

# How Do I Write a Parenting Affidavit?

## Are you preparing an Affidavit?

An affidavit is similar to a witness statement. It forms the basis of your evidence to the Court. It provides information to the Court about the history of your relationship, your children and why you want the Orders you are seeking.

If you are preparing your own affidavit, this guide can help you.

It is important that you get legal advice about preparing your Court Documents and running your case.

(**Important:** This is not a complete list and will differ depending on the circumstances of your case)

These are some of the things which may need to go into your affidavit.

- Your personal history including your date of birth, date of marriage/relationship, and dates of separation and children's name/s and date of birth/s.
- All current court orders including any family violence orders. Attach copies to the **Initiating Application**.
- If asking for your application to be listed urgently provide details of why the matter is urgent.
- If you do not have a section 60I (mediation) certificate from a family dispute resolution (FDR) practitioner, explain why you did not go to FDR, for instance, if it is an urgent matter.
- History of relationship including care of the child during relationship and after separation.
- Risks to your child. Any concerns for your child's safety or welfare, including any involvement by the Department of

## Tips for writing an affidavit

- Divide the affidavit into numbered paragraphs
- Keep each paragraph short and deal with one fact only.
- Be specific rather than general. Think about who, what, when, where, and how. Provide exact dates wherever possible. If you can't be exact, make your best estimate.
- Focus on the issues that are relevant to your Application.
- When you are writing about a conversation, quote it exactly, or write: 'On or around [DATE and TIME], [NAME] said to me words to the effect of "I'm going to my Mum's. Don't call." '
- To attach a document, you should refer to it in your Affidavit and then write "**Annexed to this Affidavit and marked with the letter "A" is a copy of [DOCUMENT NAME]**". Write the letter "A" at the top of the front page of the document you are attaching to your Affidavit. If you have more than one annexure the second document should be marked "B", the third document marked "C" etc.
- The Affidavit needs to be sworn or affirmed in front of a Justice of the Peace (JP) or lawyer.
- If you have attached a document (annexure) to your Affidavit, make sure the JP or lawyer who is witnessing the Affidavit signs each annexure.
- If you need to correct any errors, cross out the error and put your initials next to the change. The JP or lawyer who is witnessing the Affidavit must also put their initials next to the change. These changes can only be made prior to swearing or affirming the affidavit.

Communities and Justice (DCJ, previously known as FaCS or DoCS) either in the past or present.

- Your proposals for future arrangements for your children.
- Anything else which you think is relevant.

The affidavit form can be found on the Federal Circuit Court website at:

[www.federalcircuitcourt.gov.au](http://www.federalcircuitcourt.gov.au)

The affidavit needs to be set out in a particular way. You can type up most of your affidavit in a word document and then insert it into the affidavit form which can be downloaded.

Below is an example of how to draft an affidavit and some of the information that needs to be included.

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I, [name] of [address] in the State of New South Wales, [occupation] say on oath/affirm as follows:

1. I am the [applicant/respondent] [mother/father] of [child's name], born [date of birth], now aged [age] and [list the names and dob for any other children.]
2. I make this affidavit in support of my application to [describe what orders you are seeking in one sentence].

### **Personal History**

3. I was born on [date], I am currently [xx] years old.
4. The [respondent] [mother/father] was born on [date] and is currently [xx] years old.
5. The respondent and I met in [LOCATION] in or around [date].
6. We started a relationship in or about [date]
7. The respondent and I married on [date at LOCATION]
8. The respondent and I separated on a final basis on [date] when [he/she/I moved out of the home/moved into a separate room – describe the separation in one sentence. If the police were involved at the time of separation, explain why]
9. The respondent and I divorced on [date]
10. There are [X] children of the relationship:
  - a. [Child's full name] born [date]
  - b. [Second child's full name] born [date]
  - c. [etc].
11. I also have another child from my previous/subsequent relationship, [full name] who was born [date]. [Describe the parenting arrangements for this child in one sentence].

