

Instructions for completion

Affidavit

1. This form of affidavit may be used in any proceeding, save and except where another form of affidavit is applicable under the:
 - a. ~~Federal Circuit and Family Court of Australia (Division 1) Rules 2021;~~
 - b. ~~Federal Circuit and Family Court of Australia (Division 2) (Family Law) Rules 2021 (Family Law Rules);~~
 - c. ~~Federal Circuit and Family Court of Australia (Division 2) (Bankruptcy) Rules 2021;~~
 - d. ~~Federal Circuit and Family Court of Australia (Division 2) (General Federal Law) Rules 2021 (General Federal Law Rules).~~
2. Each paragraph in this affidavit must be numbered.
3. This affidavit must be sworn or affirmed before a person authorised by law to witness the swearing of affidavits; for example, a lawyer, notary public or Justice of the Peace.
4. Each page must be signed by the deponent (the person making the affidavit).
5. Any alteration in the affidavit must be initialled by the deponent and the witness.
6. You must identify the type of proceedings this affidavit is being used for on page 1 of the form.

Family law proceedings

7. Affidavits must comply with the formal requirement for documents (see Rule 2.14 of the Family Law Rules) and the limitations on number and length of affidavits (see Rule 5.08 of the Family Law Rules and the modified rule in the *Federal Circuit and Family Court of Australia (Division 2) (Family Law) Rules 2021* for proceedings in Division 2 of the Court)
8. You must complete address for service details in the footer on page 1. All correspondence concerning the affidavit will be sent to the email or mailing address inserted and all documents in the proceedings will be deemed to have been served on you if emailed or posted to that address. If your address details change, you must file a *Notice of Address for Service* within seven days and serve a copy on all other parties: see Rule 2.25 of the Family Law Rules.
9. If the facts in the affidavit are supported by a document, a copy of the document must be attached to this affidavit. This document is then referred to as an 'annexure'. If there is more than one annexure refer to each by a number or letter; for example — 'Annexure 1' or 'Annexure A'. The annexure should also have page numbers. If there is more than one annexure, the page numbers must run consecutively until the last page of the last annexure. A document annexed or exhibited to an affidavit must be served with the affidavit. See Rule 8.15(4) of the Family Law Rules.
10. Each annexure must include a statement signed by the witness identifying the annexure as the document referred to in this affidavit. The wording of the statement is as follows:

~~This is the document referred to as [insert annexure identification] in the affidavit of [insert deponent's name] sworn/affirmed at [insert place] on [insert date] before me [witness to sign] and provide name and qualification.~~

~~The statement must be signed at the same time as the affidavit and by the same witness.~~
11. The Court may strike out any material which cannot be used in evidence; for example, if the material is unnecessary, scandalous or contains opinions of persons not qualified to give them. See Rule 8.18 of the Family Law Rules.
12. If the deponent does not have an adequate command of English, a translator must read or give in writing a translation of the affidavit and oath/affirmation in a language which is understood, and must certify in the signing clause that he or she has done so. Use the alternative jurat for the swearing/affirming of the affidavit and the translator's certificate in Part F. See Rule 8.17 of the Family Law Rules.
13. Once complete, you need to file the affidavit and any annexures with the Court. It must be filed electronically on the Commonwealth Courts Portal (www.comcourts.gov.au) unless it is not reasonably practicable to do so. You will need to serve a copy on the other party or parties and keep a copy for your records.

Remove this instruction sheet before filing

Migration and general federal law proceedings

14. Affidavits must comply with the formal requirement for documents (see Rule 4.04 of the General Federal Law Rules).
15. You must complete address for service details in the footer on page 1. All correspondence concerning the affidavit will be sent to the email or mailing address inserted and all documents in the proceedings will be deemed to have been served on you if emailed or posted to that address. If your address details change, you must file a *Notice of Address for Service* within seven days and serve a copy on all other parties: see Rule 6.02 of the General Federal Law Rules.
16. If the facts in the affidavit are supported by a document, a copy of the document must be attached to this affidavit. This document is then referred to as an 'annexure'. If there is more than one annexure refer to each by a number or letter; for example 'Annexure 1' or 'Annexure A'. The annexure should also have page numbers. If there is more than one annexure, the page numbers must run consecutively until the last page of the last annexure. A document annexed or exhibited to an affidavit must be served with the affidavit. See Rule 15.15 of the General Federal Law Rules.
17. Each annexure must include a statement signed by the witness identifying the annexure as the document referred to in this affidavit. The wording of the statement is as follows:

