



NSW
Justices

AFFIDAVITS FOR DIVORCE

This document covers the steps involved in dealing with
Affidavits for Divorce as covered in the Zoom training.

All forms included in this handout can be found on this website:

<https://www.fcfoa.gov.au/fl/forms>

NSWJA Training Team
June 2023

AFFIDAVIT FOR DIVORCE



- To get a divorce, the couple must have been separated for 12 months or longer. This is not for the JP to determine. The onus is on the parties to the divorce to prove to the Court.
- The parties can apply for a divorce together (joint application) or one party can apply for a divorce by themselves (sole applicant).



RELEVANT FORMS FOR THE JP TO WITNESS/SIGN

FORM	DEPONENT
(A) Affidavit for E-filing Application (Divorce) 1 page OR Application for Divorce (7 pages)	Applicant / Respondent
(B) Affidavit of Service by Post (Divorce)	Applicant
(C) Affidavit of Service by Hand (Divorce)	Server
(D) Acknowledgment of Service (Divorce)	<i>Annexure - note at bottom of page to be completed by the JP</i>
(E) Affidavit Proving Signature (Divorce)	Applicant
(F) Affidavit (regarding photograph)	Applicant

STEP BY STEP GUIDE – Divorce

1. The **Applicant** completes an on-line application for divorce (A) - (Affidavit for E-filing Application {Divorce}) **OR** an Application for Divorce and has it witnessed by a JP.
2. If a **joint application**, both parties must sign the affidavit - this can be done at the same time by the same witness or at different times by different witnesses.
3. If it is a **Joint Application** and one deponent is not present, you must record in writing, in or below the jurat, the words: **“THIS AFFIDAVIT HAS NOT BEEN SWORN BEFORE ME BY [INSERT NAME(S) OF THE DEPONENT(S) NOT PRESENT].”**
4. Once the affidavit is witnessed and signed, there is no further action for the JP.

If a Sole Application

After applying for the divorce (*as above*), the **Applicant** must arrange for the **Respondent** to be **SERVED** with the divorce papers. This can be done by posting the papers to the respondent (*Affidavit of Service by POST (Divorce) (B)*) or having the papers served on the respondent (*Affidavit of Service by HAND (Divorce) (C)*) by a third party (*the Server*). In both cases, the respondent is asked to sign the Acknowledgement of Service (Divorce) (**D**).

Affidavit of Service by Post (Divorce) – Documents (B) and (D)

- (1) The **Applicant** posts the Application for Divorce (**A**) and the Acknowledgement of Service (Divorce) (**D**) to the Respondent. The Respondent signs the Acknowledgement of Service (Divorce) and returns it to the Applicant.
- (2) The Applicant presents the Affidavit of Service by Post (Divorce) (**B**) and the signed Acknowledgement of Service (Divorce) (**D**) to the JP for witnessing. The Acknowledgement of Service (Divorce) is an Annexure to the affidavit and the statement at the bottom of the Acknowledgement of Service form must be completed by the JP.

Affidavit of Service by Hand (Divorce)

- (1) In this case, the **Applicant** gives the Application for Divorce (**A**) and the Acknowledgement of Service (Divorce) (**D**) to a third person - the **Server**. The **Server** goes to the **Respondent**, verifies that they have the correct person and asks the **Respondent** to sign the Acknowledgment of Service (Divorce). (*NOTE: It is NOT essential that the Respondent signs this document – only that the Server left the papers with the Respondent.*)

Server as Deponent – Documents (C) and (D)

- (2) The **Server** completes the Affidavit of Service by Hand (Divorce) (**C**) then swears/affirms and signs it before an authorised witness (eg. a JP).
- (3) If the **Respondent** signed the Acknowledgment of Service (Divorce) (**D**), it must be attached to the Affidavit of Service by Hand (Divorce) (**C**) as an ANNEXURE. The JP is required to complete the annexure note at the bottom of the Acknowledgment of Service (Divorce).
- (4) If the Server relied on a photograph of the Respondent to identify that person, the photograph must be attached to the Affidavit as another annexure.

