say in an affidavit?

An affidavit is a statement of facts. Therefore, you should include all the facts that are relevant in your proceeding. Importantly, your affidavit should support the orders you have asked the Court to make in your application or response. The length of your affidavit will depend on the complexity of your matter.

Your affidavit does not need to be lengthy as long as you include all the facts that you are relying on as evidence. Try and leave out things which are not relevant to what the Court has to decide.

Note: in family law proceedings, an affidavit in support of an application for interlocutory orders must not:

- exceed 25 pages in length for each affidavit or contain more than five annexures, if filed in Division 1 of the Court, or
- exceed 10 pages in length for each affidavit or contain more than 10 annexures, if filed in Division 2 of the Court.

Unless express leave is granted by the Court, you can only rely on one affidavit from yourself, and one affidavit from each witness (provided the evidence is relevant and cannot be given by yourself). See rule 5.08 of the *Federal Circuit and Family Court of Australia (Family Law) Rules 2021* (Family Law Rules) for more information about the limit on number and length of affidavits.

Can I give my evidence in court instead?

There is limited opportunity to give a personal account of your evidence in court. However, most evidence is provided by affidavit. This allows a case to run more quickly and efficiently as all parties know what evidence is before the Court before the hearing.

What should not be included in an affidavit?

Generally, an affidavit should not set out the opinion of the person making the affidavit; that is, it must be based on facts, not your beliefs or views. The exception is where the person is giving evidence as an expert; for instance, a psychologist or licensed valuer.

Where possible, you should avoid referring to facts that are based on information received from others (known as hearsay evidence).

Note: in family law proceedings, there are a number of exceptions to the hearsay rule. If you need to rely on hearsay evidence in your affidavit, get legal advice to see whether it would be admissible in court.

You should not refer to anything said or documents produced in connection with dispute resolution or any attempt to negotiate a settlement of your dispute outside of court, as this information is not admissible as evidence in court.

There are some exceptions and if you want to refer to these communications, you should read section 131 of the *Evidence Act 1995 (Cth)*.

If you are unsure about what can and cannot be included in your affidavit, you should seek legal advice.



Attaching documents

If you refer to a document in your affidavit, you must attach a copy of it to the back of your affidavit (known as an annexure or exhibit). Examples of an annexure are a contract of sale or a child's school report. If there is more than one annexure, you need to refer to each one by a number or letter; for example, Annexure 1 or Annexure A. You also need to number the annexures consecutively; that is, from the first page of the first annexure to the last page of the last annexure.

Each annexure must have a statement signed by the authorised person identifying the annexure as the document referred to in the affidavit. The wording of the statement is:



This is the document referred to as Annexure [insert reference number] in the affidavit of [insert deponent's name], sworn/affirmed at [insert place] on [insert date] before me [authorised person to sign and provide name and qualification].

The statement must be signed at the same time as the affidavit and by the same authorised person.

For more information about annexures or exhibits in migration and general federal law proceedings, see rule 15.15 of the *Federal Circuit and Family Court of Australia (Division 2) (General Federal Law) Rules 2021* (General Federal Law Rules).

For more information about annexures or exhibits in family law proceedings, see rule 8.15 of the Family Law Rules.

Signing an affidavit

The person making an affidavit is known as the deponent. The deponent must sign the bottom of each page in the presence of an authorised person, such as a lawyer or Justice of the Peace (if you are overseas, a Notary Public or Australian Diplomatic/Consulate Officer can witness the signature). On the last page of the affidavit (known as a jurat), the following details must be set out:

- the full name of the deponent, and their signature
- whether the affidavit is sworn or affirmed
- the day and place where the deponent has signed the affidavit, and
- the full name and occupation of the authorised witness, and their signature.

If any alterations (such as corrections, cross-outs or additions) are made to the affidavit, the deponent and the witness must initial each alteration.

The deponent must also provide their full name, occupation and residential address on the first page of the affidavit, unless disclosing this information would compromise the deponent's safety.

An alternative jurat is supplied at the bottom of the affidavit form for persons who are illiterate, vision impaired, do not have a strong command of English, or are otherwise unable to sign an affidavit. For more information about requirements for an alternative jurat, please see rule 8.17 of the Family Law Rules or rule 15.14 of the General Federal Law Rules.

Where the deponent is a party in a family law parenting proceeding, and they do not disclose their residential address, they must provide their residential address to the Court by email. The Court will record the address as 'not to be disclosed', other than by a court order: see rule 8.15(2) of the Family Law Rules.