

Affidavit Checklist

When giving evidence in an affidavit, it is critical to prepare the affidavit in line with the Court's rules. This will avoid your evidence being unnecessarily challenged by any of the other parties.

For example, an affidavit can be challenged because:

- it has not been sworn or affirmed in accordance with the law
- it contains material which is inadmissible (e.g. because it is not relevant to the application before the court, or is not evidence the deponent can give)
- it does not contain the relevant material required to support the application before the court
- it is inconsistent with the application before the court

If an affidavit lacks the required form and structure, it may be inadmissible in court. In real terms, this means decisions could be made for children and young people without important evidence being considered.

<p>Is an affidavit required?</p>	<p>Affidavits are used for several purposes. An affidavit may be required:</p> <ul style="list-style-type: none"> • to support an application • to oppose an application by another party • because a court has made a direction that one be filed • to provide an update in a matter to assist the Court
<p>Am I the best person to give the affidavit?</p>	<p>An affidavit should be given by the person who has the most direct evidence on the matters in the affidavit or subject of the affidavit. Keep in mind that whoever deposes the affidavit may be called for cross-examination and be tested on the contents of the affidavit.</p>

<p>What form or template should I use?</p>	<p>You must write your evidence into the NSW Children’s Court prescribed affidavit form (Form 35) that can be found on the Children’s Court website¹</p>
<p>What should be in the affidavit?</p>	<p>An affidavit should contain:</p> <ul style="list-style-type: none"> • the details of the case it relates to, including the names of parties, court location and court case number (DCJ to provide) • the names, address (work address) and occupation of the person making the affidavit (known as the ‘deponent’) • contact details for the party for whom the affidavit is being made, or contact details for their lawyer • the evidence being given by the deponent
<p>How should the affidavit be written?</p>	<p>When you write an affidavit, you should:</p> <ul style="list-style-type: none"> • Only write facts, that is things you know directly i.e. what you did, what you saw, heard, smelt, tasted, felt. You should write in the first person and it should be in your words. • Only include information that is relevant. • Use full sentences rather than dot points. • If bullet points are used within a paragraph for a particular reason (e.g. a list), these should be in the form of alphabet, roman numerals etc. for ease of reference. • Write chronologically, as if telling your story from the beginning to the end. Use headings if your affidavit covers a number of different issues. • Use consecutively numbered paragraphs throughout the body of the affidavit, the numbering contributes and does not start from ‘1’ under each subheading. • Each paragraph should deal with (as much as possible) discrete matters.

¹http://www.childrenscourt.justice.nsw.gov.au/Pages/childrenscourt_formsandfees/care_protection_forms.aspx

- A new paragraph is not required for every sentence. Generally, each paragraph should contain 2 to 3 concise sentences. A paragraph longer than 10 lines is usually too long. A sentence longer than 5 lines is usually too long. Avoid excessively long paragraphs or sentences.
- Write conversations in the first person, for example, I said “I’ll take it”, or she said, “I’ll send it right over”.
- Use past tense when referring to events, conversations etc. that occurred prior to the date of signing the affidavit (e.g. a contact visit report recorded in present tense must be re-written in past tense when referred to in the body of the affidavit).
- Number every page (usually on the bottom right-hand corner) including any annexures.
- In the body of the affidavit (except for paragraphs and page numbers), spell the numbers one to ten as words, and numbers from 11 onward as figures (e.g. 11).
- Write all dates in full i.e. 10 September 2019.
- Name individuals who say or do certain things, unless confidentiality of identity has to apply (such as reporters or some carers).
- Name the specific people who say, believe, decide or do something rather than naming DCJ or a PSP Service Provider. For example, don’t say ‘The service provider organised a meeting with the child’s family’ say ‘caseworkers Mandy Smith and Jon Wykes called Peter Wu to talk about Charlotte’s behaviour at school.’
- Introduce relevant family members clearly in the opening paragraphs. When a new person is referred to for the first time in the affidavit they are referred to by their full name and relationship to the child or young person, for example: Jane Smith (‘Ms Smith’), DCJ Manager Casework. Jane Smith will then be referred to as Ms Smith for the remainder of the affidavit. The same convention applies to all other acronyms, for example DCJ must first