Applicant as Deponent – Documents (D) and (E) OR (F)

- (5) If the **Respondent** signed the Acknowledgment of Service (Divorce) (**D**) and the **Applicant** recognises their signature, the **Applicant** should complete the Affidavit Proving Signature (Divorce) (**E**) – a copy of the Acknowledgment of Service (Divorce) (**D**) is annexed to this.
- (6) If the Server relied on a photograph of the Respondent to identify that person, the **Applicant** must prepare a brief Affidavit (**F**) stating that the person in the photograph is the Respondent. (*Note – there is no specific form for this affidavit*). The photograph becomes an annexure to this affidavit.

AFFIDAVIT FOR EFILING APPLICATION (DIVORCE)

A/2

FEDERAL CIRCUIT AND FAMILY COURT
OF AUSTRALIA

REGISTRY:

File number:
.....

COURT USE ONLY

Court Location

Court date

Court time

Affidavit of applicant/s

Do not swear or affirm this affidavit until you are with a person who is authorised to witness your signature.

If you are applying as a sole applicant, you only need to sign your part of the affidavit. You do not have to ask or arrange for the other party to the marriage to sign his or her part of the affidavit.

If you are applying together with the other party to the marriage (joint applicants), each person must sign their part of the affidavit. You may do so at different times and before different witnesses or before the same witness at the same time.

Full Name of Party 1

Full Name of Party 2

Party 1

I swear / affirm that:

1. I am the applicant.
2. I have read the application.
3. The facts and circumstances set out in the application of which I have personal knowledge are true.

Signature

Place

Date / /

Party 2

I swear / affirm that:

1. I am the applicant.
2. I have read the application.
3. The facts and circumstances set out in the application of which I have personal knowledge are true.

Signature

Place

Date / /

Before me (signature of witness)

Full name of witness (print name)

- Lawyer
 Justice of the Peace
 Other authorised person
(specify):

Before me (signature of witness)

Full name of witness (print name)

- Lawyer
 Justice of the Peace
 Other authorised person
(specify):

Lawyer's declaration

If you are representing yourself for this application you do not need to sign this part. However, make sure you have a copy of the information brochure 'Marriage, Families and Separation'.

If a lawyer is representing you for this application, then your lawyer must give you a copy of the brochure 'Marriage, Families and Separation' and complete and sign the declaration below.

I gave the applicant/s a copy of the brochure 'Marriage, Families and Separation'.

Signature of lawyer

Full name of lawyer:

Date: / /

[Alternative jurat for non-English speaking affidavit]

Sworn / Affirmed by the deponent through the interpretation of (name of interpreter) of (address of interpreter), (description of interpreter), the interpreter having first sworn that he / she had truly interpreted the contents of this affidavit to the deponent and that he or she would truly interpret to (name of deponent) the oath about to be administered to him / her.

at (place)

on (date)/...../.....

Signature of deponent

Before me:

Signature of witness

Full name of witness:

Qualification of witness:

I (name of interpreter) certify that I understand the English language and the (name of language used) language, and that I have truly interpreted to the deponent the contents of this affidavit and the oath or affirmation which was administered.

Signature of the interpreter (print name)

.....
Date:/...../.....

AFFIDAVIT OF SERVICE BY POST (DIVORCE)

B

Filed in:

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

You must attach the signed Acknowledgment of Service (Divorce) to this form.

Client ID
File Number
COURT USE ONLY
Filed at
Filed on
Court location
Court date
Court time

Part A

The applicant

1. Name

Family name
Given names

Part B

Details of service

2. Person served (respondent)

Family name
Given names

3. Postal address of respondent

State Postcode

4. Date of posting

/ /

5. What documents were posted?

- Application for Divorce
 Marriage, Families & Separation brochure
 Other (give details): _____

6. Acknowledgment of Service signed

- The Acknowledgment of Service (Divorce) is signed by the person named in question 2 above. It is attached to this affidavit.

Part C Signing

Do not swear/affirm this affidavit until you are with a person who is authorised to witness your signature.

I swear / affirm that:

- I am the applicant.
- The person served is my spouse (respondent).
- The facts set out are true.
- I recognise the signature on the Acknowledgment of Service (Divorce) as that of my spouse.

Signature

Place

Date / /

Before me (signature of witness)

Full name of witness (print name)

- Lawyer Justice of the Peace Authorised Staff Member of the Court
 Other (specify): _____

The witness must also sign the annexure note on the Acknowledgment of Service (Divorce).