~~This is the document referred to as [insert annexure identification] in the affidavit of [insert
deponent's name] sworn/affirmed at [insert place] on [insert date] before me [witness to sign
and provide name and qualification].~~

~~The statement must be signed at the same time as the affidavit and by the same witness.~~
18. The Court may strike out any material which cannot be used in evidence; for example, if the material is unnecessary, scandalous or contains opinions of persons not qualified to give them. See Rule 15.16 of the General Federal Law Rules.
19. If the deponent does not have an adequate command of English, a translator must read or give in writing a translation of the affidavit and oath/affirmation in a language which is understood, and must certify in the signing clause that he or she has done so. Use the alternative jurat for the swearing/affirming of the affidavit and the translator's certificate in Part F. See Rule 15.14 of the General Federal Law Rules.
20. Once complete, you need to file the affidavit and any annexures with the Court. It must be filed electronically using [eLodgment](#), unless it is not reasonably practicable to do so. You will need to serve a copy on the other party or parties and keep a copy for your records.

Remove this instruction sheet before filing

Affidavit

Family Law Rules 2021 – RULE 8.15
General Federal Law Rules 2021 – RULE 4.04

COURT USE ONLY

Filed in:

- Federal Circuit and Family Court of Australia
 Family Court of Western Australia
 Other (specify)

Type of proceedings:

- Family law proceedings
 Migration proceedings
 General federal law proceedings
 Other (specify)

Filed on behalf of:

Full name: John Smith

Client ID _____

File number _____

Filed at _____

Filed on _____

Court location _____

Court date _____

Name of person swearing/affirming this affidavit (SEE PART C)
John Smith

Date of swearing/affirming 30/11/20XX

Part A About the parties

APPLICANT 1

Family name as used now

Smith

Given names

John

RESPONDENT 1

Family name as used now

Smith

Given names

Jane

APPLICANT 2

Family name as used now

Given names

RESPONDENT 2

Family name as used now

Given names

What is the contact address (address for service) in Australia for the party filing this affidavit?

You do not have to give your residential address. You may give another address at which you are satisfied that you will receive documents. If you give a lawyer's address, include the name of the law firm. You **must** also give an email address.

123 Applicant Street, Cowra

State NSW

Postcode 2794

Phone 04XX XXX XXX

Lawyer's code

Email John.Smith@email.com.au

Part B About the independent children's lawyer (if appointed)

Independent children's lawyer family name

Given names

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Firm name

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Part C About you (the deponent)

What is your family name used now?

Your given names?

Smith

John

Gender

Male

Female

X

Usual occupation

Pensioner

What is your address?

You do not have to give your residential address if you are concerned about your safety. You may give another address at which you are satisfied that you will receive documents.

123 Applicant Street Cowra

State NSW

Postcode 2794

Part D Evidence

- Set out the facts divided into consecutively numbered paragraphs. Each paragraph should be confined to a distinct part of the subject matter.
- Attach extra page(s) if you need more space. Make sure that the page containing Part E is always the last page of the form. You and the witness to your affidavit must sign the bottom of each additional page.

1. I am the Applicant in this matter and in the divorce proceedings.
2. I was born on 1 June 1980 in Paris, France and am currently X years old.
3. Jane was born on 23 August 1982 in Paris, France and is currently X years old.
4. Jane and I began living together in January 1999 and married on 27 March 2000.
5. We moved to Australia in 2001 and obtained our Australian citizenship in 2013.
6. We separated on 31 December 20XX.
7. There is one child of our marriage, Johnny Smith born 1 October 2007 (now X years old).
8. Following our separation, I moved back to live with my parents.

John Smith

Signature of person making this affidavit (deponent)

Lisa Witness

Signature of witness

9. Jane and Johnny continued to reside in the family home.
10. Following our separation, I commenced spending time with Johnny every second weekend.
11. I am currently in receipt of a Centrelink disability pension.
12. Until recently, Jane was employed full-time as a business manager at AMP and was earning approximately \$150,000 per year.

