

4.8 Witnessing family law documents

What are the Family Law Courts?

The Family Law Courts comprise the Family Court of Australia and the Federal Circuit Court of Australia. Both courts have jurisdiction in family law matters in all states and territories except Western Australia, which has its own Family Court.

The Family Court of Australia is a specialist court, which deals with more complex matters and is the appellate court for decisions from the Federal Court of Australia.

What legislation governs family law documents?

The responsibilities that Cdecs have under the *Family Law Act 1975* accord, for most part, with the *Uniform Civil Procedure Rules 1999*.

The principles that apply generally with respect to witnessing documents apply to family law documents. Of particular note for family law documents is the necessity to properly witness annexures to affidavits for use in proceedings in the Family Court of Australia and the Federal Circuit Court of Australia.

The following family law forms differ from the protocols in other court jurisdictions:

- divorce application form
- affidavits
- application for consent orders
- financial statements.

What is an application for divorce?

A person who wishes to file for a divorce completes an application for divorce. It can be completed by one party to the marriage or as a joint application. The Federal Circuit Court will only grant a divorce once it is satisfied both parties have a copy of the application for the divorce and are aware of the court hearing date.

How do I witness an application for divorce?

1. Ask the applicant for some form of identification.
2. Immediately place the applicant on oath or affirmation.

The form of basic oath for this situation is:

.....

I swear that the contents of this document are true and correct to the best of my knowledge and belief, so help me God.

.....

The affirmation for this application is:

.....

I solemnly and sincerely declare and affirm that the contents of this document are true and correct to the best of my knowledge and belief.

.....

3. Read over the application to ensure the form appears to be fully completed. Check:
 - a. Names and address details for both the husband and wife have been provided.
 - b. Any questions that cannot be answered are marked 'not known'.
 - c. The date of separation is at least 12 months.
 - d. A copy of the marriage certificate will accompany the application when it's filed at the court.
4. Witness the applicant's signature.
5. Enter the details in your logbook. Information that can be entered includes:
 - date
 - type of application presented for witnessing
 - applicant's details
 - type of identification sighted
 - location of signing
 - any other relevant details.

How do I witness an affidavit?

1. Ask the applicant for some form of identification.
2. Immediately place the deponent on oath or affirmation.

The form of basic oath for this situation is:

.....

I swear that the contents of this document are true and correct to the best of my knowledge and belief, so help me God.

.....

The affirmation for this affidavit is:

.....

I solemnly and sincerely declare and affirm that the contents of this document are true and correct to the best of my knowledge and belief.

.....

3. Read over the affidavit to ensure the form appears to be fully completed.
4. Check any annexures to the affidavit and sign the annexure statement.
5. Ensure any changes or alterations have been initialled by both you and the deponent.
6. Both you and the deponent sign the bottom of every page of the affidavit.
7. Witness the deponent's signature. Indicate if the affidavit was sworn or affirmed.
8. Sign the affidavit, write your full name, qualification and insert your registration number. Include the day and place where the affidavit was witnessed.

9. Enter the details in your logbook. Information that can be entered includes:

- date
- document witnessed
- deponent’s details
- type of identification sighted
- location of signing
- oath or affirmation taken
- any other relevant details.

Attachments and annexures

An affidavit is a written statement prepared by a litigant or a witness and is the only way for a litigant to present evidence to the court, in accordance with the rules of the courts. Both the Family Court and the Federal Circuit Court have their own affidavit forms, however the structure and witnessing requirements are the same.

When witnessing affidavits, both the deponent and the witness must sign the bottom of every page. Often the form of affidavit used in the courts does present with a footer on the first page for both parties to sign. Please ensure both you and the deponent sign the bottom of each and every page, as well as the last.

Definitions

‘Attached’

Inserted as an addendum within an affidavit, ‘attached’ means a continuation of evidence and is still part of the deponent’s affidavit. The bottom of each page is to be signed by the deponent and Cdec. All attached evidence is placed between the first page of the affidavit and the last.

‘Annexure’

Annexures are referenced as evidence. They include any documents provided to support the facts deposed in an application or affidavit, such as bank statements, bills, medical reports or school reports. Copies of these must accompany the affidavit at the time of witnessing. Annexures should be photocopies of the original documents. There is no requirement for these to be certified as copies.

