

Preparing Documents for Court

Fact Sheet



This fact sheet covers:

- ✔ How do I prepare a statement of claim?
- ✔ How do I prepare an affidavit?
- ✔ What do I do with my finished documents?
- ✔ What happens if I want to make changes to my documents?

This fact sheet provides some information about how to prepare the legal documents commonly required to make a claim in the Federal Court and Federal Circuit Court.

1. How do I prepare a statement of claim?

A statement of claim is a written statement that sets out the facts of your case and what it is you are seeking.

The Federal Court or Federal Circuit Court may ask you to file a statement of claim in order to get a clearer picture of the details of your claim.

1.1 Finding the form

When you are asked to file a statement of claim by the Federal Court or Federal Circuit Court, you can find a statement of claim template on the 'Forms & Fees' section of the Federal Court website here: <http://www.fedcourt.gov.au/forms-and-fees/forms/federal-court-rules>

[Form 17](#) is a blank statement of claim that you should use as your template.

! CAUTION – REMEMBER YOUR DEADLINES TO FILE AND SERVE

Please ensure you know the **deadline** by which you are to file and serve any documents. Deadlines are ordered by Judges or Registrars of the Federal Court and Federal Circuit Court. You can search for orders in your matter through the [Federal Law Search](#) tool of the Commonwealth Courts Portal. You will either need to enter the party names, or simply enter your matter number: e.g. "NSD3123/2011".

1.2 Common mistakes

The best way to draft a statement of claim is to write a series of numbered short paragraphs, each containing a separate fact that is central to your claim. If your statement of claim does not adequately outline your claim, or if parts of your claim are inadequate or do not comply with the rules, the Court may decide to throw out part or all of your claim. You should spend enough time to get the statement of claim right the first time.

USEFUL INFORMATION

See [LawAccess NSW](#) for more a useful guide to writing statements of claim and have a read of the [Sample Statement of Claim](#).

Some of the common mistakes that people make in preparing a statement of claim include:

- **Statement of claim is *too long*** – This is perhaps the most common mistake made by self-represented litigants. You do not need to include every single detail about what happened or to repeat yourself for emphasis. A short and concise statement will make it easier for the Court to understand the issues in your case.
- **Statement of claim *lays out the defence*** – It might be tempting to draft your statement of claim to address the matters you think the other side will raise as a defence to your claim. You should not do this. Your statement of claim should only deal with the facts of your claim. You will have an opportunity to respond to the defendant's version of the facts at a later stage.
- **Statement of claim *withholds information*** – Don't hold back key parts of your claim to try and surprise the other side at your Court hearing. If you do, you may not be permitted to raise this information or you may be required to pay the other party's costs of responding to the new point at a later stage of the proceedings.

2. How do I prepare an affidavit?

An affidavit is a written statement that sets out evidence that can be used in Court. It contains factual information, that is, things that you have personally done, seen, heard or experienced first-hand. The contents of an affidavit are sworn or affirmed to be true by the person who writes it.

2.1 Finding the form

[Form 59](#) is a blank affidavit that you should use as your template in the **Federal Court of Australia**.

You can find a blank affidavit to use as a template in the **Federal Circuit Court of Australia** here: <http://www.federalcircuitcourt.gov.au/wps/wcm/connect/fccweb/forms-and-fees/court-forms/form-topics/All+Jurisdictions/form-fcc-affidavit>

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2.2 Common mistakes

Your affidavit is the main way that you will be asked to present the facts of your case in legal proceedings.

 USEFUL INFORMATION

See [LawAccess NSW](#) for more a useful guide to writing affidavits and have a read of the [Sample Affidavit](#).

Some of the common mistakes that people make in preparing an affidavit include:

- **Affidavit is too long** – This is perhaps the most common mistake made by self-represented litigants. You do not need to include every single detail about what happened or to repeat yourself for emphasis. A short and concise statement will make it easier for the Court to understand the issues in your case. You should try to avoid reciting conversations you had or heard.
- **Affidavit withholds information** – Don’t hold back key parts of your claim to try and surprise the other side at your Court hearing. If you do, you may not be permitted to raise it or you may be required to pay the other party's costs of responding to the new point at the late stage of the proceedings.
- **Affidavit lacks truth** - Affidavits are sworn or affirmed to be true, so you should make sure everything in the affidavit is truthful or you may face penalties for perjury
- **Affidavit includes an opinion rather than facts** - It is essential that you only include relevant facts rather than opinion. Facts are anything that was seen, heard or experienced first- hand by you. Do not include information that was told to you by someone else or that is based on your beliefs or views. This is an opinion and should not be included in an affidavit.

2.3 Structuring your Affidavit

Your affidavit must be easy to read and understand. The most effective approach is to use headings that identify the subject matter of your affidavit and what each part is about.

Under these headings you should then divide your facts into paragraphs that are short and numbered. The outline of the relevant facts may follow a chronological order that maintains a narrative of the relevant facts of the situation that has occurred.

! CAUTION – THERE IS A PARTICULAR FORMAT TO AN AFFIDAVIT

- ✓ An affidavit should be typed
- ✓ Printed on one side of the page only
- ✓ The content must be divided into numbered paragraphs
- ✓ Each paragraph should, if possible, cover only one topic or subject matter but can include a series of subsequent details of events for this topic
- ✓ A separate affidavit must be filed for any witness evidence relied upon from a third party

2.4 What should be included in your affidavit

Aside from including facts that are relevant to your case, your affidavit should be supportive of the orders you are asking the Court to make in your application or response.

