

Affidavit: The Basics

What is an Affidavit?

An affidavit is a written document used to provide information to a Court. It is a statement of evidence or facts as known by the author, which is voluntarily made and ‘affirmed’ or ‘sworn’ to be true.

The Children’s Court is an affidavit jurisdiction and so all parties are required to use affidavits to present their evidence. Oral evidence is only given at a hearing when a person is cross examined on the evidence in their affidavit. If the evidence in an affidavit needs to be tested in Court, the author, known as the ‘deponent’ will attend Court to be cross-examined. This does not happen very often.

In child protection matters the Department of Communities and Justice (DCJ), the parents and the child/young person’s legal representative are ‘party to the proceedings.’ The role of PSP Service Providers is to prepare an affidavit that provides updated information about the child/young person and/or their family situation. DCJ’s legal representative will review your affidavit prior to it being filed with the Court. This is called ‘settling’ the affidavit. This review includes examining the content, so it is thorough and objective, and only contains relevant information. Information in the affidavit which is supported by a document is attached to the affidavit as an ‘annexure’.

The person who swears/affirms the affidavit is referred to as the
‘deponent’

The purpose of an affidavit is to inform the Court about the current situation for the child/young person and/or their family. An affidavit can also be used to provide information to the Court about:

- health and wellbeing
- safety concerns
- living and care arrangements

- the circumstance of family members which may include birth parents and siblings
- frequency and quality of family time
- any criminal matters.

For an affidavit to be in the correct form, it must comply with specific rules, in form, structure and content. If an affidavit is not in the correct form, other parties in the Court proceeding can object to it, in whole or in part, and the Court can rule that the affidavit is inadmissible (not accepted as valid by the Court).

When are Affidavits Required?

An affidavit can be used at any stage of the Court process to provide evidence. The Court will normally make directions about when an affidavit is to be filed, and the Court's directions must be followed.

Key times that affidavits are filed with the Court include:

- during the Court proceedings, to provide evidence that supports a finding that a child needs care and protection
- during Court proceedings, to provide information from the parents
- during Court proceeding to update the Court on parents' progress against goals, how contact is going and how the child's needs are being met
- in reply to an affidavit filed by another party to the proceedings
- to initiate a Section 90 Application that seeks to vary or rescind existing orders.

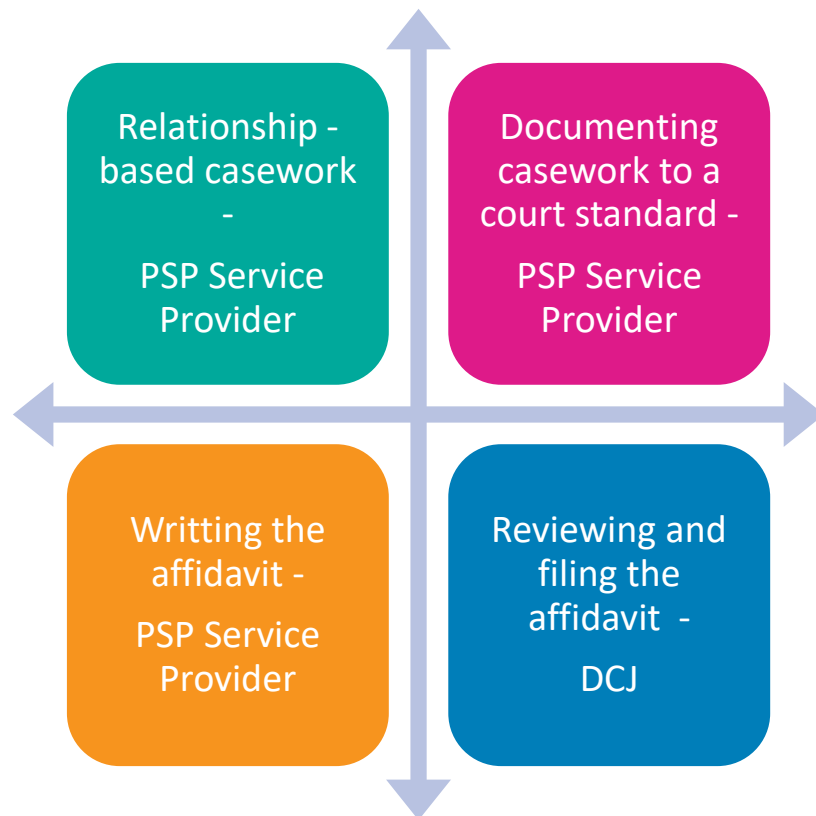
DCJ expects that PSP Service Provider casework staff will write affidavits in care matters.

The Role of PSP Service Providers

Writing an affidavit for a care matter is only a portion of the scope of work required to file a quality affidavit with the Court. PSP Service Providers are responsible for:

- relationship-based casework that creates the opportunity for change and includes the child/young person's thoughts and opinions

- documenting this casework in an objective, concise, timely and fair way
- writing the affidavit.



Once the affidavit is complete, and approved by a manager at the PSP, it is 'settled' by a DCJ Legal representative to ensure it meets the rules of structure and content, is thorough and objective, and it only contains relevant information. All necessary evidence is attached as annexures.

Once settled, the affidavit is returned to the deponent to be finalised by the PSP caseworker, and it is then 'sworn' or 'affirmed' by the deponent and witnessed by a duly authorised person (a Justice of the Peace (JP) or legal practitioner). The affidavit is returned to DCJ and filed at Court by the DCJ caseworker. The original copy is kept on the Court file and DCJ will provide a 'sealed' (Court stamped) copy to

all other parties to the proceedings. The PSP caseworker should always ask for a copy of the affidavit they have made after it has been filed.

What is the Difference Between ‘Sworn’ and ‘Affirmed’?

When you sign an affidavit, you need to state that the information contained in it is the truth. This is done by swearing an oath or completing an affirmation.

Whether you swear or affirm your affidavit you are attesting to the truthfulness of your affidavit or testimony. Ensure which ever one you choose is used consistently. Do not swear at the beginning of an affidavit and attest at the end.

Annexures

Annexures are attachments to an affidavit that evidence or reinforce statements within the affidavit.

Examples of annexures:

- case plans
- family action plans
- family visit reports
- school reports
- health professional reports
- home visit reports that capture the voice of the child
- email or phone call records
- records of meetings or incidental conversations that demonstrate change or concerns
- records documenting conversations with the child or young person or the family, which demonstrate their views or wishes.

Remember, it is the responsibility of the deponent to include all relevant facts in an affidavit, including facts that do not support their preferred outcome.

What are ‘Facts’ in the Child Protection Space?

One of the most complex aspects of working in the child protection space is recognising how our own experiences and views influence how we interpret what children and families do, say and need. Facts are things we hear, see, smell, taste or can feel, however our bias affects how we interpret what we observe and how we document an event.

It is essential that we use the tools of reflective practice and observation-based record-keeping to record casework and list facts in an affidavit. For further information, see: [Writing An Affidavit: Tips and An Example](#)