### **Dispense with section 60I certificate**

*It is important to specify the reasons why you are seeking to dispense with the requirement for a section 60I (mediation) certificate. For example:*

12. *"I request that I be permitted to file this application before attending family dispute resolution on the grounds that this matter is (stipulate the grounds for seeking the exemption; that is urgency, violence, risk to the child.)"*

13. *I refer to the matters sworn in this affidavit to support my application to file the proceedings before attending family dispute resolution.*”

### **History of our Relationship**

14. When the Respondent and I first met, I was living [*with my family/on my own/with housemates*] and they were living [*where*]. We started living together [*when?*].
15. When I/my partner was pregnant with our first child, [*describe your living arrangements, if either parent was working, who was responsible for household chores and looking after each other*].
16. When our first child was born, [*describe any change in the household responsibilities after child was born*].

### **Arrangement for the Child/ren since Separation**

17. Since the date of separation, the children have lived with [*who/where*].
18. The children have spent time with [*me/the respondent*] [*explain how the time was arranged, eg. by agreement between us/as negotiated through my mum/arranged through lawyers*].
19. [*Describe factually, how often this was eg. every second week/alternate weekends/after school a couple days during the week and longer in school holidays/once or twice for three hours every month. If it was only a few times, give the exact dates if you can remember them.*]
20. There are no Parenting Orders in place. [*or specify details of orders made*]
21. The respondent and I have not entered into a parenting plan. [*or specify details of parenting plan*].

### **Risk Factors**

*Describe any risk concerns you have about the other party including dates and details if possible. Do not use emotional language, try to stick to just the facts. Use the Court’s “Notice of Risk” form to identify the risk factors present in your case and write a short paragraph explanation for any concerns raised in that document.*

- ⊖ *Any allegations that a child has been abused by a party to proceedings or any other person who is relevant to these proceedings and provide the details of the alleged abuse*
- *Any allegations that a child is at risk of being abused by a party to proceedings or any other person who is relevant to these proceedings and the particulars of such risk, including whether the risk is physical assault, sexual assault or abuse, serious psychological harm or serious neglect.*
- *Any family violence or risk of family violence by a party to the proceedings or any other person who is relevant to these proceedings and the details of such family violence or risk*
- *Any allegations that a child is at risk because a party to the proceedings, or another person relevant to the proceedings, suffers mental ill-health, abuses drugs or alcohol or suffers a serious parental incapacity*
- *Any other circumstances where the child is otherwise at risk?*

*If there are no risk factors, you can say something like “I do not consider there are any facts which may put our child/ren at any risk of emotional or physical harm”.*

### **My Proposal for the Future Care of our Child/ren**

*Describe factually, the details of how your proposed Orders would work. Some examples:*

- *Where will the child/ren live? Give details of where you live, who you live with, what the sleeping arrangements for the children will be.*

- *Where will the children go to school/ day care?*
- *How will they get to and from school?*
- *How will they travel to see the other parent or extended family members?*
- *Who will pay for telephone calls?*
- *What happens at Christmas or other important family or cultural events?*
- *How will you communicate about important issues in your child/ren's future eg. schooling and medical treatment?]*
- *Overseas travel?!*

22. I ask this Honourable Court grant me the Orders that I seek in my Application.

*Once your affidavit is completed, you will need to collate any annexures or attachments, and have a Justice of the Peace witness your signature. It is important to remember that all parties (including an Independent Children's Lawyer if appointed) will need to be served with a copy of your sealed (stamped) affidavit. It is also a good idea to keep a spare sealed copy for your own records.*

***This fact sheet is intended as a general guide to the law. It should not be relied on as legal advice and it is recommended that you talk to a lawyer about your particular situation. At the time of writing, the information shown is correct but may be subject to change. If you need more help, contact Law Access NSW on 1300 888 529.***

Family Law Early Intervention Unit: 1800 551 589 • Legal Aid NSW [www.legalaid.nsw.gov.au](http://www.legalaid.nsw.gov.au)