Contact with Jane Post-Separation

13. On 2 January 20XX, I collected Johnny from McDonalds Parramatta and brought him back to my parents place.
14. On 13 January 20XX, Jane was supposed to pick up Johnny from my parents place but never arrived.
15. I called her and she said words to the effect of *"I can't pick him up this weekend. I'll come next weekend at the same time."*
16. On 20 January 20XX, Jane did not arrive to collect Johnny.
17. In the afternoon of 20 January 20XX, I called Jane and she said words to the effect of *"I am helping a friend with something. I'll pick Johnny up next weekend."*
18. On 27 January 20XX, Jane did not arrive to collect Johnny again.
19. On the afternoon of 27 January 20XX, I called Jane and said words to the effect of, *"What is going on? When are you coming to get him? He's meant to start school in two days."* Jane replied with words to the effect of, *"I can't come to get him. Can he stay with you?"*
20. I said to Jane words to the effect of, *"But he's meant to start school in two days. Do you want me to drive him to Parramatta?"* Jane replied with words to the effect of, *"No. He will have to stay with you. I have to go back to France tomorrow. My parents are in hospital and I don't know how long I'll be there. I will call you in the next couple of days to let you know what's happening."*
21. On 29 January 20XX, I enrolled Johnny at Cowra High School and he attended his first day of year 7.
22. On Friday, 2 February 20XX, Johnny called Jane's mobile number but she did not answer.
23. On 12 February 20XX, I received a call from Westpac and was advised words to the effect of, *"Your mortgage is five weeks and \$2,250 in arrears. This needs to be paid immediately or we will have to commence legal proceedings for the property to be sold."*

John Smith

Signature of person making this affidavit (deponent)

Lisa Witness

Signature of witness

24. On 12 February 20XX I tried to call Jane, but her mobile phone number was disconnected. Jane did not tell me that she had stopped paying the mortgage repayments.
25. I immediately paid the arrears, and have met all mortgage repayments since.
26. On 13 February 20XX, I contacted Parramatta City Council to check whether Jane had paid the rates. I was advised words to the effect of, “*You have not paid your December quarterly rates. You currently owe \$179, including interest.*”.
27. On 14 February 20XX, I received an email from our mutual friend, Sarah Friend saying, ‘*Jane asked me to tell you she’s travelled back to France on the 1st of this month. She will give you a call later today to discuss everything.*’. A copy of the email from Sarah Friend dated 14 February 20XX is attached as **Annexure A**.
28. I immediately sent Jane an email asking her to contact me urgently. A copy of my email to Jane dated 14 February 20XX is attached as **Annexure B**.
29. I did not receive a reply from Jane to the email I sent her on 14 February 20XX.
30. On 16 February 20XX, I sent Jane another email asking her to contact me urgently. A copy of my email to Jane dated 16 February 20XX is attached as **Annexure C**.
31. I did not receive a reply from Jane to the email I sent her on 16 February 20XX.
32. On 17 February 20XX, I sent an email to Jane’s sister, Catherine Lee, asking her to have Jane contact me. A copy of my email to Catherine Lee dated 17 February 20XX is attached as **Annexure D**.
33. I did not receive a reply from Catherine to the email I sent her on 17 February 20XX.
34. On 18 February 20XX, I sent an email to Jane’s brother, Justin Lee, asking him to have Jane contact me.
35. Justin replied saying, “*Jane does not want to talk to you. Please stop trying to contact her. She will get in touch with you when she is ready.*”. A copy of Justin’s email (including my initial email) dated 18 February 20XX is attached as **Annexure E**.
36. Jane did not tell me that she was moving back to France to live permanently.
37. I have not seen Jane since 2 January 20XX.
38. I have not had any contact with her since 27 January 20XX.

John Smith

Signature of person making this affidavit (deponent)

Lisa Witness

Signature of witness

39. I do not know where Jane is living or working.
40. I am aware that Johnny has had contact with Jane on Facebook.
41. He has not spent any time with Jane's family since January 20XX.
42. I have been meeting all expenses in relation to the joint property owned by Jane and myself, with the help of my parents, including mortgage repayments, rates and utilities.
43. I have not been receiving and child support payments from Jane.