AFFIDAVIT OF SERVICE BY HAND (DIVORCE)

Filed in:

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

**The applicant cannot serve the respondent.
If the respondent signed the Acknowledgment of
Service (Divorce), it must be attached to this form.**

Client ID

File Number

COURT USE ONLY

Filed at

Filed on

Court location

Court date

Court time

Part A

1. Name

Family name

Given names

2. Address

State

Postcode

3. Occupation

Person serving documents

Part B

4. Person served (respondent)

Family name

Given names

5. Date documents served

/ /

6. What documents were served?

- Application for Divorce
- Marriage, Families & Separation brochure
- Other (give details):

7. How were the documents served?

- I handed them to the person at (give address):
- I attempted to hand them to the person at (give address):
- The person refused to accept them. I put them down and left them in the presence of the person and told the person what they were.

Part C

8. How was the person served identified?

Identity of person served

- I know the person
- The person is shown in the attached photograph
- I saw the person sign the attached Acknowledgment of Service (Divorce)
- I spoke to the person at the time of service (give details of conversation relating to identity):

If the Server used a photo to identify the Respondent, that photo must be attached to this Affidavit.

If the Server saw the Respondent sign the Acknowledgement of Service, that document must be attached to this Affidavit as an annexure.

Part D Signing

Do not swear/affirm this affidavit until you are with a person who is authorised to witness your signature.

I swear / affirm that:

1. I am the server.
2. The facts set out are true.

Signature

Place

Date / /

Before me (signature of witness)

Full name of witness (print name)

- Lawyer
- Justice of the Peace
- Authorised Staff Member of the Court
- Other (specify): _____

The witness must also sign the annexure note on the Acknowledgment of Service (Divorce).

ACKNOWLEDGMENT OF SERVICE (DIVORCE)

Filed in:

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

**This form must be attached to EITHER:
an Affidavit of Service by Post (Divorce)
OR
both an Affidavit of Service by Hand (Divorce) and
Affidavit Proving Signature (Divorce).**

Client ID

File Number

COURT USE ONLY

Filed at

Filed on

Court location

Court date

Court time

Part A

The applicant

1. Name

Family name

Given names

Part B

Details of service

2. Person served (respondent)

Family name

Given names

3. Date documents served

/ /

4. What documents were served?

- Application for Divorce
- Marriage, Families & Separation brochure
- Other (give details): _____

Part C

Signing

I acknowledge service of the documents named in question 4 above.

Signature

Date

/ /

OR

I am the lawyer for the person served. On behalf of my client, I acknowledge service of the documents named in question 4 above.

Lawyer's signature

Date

/ /

Name of lawyer (print name):

Lawyer's code:

Address of lawyer:

ANNEXURE NOTE — Witness to complete only if this form is attached to an affidavit.

This Acknowledgment of Service (Divorce) is referred to in the affidavit of (name):

Sworn/affirmed at (place):

On (date):

Before me (witness to sign): _____

Lawyer Justice of the Peace Authorised Staff Member of the Court

Other (specify): _____

AFFIDAVIT PROVING SIGNATURE (DIVORCE)

Filed in:

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

You must attach the signed Acknowledgment of Service (Divorce) to this form.

Client ID

File number

COURT USE ONLY

Filed at

Filed on

Court date

Court time

Part A The applicant

1. Name

Family name
 Given names

Part B Identifying signature

2.

Acknowledgment of service signed (respondent)

The attached Acknowledgment of Service (Divorce) is signed by:
 Family name
 Given names

Part C Signing

Do not swear/affirm this affidavit until you are with a person who is authorised to witness your signature.

I swear / affirm that:

- The facts set out are true.
- I recognise the signature on the Acknowledgment of Service (Divorce) as that of my spouse.

Signature

Place

Date / /

Before me (signature of witness)

Full name of witness (print name)

- Lawyer
 Justice of the Peace
 Authorised Staff Member of the Court
 Other (specify):

The witness must sight the signature of the person served on the Acknowledgment of Service (Divorce).

FEDERAL CIRCUIT COURT OF AUSTRALIA

File number:

COURT USE ONLY

Court Location

Court date

Court time

REGISTRY:

This Affidavit can be used for the Applicant to confirm the photo of the respondent.