Annexures must be referred to in the body of the affidavit and titled i.e. ‘annexure 1’ or ‘annexure A’.

If there is more than one annexure, they must be referenced consecutively i.e. annexure A, annexure B, annexure C and so on. The page numbers of all annexures must run consecutively—that is, from the first page of the first annexure to the last page of the last annexure.

Annexures should be marked in the following way to meet the requirements of the *Family Law Act 1975*:

.....

This and the following pages in the Annexure marked referred to in the Affidavit of
..... Sworn/Affirmed before me JP/Cdec.

This day of 20

.....

Full-page photographs

In some circumstances, you may be asked to sign and complete a full-page photograph as an annexure. The most appropriate procedure to follow is to place a blank sheet of paper in front of the photograph and use the above wording. Certification on the back of the photograph is not acceptable.

What are service documents?

Service is the process of sending or giving court documents to a party after they have been filed, in accordance with the rules of the court. Service ensures all parties have received the documents filed with the court.

The court will only grant a divorce once it is satisfied that both parties have a copy of the application for divorce and are aware of the court hearing date. Service can be effected by either posting the documents or serving them by hand. Both methods require an affidavit of service to be witnessed. You can assist the deponent in this process.

For ‘service by post’, the applicant who posted the application is required to have the following forms witnessed:

- *Affidavit of Service by Post (Divorce)*
- *Acknowledgement of Service (Divorce)*.

Both the affidavit of service and the annexure note on the bottom of the acknowledgement of service **must** be witnessed by the same Cdec on the same day.

For ‘service by hand’, the applicant will need to arrange for a person over 18 years of age (the server) to serve the documents. When the documents have been served, the server is required to have the following forms witnessed:

- *Affidavit of Service by Hand (Divorce)* [compulsory]
- *Acknowledgment of Service (Divorce)* [only if signed by the former spouse].

Both the affidavit of service and the annexure note on the bottom of the acknowledgement of service **must** be witnessed by the same Cdec on the same day.

If the former spouse signed the acknowledgement of service, the applicant will also need the following form witnessed:

- *Affidavit Proving Signature (Divorce)—Applicant*.

Things to bear in mind

- Generally, three copies of documents are to be filed in the courts. Clients are instructed to file an original and two copies. It is reasonable to expect an applicant will present with one copy to be witnessed prior to making additional copies. However, if you are presented with three copies, there is no objection by the courts to having all three witnessed.
- There is no requirement for any annexures or additional copies of applications to be certified as copies of originals.
- An application for divorce can be electronically filed through the Commonwealth Courts Portal. The applicant is required to print off the application, called the *Affidavit for E-filing Application (Divorce)*. This application must be witnessed. The affidavit of e-filing only requires Cdecs to witness the signature of the applicant and/or respondent to the divorce application. The deponents are required to attest they have read the application identified by the noted transaction number. From the courts’ position, Cdecs do not have to physically see the deponent read the application, nor do they need to read the application themselves.

Where can I get more information?

Queensland legislation
www.legislation.qld.gov.au

Family Court of Australia
www.familycourt.gov.au

Quick guide

Follow these steps to witness an application for divorce

- ① Ask the applicant for identification.

- ② Immediately place the applicant on oath or affirmation.
Read over the application to ensure the form is complete:
 - a. names and address details for both husband and wife
 - ③ b. questions that can't be answered are marked 'not known'
 - c. date of separation is at least 12 months
 - d. copy of the marriage certificate will accompany the application when it's lodged at court.

- ④ Witness the signature.

- ⑤ Enter all relevant details in your logbook.

Follow these steps to witness a family law affidavit

- ① Ask for identification.

- ② Immediately place the deponent on oath or affirmation.

- ③ Read through the affidavit to ensure it is properly completed and numbered.

- ④ Check any annexures in the affidavit, ensure they are marked appropriately and sign the annexure statement.

- ⑤ Ensure any changes or alterations are initialled.

- ⑥ Both you and the deponent must sign the bottom of every page of the affidavit.

- ⑦ Witness the signature, and note if the document was sworn or affirmed.
Sign the affidavit, including your:
 - a. full name
 - ⑧ b. qualification
 - c. registration number
 - d. date and place of witnessing.

- ⑨ Enter all relevant details in your logbook.
