

## **Checklist: Writing affidavits**

You can print this checklist as it may help you when you need to write an affidavit. This checklist relates specifically to affidavits. For tips on writing skills and things to think about when writing any type of legal document, see [Checklist- Writing](#).

Tick on each box as you go.

### **Writing affidavits**

#### **Should I make an affidavit?**

- An affidavit can be made by anyone involved in a court case, including a:
- plaintiff or applicant
  - defendant or respondent
  - witness.

The type of case and any orders that may have been made by the court will affect whether you should make an affidavit. If you are not sure if an affidavit is required, you should get legal advice.

#### **What should be in the affidavit?**

- An affidavit should contain:
- the details of the case it is being used in, including the names of parties, court location and court case number
  - the name, address and occupation of the person making the affidavit (known as the 'deponent')
  - contact details of the party for whom the affidavit is being made, or contact details for their lawyer
  - the evidence being given by the deponent.

#### **How should the evidence be written?**

- When you write an affidavit, you should:
- only write things you know about (not necessarily what you heard someone say)

- number each paragraph
- write your affidavit in chronological order from oldest to newest. Use headings if your affidavit covers a number of different issues
- write conversations in the first person (for example, I said "I'll take it", or she said "I'll send it right over")
- only include information that is relevant
- make sure you number every page.

#### Include any annexures

- If you want to include any documents as part of your affidavit, you can attach them to the back as an 'annexure'.

Make sure that you give a brief description of what you are attaching in the text of your affidavit. For example, "on 29 December 2009, I received an email from Mr Lennison. Annexed and marked 'A' is a copy of that email".

The pages of each annexure should be numbered consecutively. The page number of the first annexure will be the next number after the last page of the affidavit.

Each annexure must be identified, for example by letters "A", followed by "B".

The first page of each annexure must be signed by the witness.

The witness must also include a statement on the annexure that says:

**"This is the document referred to as Annexure [insert annexure letter] in the affidavit of [insert name of deponent], sworn at [insert suburb or town where affidavit was sworn or affirmed] on [insert date affidavit was sworn or affirmed] before me [insert name of witness], [insert capacity of witness, for example solicitor or barrister]."**

#### Include any exhibits

- If you want to include a large document or other item of evidence, you can refer to it in the affidavit as an 'exhibit'.

Exhibits are not filed with the affidavit but are taken to the hearing.

Exhibits should be numbered with the deponent's initials and a number (for example, "FN 1" for the first exhibit, "FN 2" for the second exhibit).

An exhibit would usually have a cover page marking its exhibit number (for example "Exhibit 'FN 1' in the affidavit of Fred Nerf").

The witness to the affidavit should also sign the cover page, with words like:

**"Exhibited to me at the time of swearing this affidavit and marked [deponent's initials and a number] is [describe item, for example "a folder of documents" or "10 photographs"]."**

#### **Swear or affirm the affidavit and sign every page**

- You must either swear (make a religious oath) or affirm that the contents of the affidavit are true.

Although it is not always necessary, you and your witness should sign the bottom of each page, and on the last page sign it, state where it was signed and include the witness's address and capacity to witness your signature (for example whether they are a solicitor or Justice of the Peace).

Make sure the witness includes details about how they confirmed your identity.

#### **Keep a copy**

- Make sure you keep a copy of your signed and witnessed affidavit for your records.

#### **File and serve**

- You should serve (formally give the other party) affidavits by the date ordered by the court.

Affidavits should be served together with any annexures. Exhibits that are documents should also be served, or made available for the other party to copy.

Affidavits are not always filed with the court, so check the court's orders before filing.

If you are filing an affidavit with the court, exhibits are usually not filed.