

DIRECTIONS TO FILE & SERVE MATERIAL - RESPONDENT

WHAT DO I HAVE TO DO NOW?

The Magistrate has made directions for you to file all affidavit/s and/or sworn statement/s that you want to rely upon in your domestic violence matter where you are named as a respondent.

You need to prepare an affidavit if you are contesting (fighting) the application for a protection order that was made naming you as a respondent. Your affidavit is your story. The Magistrate will use your affidavit to decide whether or not to make a final protection order against you.

THE AGGRIEVED'S AFFIDAVIT

We confirm that the Magistrate also made directions for the aggrieved to file and serve their material. You will need to go to the Magistrates Court Registry to get a copy of the aggrieved's material. It is best to go to the court the business day immediately after the aggrieved's material is due to give you the most amount of time to read the documents.

You may wish to contact the registry after the date that the aggrieved was ordered to file their affidavit/s to make sure that the documents have been filed and are available before you go to collect them.

If the aggrieved does not file an affidavit you should still file an affidavit giving your version of the events written about in the aggrieved's application.

WHAT DO I PUT IN MY AFFIDAVIT?

What you put in your affidavit is up to you, but you should go through the aggrieved's application and any affidavits that they have filed and put your side of the story forward. If you do not give your version of the events that are written about in the aggrieved's affidavit/s then the court will take it that you agree with what has been written.

Once you have responded to all the incidents that the aggrieved has raised you should include any extra facts or incidents that you want the Magistrate to know about, including if the aggrieved has committed domestic violence against you. Remember the Magistrate will use what is written in your affidavit to decide whether you have committed

domestic violence against the aggrieved and whether you should have a protection order against you to keep the aggrieved safe in the future.

Everything you put in your affidavit must be true. It is an offence to lie in an affidavit and you could be charged. Everything you put in your affidavit must also be relevant to why you should not have a protection order made against you.

ABOUT THE AFFIDAVIT TEMPLATE

The **attached** template affidavit contains some general details and prompts that you can use as a starting point when writing your affidavit. The prompts are things or information that you should think about including in your affidavit. We have highlighted our prompts in yellow. You must delete all the highlighting and our prompts from the document before you sign and file the affidavit with the court.

Your affidavit should be written in numbered paragraphs with each new incident or fact in a new paragraph. You should also number each page.

EXHIBITS

Any documentary evidence or proof, such as photos, copies of text messages, emails, call logs etc that you wish to attach to your affidavit to support what you are saying are called exhibits.

You should refer to each exhibit in your affidavit and then attach it to the back of your affidavit in order. For example, if the aggrieved sent you a text message that you want the Magistrate to know about you would write in your affidavit:

"On 10 October 2020 the aggrieved sent me a text message inviting me to come over to his house. Attached to this affidavit as Exhibit 1 is a copy of the text message."

You would then need to print out the text message, write "Exhibit 1" on it and attach it to the back of the affidavit. You should do this with each attachment/exhibit and number them in numerical order (1, 2, 3, 4, etc).

MEDIA EXHIBITS

Recordings or videos that support what you are saying can be filed as media exhibits. You should refer to the recording or video in your affidavit and then you will need to file the recording at least 7 days before your hearing date.

For example, if you have a recording of the aggrieved yelling at you and threatening you, you would write in your affidavit:

“On 12 October 2020 I went to the aggrieved's house and he started yelling at me. He called me stupid and useless and threatened to bash my head in.”

You would then need to file the recording and a *Notice of filing of media exhibit* form in the Magistrates Court Registry at least 7 days before your hearing.

Most courts will need you to put the recording on a USB stick, however we suggest you contact the court registry where your hearing is being held and ask them what format they would like.

The aggrieved will be given a copy of the Notice and they will have the opportunity to go and listen to and/or watch the recording or video.

ABOUT THE NOTICE OF FILING OF MEDIA EXHIBIT TEMPLATE

The **attached** template Notice of filing of media exhibit includes some examples of how to complete the Notice. We have highlighted our examples in yellow. You must delete all the highlighting and our examples from the document before you sign the Notice and file it with the court.

SIGNING YOUR AFFIDAVIT

Once you have finished your affidavit and have attached your exhibits you must sign where indicated at the end of the affidavit and the bottom of every page in front of a Justice of the Peace, Commissioner for Declarations or a lawyer.

You will be required to either ‘swear’ or ‘affirm’ the affidavit. The Justice of the Peace, Commissioner for Declarations or lawyer who is witnessing your signature will ask you to read (or take) the oath or affirmation. That person will also sign at the end of the affidavit and the bottom of every page to show that they witnessed your signature.

WITNESSES



FREE LEGAL ADVICE FOR WOMEN | Townsville (07) 4772 5400 | Cairns (07) 4033 5825 | www.nqwls.com.au

If you want to include evidence or statements from a witness, you will need to file an affidavit from that witness. You can have more than one witness.

If you want someone to be a witness, you must make sure that they are willing to:

- Sign an affidavit which will be given to the aggrieved;
- Go to court for the hearing;
- Give evidence at the hearing; and
- Be asked questions about their evidence by the aggrieved, their lawyer or possibly the Magistrate.

If you want to file an affidavit from a witness, you can download a blank affidavit form from domestic violence section of the Queensland Courts website: <https://www.courts.qld.gov.au/going-to-court/domestic-violence>

To find the affidavit form, scroll down to the bottom of the page, click on Forms and then look for ‘Form DV25 – Affidavit’ and it will download as a Word document for your use. You can also contact our office and we can send you a blank copy of the form.

Remember your witnesses will also need to sign their affidavit in front of a Justice of the Peace, a Commissioner for Declarations or a lawyer.

FILING & SERVING YOUR AFFIDAVIT/S

Once your affidavit and any witness affidavits are signed, you will need to make 2 copies of each affidavit and attached exhibits. You must then take the original, plus the 2 copies, of each affidavit and file it at the Magistrates Court Registry where your hearing is being held. You must do this by the date given by the Magistrate in the directions. It is your responsibility to comply with the directions and file your affidavit/s by the due date. If you do not the Magistrate may not give you any extra time.

The Registry staff will keep the original of each affidavit for the court file. They will also keep one copy of each of your affidavits for the aggrieved. Please ensure that you keep a copy of all documents that you file with the court for your own records.

After filing your documents with the court registry, the aggrieved will need to go to the registry to collect their copy of your affidavit/s.

Although we are not able to draft your affidavit for you, you are welcome to contact us to request advice about writing your affidavit and we may be able to look over it before you file it with the court.