..... Applicant

..... Respondent

..... Other party (if applicable)

* Repeat as necessary for additional parties

AFFIDAVIT

Name of deponent:

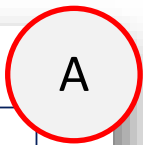
Date sworn / affirmed:/...../.....

I, (full name) of (address, including State or Territory) and (occupation) make oath and say / affirm:

- 1.
2.

Filed on behalf of
Prepared by
Name of law firm
Address for service in Australia
State
Postcode
DX
Email
Tel
Fax
Attention

APPLICATION FOR DIVORCE



Filed in:

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



NOTE: Applications for Divorce can be electronically filed using a separate interactive online form through the Commonwealth Courts Portal (www.comcourts.gov.au). There is no need to complete this form if you wish to eFile. Visit the *How do I...? Apply for a Divorce* page at www.federalcircuitcourt.gov.au/bowdoi for more details.

Client ID
File Number
COURT USE ONLY
Filed at
Filed on
Court location
Court date
Court time

Part A The applicant/s

1. Who is/are making this application?

Applicant Applicant and Applicant 2

2. Do you want to attend the hearing?
It may be compulsory for you to attend.
Page D – Divorce Kit

Applicant	Applicant 2
<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

Part B The parties

3. Family name as used now

4. Full given names

5. Gender*

Applicant	Applicant 2/Respondent
<input type="checkbox"/> Choose not to answer	<input type="checkbox"/> Choose not to answer
<input type="checkbox"/> M (male)	<input type="checkbox"/> M (male)
<input type="checkbox"/> F (female)	<input type="checkbox"/> F (female)
<input type="checkbox"/> X (indeterminate/intersex/unspecified)	<input type="checkbox"/> X (indeterminate/intersex/unspecified)
6. Date of birth (day / month / year)	6. Date of birth (day / month / year)
7. Country of birth	7. Country of birth
8. If born outside Australia, date you started living in Australia (day / month / year)	8. If born outside Australia, date you started living in Australia (day / month / year)
9. What is your occupation?	9. What is your occupation?

* You are not required to answer this question. The information assists to understand the diversity of family relationships in Australia and contributes to gender disaggregated data. The courts' privacy policies can be found on the websites www.federalcircuitcourt.gov.au and www.familycourt.gov.au

This application is 7 pages long. Jurat is on Page 7 – Part G. Check that all sections have been completed – where an answer is required – before witnessing.

Part G Affidavit of applicant/s

Do not swear or affirm this affidavit until:

- you and the other party have been separated for at least 12 months, and
- you are with a person who is authorised to witness your signature.

If you are applying as a sole applicant, you only need to sign your part of the affidavit. You do not have to ask or arrange for the respondent to sign their part of the affidavit.

If you are applying together (joint application), each person must sign their part of the affidavit. You may do so at different times and before different witnesses or before the same witness at the same time.

Applicant

I swear / affirm that:

- I am the applicant.
- I have read this application.
- The facts of which I have personal knowledge are true.
- All other facts are true to the best of my knowledge, information and belief.

Applicant 2

I swear / affirm that:

- I am the applicant.
- I have read this application.
- The facts of which I have personal knowledge are true.
- All other facts are true to the best of my knowledge, information and belief.

Signature

Signature

Place
Date / /

Place
Date / /

Before me (signature of witness)

Before me (signature of witness)

Full name of witness (print name)

Full name of witness (print name)

- Lawyer
- Justice of the Peace
- Authorised Staff Member of the Court
- Other authorised person (specify): _____

- Lawyer
- Justice of the Peace
- Authorised Staff Member of the Court
- Other authorised person (specify): _____

Part H Lawyer's declaration

If you are representing yourself for this application, you do not need to sign this part. However, make sure you receive a copy of the information brochure 'Marriage, Families and Separation'. You will be provided with a copy when you file your application.

If a lawyer is representing you for this application, then your lawyer must give you a copy of the brochure 'Marriage, Families and Separation' and complete and sign the declaration below.

I gave the applicant/s a copy of the brochure 'Marriage, Families and Separation'.

Signature of lawyer _____

Full name of lawyer:

Date: / /