SAMPLE

John Smith

Signature of person making this affidavit (deponent)

Lisa Witness

Signature of witness

Part E Signature

I swear* /~~affirm~~* the contents of this affidavit are true

John Smith
Signature of Deponent

Place Cowra Date 04/11/20XX

Lisa Witness
Before me (signature of witness)

Lisa Witness
Full name of witness (please print)

- Justice of the Peace
- Notary public
- Lawyer

* delete whichever is inapplicable

This affidavit was prepared / settled by deponent/s
 lawyer

PRINT NAME AND LAWYER'S CODE

Part F

Alternative jurat for non-English speaking affidavit

Use this alternative jurat for the swearing/affirming of the affidavit and the translator's certificate. See Rule 8.17 of the Family Law Rules or Rule 15.14 of the General Federal Law Rules.

Interpreter/translator's certification

I certify that I understand the English language and the language, and that I have truly interpreted to the deponent (named in Part C) the contents of this affidavit and the oath or affirmation which was administered.

Signature of interpreter

Date / /

Sworn*/affirmed* by the deponent through the interpretation of:

Interpreter's full name

Address

Language

Signature of Deponent

Place

Date / /

Before me (signature of witness)

Full name of witness (please print)

- Justice of the Peace
- Notary public
- Lawyer

* delete whichever is inapplicable

This affidavit was prepared / settled by deponent/s
 lawyer

PRINT NAME AND LAWYER'S CODE

Annexure A

This is the document referred to as Annexure A in the affidavit of John Smith, sworn/affirmed at Cowra on 4 November 20XX before me Lisa Witness, Justice of the Peace.

Lisa Witness

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Witness

SAMPLE

Jane

Sarah Friend

Sent: Thu 14/02/20XX 10:51 PM

To: John Smith

Hi John,

I have just spoken to Jane. She told me that you guys had broken up.

Jane asked me to tell you she's gone back to France on the 1st of this month.

She will give you a call later today to discuss everything.

I'm sorry to hear what happened. I'm here if you need anyone to speak to.

Sarah

Annexure B

This is the document referred to as Annexure B in the affidavit of John Smith, sworn/affirmed at Cowra on 4 November 20XX before me Lisa Witness, Justice of the Peace.

Lisa Witness
.....

Witness

SAMPLE

Call me urgently

John Smith

Sent: Thu 14/02/20XX 11:15 PM

To: Jane Smith

Hi Jane,

Can you please call me as soon as you get this email. I need to know what is going on.

John

SAMPLE

Annexure C

This is the document referred to as Annexure C in the affidavit of John Smith, sworn/affirmed at Cowra on 4 November 20XX before me Lisa Witness, Justice of the Peace.

Lisa Witness

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Witness

SAMPLE

Contact me ASAP

John Smith

Sent: Sat 16/02/20XX 9:15 AM

To: Jane Smith

Hi Jane,

I don't know if you got my last email, but can you please call me urgently.

John

SAMPLE

Annexure D

This is the document referred to as Annexure D in the affidavit of John Smith, sworn/affirmed at Cowra on 4 November 20XX before me Lisa Witness, Justice of the Peace.

Lisa Witness

.....

Witness

SAMPLE

Unable to contact Jane

John Smith

Sent: Sun 17/02/20XX 9:05 AM

To: Catherine Lee

Hi Catherine,

I have been trying to speak with Jane, but she hasn't been answering my emails and her phone has been cut off.

Could you please get her to contact me urgently.

I need to talk to her about Johnny.

John

SAMPLE

Annexure E

This is the document referred to as Annexure E in the affidavit of John Smith, sworn/affirmed at Cowra on 4 November 20XX before me Lisa Witness, Justice of the Peace.

Lisa Witness

.....

Witness

SAMPLE

Jane

Justin Lee

Sent: Mon 18/02/20XX 9:01 PM

To: John Smith

John,

Jane does not want to talk to you. Please stop trying to contact her. She will get in touch with you when she is ready.

Justin

From: John Smith

Sent: 18 February 20XX, 10:04am

To: Justin Lee

Subject: Jane

Hi Justin,

I'm trying to get in contact with Jane. I need to know what is happening.

She isn't responding to my emails. I've tried emailing your sister Catherine, but she isn't answering my emails either.

Can you please ask Jane to contact me.

Thanks,

John