

Domestic Violence Orders 3

What do I put in my Affidavit in Support?



Magistrates Court

It is very important that you are careful about what you put in your affidavit in support and how you say it. Even if you do not have a lawyer representing you, it is suggested that you get some legal advice on the affidavit or declaration you want to put before the Court.

Basic Rules of Affidavits/Statutory Declarations

You must tell the truth in the affidavit/statutory declaration otherwise you could be committing an offence.

You should try and put the information that you want before the Court in date order in your own mind, before you write it into an affidavit. If there has been a series of events which have led to you making the application for a Domestic Violence or Personal Violence Restraining Order, you should describe those events in a brief way identifying who was involved and when and where it happened.

Generally, your affidavit/ statutory declaration should only be of what you saw, heard or experienced, not what someone else has told you they have heard someone else say.

It is important to put your affidavit in a clear simple language so that it is clear to the person reading your affidavit what has happened and when.

If you intend to attach documents to your affidavit/ statutory declaration, you should refer to it in the body of the document and then have it marked as an annexure. For example:

“I reported this incident to the police and attached to my affidavit is a copy of the job card marked “A”.

You should then mark an “A” on that copy of the job card which is going to be attached.

Each document attached to your affidavit should have unique identification, it is usual to use sequential letters of the alphabet.

You should have your signature of the affidavit/statutory declaration witnessed by a qualified witness, eg Justice of the Peace or Commissioner for Oaths. Most Court offices and/or police stations have a Justice of the Peace available to do this for you. If the document is over a page long, you and the witness should sign at the bottom of each page.

Contents of the Affidavit/Statutory Declaration?

Format

To identify the file for your affidavit/ statutory declaration, the top of the page should have the following information:

In the Court of Summary Jurisdiction
of the Northern Territory of Australia
at <place>

Case no.

APPLICANT NAME

DEFENDANT NAME

PROTECTED PERSON

Contents

Relationship - you should set out in the first paragraph who you are and the relationship with the defendant. Each fact should have its own numbered paragraph. For example:

1. I am Anna Smith and I have known the defendant for 3 years.
2. I have been married to the defendant for 1 year.
(See Brochure 1 for a description of what types of relationships are considered to be “domestic relationships” under the Act).

Events leading up to the application

Next you should set out what has happened that has led you to making the application: For example:

1. During our relationship the defendant has been violent towards me on several occasions.
2. On Sunday after Christmas day in 2007 he had been drinking with his mates and when he came home he was drunk.
3. On that Sunday we had an argument about money and he threw a vase at me hitting me on my head.

4. I ran into the bedroom and called the police.
5. Before that day we have had several arguments after he had been drinking. Usually those arguments have ended up with him either hitting me or throwing something at me.
6. On New Years Day I told him I do not want to have anything more to do with him.
7. Since we have broken up he has called me several times threatening to kill me.
8. I am afraid he will go through with his threats.

You can see from this example that each paragraph has one set of facts in it and is clear about what happened.

The information you put in your affidavit/statutory declaration should be in enough detail to convince the Court that you have a domestic relationship with the defendant or if no such relationship, that the person has committed or threatened a personal violence offence against you.

The information should also establish a basis for the application, in our example there was a domestic relationship, husband and wife, a history of violence, and reasonable grounds, the history and the continued threats, for believing the violence will continue should an order not be made.

Defendant's Criminal Record

You should also state in your affidavit, any information about the defendant's criminal record, if there is any.

Other Orders

It is also important to refer to Family Court Orders and other Domestic Violence Orders etc in your affidavit.

What if there are children involved?

If there are children who have witnessed the violence between you and the defendant, it may be that you will have to put into your affidavit where and when they witnessed the violence and if the defendant is related to those children. These are important facts to put in your affidavit because there may be a need for some orders relating to those children and the defendant's contact with them.

If there is a Family Court Order relating to those children, it is important to put the details of that order in your affidavit and even attach a copy of the order.

What if we usually live in the same house and his name is on the lease?

You should have a paragraph in your affidavit setting out your accommodation details so that the Court has this information before it when making its orders.

How much information is enough?

It is really important that you get some legal advice as to the content of your affidavit if you can, however if you are unable to get that advice, you should remember you can always be called upon by the Court to give oral evidence in open Court, if the Court needs more information.

The purpose of the affidavit in support of your application is to let the Court and the defendant know what is said against the defendant and to provide a basis for any order which may be made in the absence of the defendant. If the

affidavit evidence is inadequate, you could be asked to give more information by oral evidence.

Further information can be obtained by visiting our website
www.nt.gov.au/justice/ntmc/