	<p>be referenced as “the Department of Communities and Justice (‘DCJ’)” and then “DCJ” in subsequent mentions.</p> <ul style="list-style-type: none"> • Use a formal and dignified approach when naming adults referred to in the affidavit. Do not use terms like ‘birth mother’, ‘natural mother’ or ‘biological mother’, use ‘mother’. • When referring to children in an affidavit, the process is slightly different. In the first instance use their full name and date of birth, and then by their first name in subsequent mentions, for example: Pearl Hope Jones (‘Pearl’), born 16 November 2005.
<p>How should it be laid out and printed?</p>	<ul style="list-style-type: none"> • Use standard A4 paper of durable quality, capable of receiving ink writing. • Ensure text is clear, sharp and legible. • Print on one side of the paper only. • Securely fasten pages on the top left-hand corner (for example, use large staples when possible, not bulldog clips).
<p>Identify and include any annexures</p>	<p>If the facts in the affidavit are supported by a document, a copy of the document must be attached to the affidavit. This document is then referred to as an ‘annexure’.</p> <ul style="list-style-type: none"> • Make sure that you give brief descriptions of the attachment in the text of your affidavit. For example. “On 1 March 2019, I received an email from Mr Dennison. Annexed and marked ‘A’ is a copy of that email”. Bolding the letter in the body of the affidavit helps the reader locate annexures easily. • Number the pages of the annexure consecutively. The page number of the first annexure will continue from the last number of the affidavit. • Identify each annexure, for example by letters “A”, followed by “B”. • Each annexure must include a statement signed by the witness identifying the annexure as the document

	<p>referred to in this affidavit. The working of the statement is as follows if the annexure is only one page:</p> <p><i>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].</i></p> <p>Or if the annexure is more than one page:</p> <p><i>This and the following [insert number of pages following the front page] pages 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].</i></p> <ul style="list-style-type: none"> • The statement must be signed at the same time as the affidavit and by the same witness • It can be helpful to use an annexure cover page to help identify each annexure clearly, and to avoid squeezing the statement into a small vacant space on the document's first page.
<p>Have your affidavit 'settled'</p>	<ul style="list-style-type: none"> • It's important that your affidavit provides all the evidence the Court may need because they may not give you a second chance and this can impact on the case. This is why it is important that an affidavit is 'settled' (i.e. checked by a lawyer so they can check it meets requirements, provide legal advice about the information and ask questions to check if relevant information has been included). • When preparing an affidavit in the Secretary's case, once you have drafted your affidavit (and collated any annexures) and before you sign it, you need to send a draft version to the DCJ Manager Casework so that they can arrange to have it settled by the DCJ lawyer acting. Unless another timeframe has been negotiated, you should provide your affidavit to DCJ within five working days (if the matter is already before court) or ten working days (if the matter has not yet been filed in court). This

	<p>allows time to make amendments if required before the affidavit is ready ('settled') to be filed with court.</p> <ul style="list-style-type: none"> • If you have in-house or external legal support assisting you with a matter, that legal practitioner will need to settle it first before you send it to DCJ.
Swear of affirm the affidavit and sign every page	<ul style="list-style-type: none"> • You must either swear (make a religious oath) or affirm (make a solemn promise) that the contents of the affidavit are true. • You and your witness should sign the bottom of each page of the affidavit (but not the annexures), and the 'jurat' (the signature block) on the last page of the affidavit. The witness must sign it, state where it was signed and his or her capacity to witness your signature (for example whether they are a solicitor or Justice of the Peace). • Only the witness signs and completes the annexure cover page (or stamp). • Make sure your witness includes details about how they confirmed your identity.
Keep a copy	<ul style="list-style-type: none"> • Make sure you keep a copy of your signed and witnessed affidavit.
File and serve	<ul style="list-style-type: none"> • The affidavit should be filed (lodged with the court) and served (formally given to the other parties) by the date ordered by the court or under the court rules / practice notes. If the affidavit is in the Secretary's case, DCJ will file and serve the affidavit on the other parties.

References

Law Access NSW. (n.d). Checklist: Writing affidavits. Viewed 4 September 2020, <https://www.lawaccess.nsw.gov.au/Pages/representing/lawassist_readingwritingh_ome_wysk/lawassist_affidavits_checklist.aspx>.