! CAUTION – FACTS THAT ARE NOT ADMISSIBLE

- ✗ Do not refer to anything said or documents produced in an attempt to negotiate or settle the dispute that were made *without prejudice*. This is not admissible as evidence in court. If you are unsure about what can and cannot be include in an affidavit, you should seek legal advice.
- ✗ Do not include facts based on information received by others. This is known as *hearsay*. If relevant, this witness should produce their own affidavit detailing these facts to avoid this.

2.5 Attaching documents to your affidavit

Any document that you refer to in your affidavit must be copied and attached to the back of your affidavit. This is known as an annexure or exhibit. More than one annexure or exhibit can be referred to, however you must number or letter each one consecutively in the order you refer to them.

! CAUTION – EACH ANNEXURE AND EXHIBIT MUST BE SIGNED

- ✓ A certificate must be attached to the first page of each annexure and exhibit.
- ✓ The certificate must be headed in the same manner as the affidavit and identified by the deponent's initials followed by the number of the annexure e.g. JWG1, JWG2 etc.
- ✓ The first page of the annexure must have a statement signed by the authorised person.
- ✓ The authorised person will be identifying the annexure as the document referred to in the affidavit
- ✓ The statement would say:
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 is to be signed by the same authorised person who signed the affidavit and at the same time.

WHAT CAN'T BE ANNEXED TO THE AFFIDAVIT:

- ✘ A document that is an original
- ✘ A document that is of dimensions that it cannot be annexed

3. What do I do with my finished documents?

Once you have finished preparing your statement of claim or affidavit, you will need to think about how to properly notify the Court and the other parties. The Court has particular rules about how this is done. If you don't abide by these rules, the Court may decide to reject parts of your argument, or throw your case out altogether.

3.1 Statements of claim

Step 1:

After preparing your statement of claim you need to deliver the original to the Court. You can do this by bringing the statement of claim to the Court Registry, or by sending the Statement of Claim to the Registry online. To send the statement of claim online you will need to use a program called [e-Lodgment](#).

NOTE

You will need to register for e-Lodgment before you can send in your statement of claim. Keep in mind that registration can take up to 1 business day to process.

Step 2:

Once the statement of claim has been filed a stamped copy will be returned to you. You must then give a copy of the stamped statement of claim to each of the other parties to your matter by:

- personally delivering the statement of claim to the person; or
- arranging for someone else to personally deliver the statement of claim.

This is called personal service and you should do this at least 5 days before your next hearing, or before the date ordered by the Court.

3.2 Affidavits

Step 1:

Make sure your affidavit is signed at the bottom of each page in the presence of an authorised person, such as a lawyer or Justice of the Peace.

On the last page of the affidavit, the following details need to be included:

- The full name of the person making the affidavit
- The signature of the person making the affidavit
- Whether the affidavit is sworn or affirmed

- The day and place the person signed the affidavit
- The full name and occupation of the authorised person
- The signature of the authorised person

 Note

Persons authorised to witness an affidavit in Federal Court proceedings are a:

- ✓ Judge of the Court;
- ✓ the Registrar; a Deputy Registrar; a District Registrar; a Deputy District Registrar;
- ✓ a member of staff of the Federal Court;
- ✓ a justice of the peace;
- ✓ a commissioner for affidavits; a commissioner for declarations;
- ✓ Any other person who is authorised to administer oaths for the purposes of the Federal Court or the High Court or the Supreme Court of a State or Territory (includes lawyer with a current practising certificate).

(authorised under s 44 of the *Federal Court of Australia Act*)

Step 2:

After preparing and finalising your affidavit it must be filed at the Court Registry. You can do this by bringing the affidavit to the Court Registry, sending it by post or fax or by sending the affidavit to the Registry online. To send the affidavit online you will need to use a program called [e-Lodgment](#). However, make sure that you have a copy of the documents for yourself.

N.B. There is a fee involved in filing your affidavit, however, if you cannot afford this fee you may be able to ask the Court to exempt you from paying it or defer the time for this payment. To do so, obtain and complete the required form from the Federal Courts [website](#) or from the registry.

Step 3:

Once the affidavit has been filed a stamped copy will be returned to you. You must then give a copy of the stamped affidavit to each of the other parties to your matter by:

- personally delivering the statement of claim to the person; or
- arranging for someone else to personally deliver the statement of claim.

This is called personal service and you should do this at least 5 days before your next hearing, or before the date ordered by the Court.

4. What happens if I want to make changes to my documents?

In circumstances where you need to make changes to the documents that you have already filed and served, the process involves completing the steps set out above once again. This means you will need to draft, file and serve the documents containing the new amendments. Note that you may require the Court's permission (called *leave*) to amend these documents once they have been filed.

4.1 The procedure for making amendments

1. Make the alterations on the originating application
2. Write on the originating application the following information
 - a. The date on which the amendment is made
 - b. The date on which the order permitting the amendment was made

If you have submitted an electronic application or the amendments to the originating application are numerous and/or lengthy then you can file an amended originating application that not only contains but also distinguishes the amendments. It must also contain the information that is shown at 4.1.2 above.

4.2 Judge ordered amendments

If a Judge or Registrar orders that you make amendments, you must comply with these orders as they will be enforced against you. Failure to comply with orders made by a Judge or Registrar may have a negative impact on the future conduct of your proceedings. You will therefore be expected to make the amendments and file and serve the documents by the ordered deadline. The deadline may be specified in the order, however, if no deadline is given in the orders then it will be 14 days after the date on which the orders permitting the amendments were made.

4.3 Applying for leave to amend

If leave to amend an originating application was sought by you and not ordered by the Court, it is up to you to follow through with making these amendments. The process requires you once again to draft the amendments, file and serve them on all parties involved. Remember to be mindful of the time frames and deadlines set for the amendments to take place.

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