



Preparing an affidavit

This fact sheet explains what an affidavit is and when you need to file one. 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 case must be served on all parties, including the independent children's lawyer (if appointed).

When do I file an affidavit?

In the Family Court, you need to file an affidavit with an interim application, response or when directed by the Court. The Family Court has a blank affidavit form which can be used by applicants and respondents.

In the Federal Circuit Court, you need to file an affidavit with your application or response, for both interim and final orders, and when directed by the Court. The Federal Circuit Court has a blank affidavit form which can be used by applicants and respondents.

You should use the form that is relevant to the Court handling your matter. You can get the forms from www.familycourt.gov.au, www.federalcircuitcourt.gov.au, by calling 1300 352 000 or at your nearest family law 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?

In the Family Court, the affidavit should be typed. In the Federal Circuit Court, the affidavit may be typed or printed clearly on only one side of the page.

The content of an affidavit should be divided into paragraphs that are numbered.

It is a good idea to divide an affidavit into sections under separate headings; 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 a 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 case. 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 case. Your affidavit does not need to be lengthy provided you include all the facts that you are relying on as evidence. Try and leave out things not relevant to what the court has to decide.

Can I give my evidence in court instead?

There is limited opportunity to give a personal account of your evidence in court. 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.

This fact sheet provides general information only and is not provided as legal advice. If you have a legal issue, you should contact a lawyer before making a decision about what to do or applying to the Court. The Family Court of Australia and Federal Circuit Court of Australia cannot provide legal advice.

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). There are, however, 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 an attempt to negotiate a settlement of your dispute, as these are 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

Federal Circuit Court

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). 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.

Note: In interim proceedings, unless express leave is granted by the Judge into whose docket the matter has been allocated, affidavit material in support of an interim application must not exceed 10 pages in length for each affidavit or contain more than 5 annexures. See Practice Direction No 2 of 2017.

Family Court

In the Family Court, a document that is to be used in conjunction with an affidavit and tendered in evidence in a court proceeding, must be identified in the affidavit but **must not be attached** to (or annexed to) the affidavit, or filed as an exhibit to the affidavit. There may be exceptions where court orders or the Rules provide otherwise (for example Family Law Rule 15.62 in relation to expert reports).

The document/s referred to in the affidavit must be served with the affidavit on the other party/ies after filing. The document/s must then be tendered in evidence at the court event when the relevant affidavit is relied upon or as required. See Family Law Rule 15.08.

Signing an affidavit

The person making an affidavit (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 the following details must be set out (known as a jurat):

- the full name of the person making the affidavit, and their signature
- whether the affidavit is sworn or affirmed
- the day and place the person signs the affidavit, and
- the full name and occupation of the authorised person, and their signature.

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