

**IN THE CHILDREN'S COURT  
OF NEW SOUTH WALES  
AT //LOCATION//**

**CASE NUMBER**

## **Affidavit**

Children and Young Persons (Care and Protection) Act, 1998

### **Children and young person**

Name //full name of child//  
//full name of child2//

### **Application details**

Type of application Variation/Rescission of Care Order s. 90  
Guardianship order s. 79A

Date care application filed //date in full//

### **Affidavit**

Name //full name of deponent//

Address //work address//

Date sworn/affirmed //date in full//

I, **swear/affirm**:

1. I am employed as a //position// with //name of NGO (abbreviated NGO) at //Location.
2. On //date in full // case management responsibility was transferred from the Department of Communities and Justice (DCJ) to //abbreviated NGO// for the following child//children//:
  - a. //Full name of child//, born //date of birth in full// (//child's first name//)
  - b. //Full name of child//, born //date of birth in full// (//child's first name//)// (collectively referred to as the children) //. **[delete if only one child]**
3. Case management involves the placement, assessment, planning, implementation, supervision, monitoring and review of children and young people in out-of home care. It includes making recommendations for permanency plans for children and young people and supporting any Court applications made by DCJ for care orders or to vary care orders. DCJ continues to exercise aspects of parental responsibility that it retains following the case management transfer.

4. Since //date//, I have had casework responsibility for //first name of child// or // the children//.
5. I commenced employment with //abbreviated NGO// on //date in full// and have been working in my current role //since that time [or] //date in full//.
6. I obtained a //name of degree/diploma and type of qualification// at //university/college// in //year completed//.
7. In the course of preparing this affidavit I have had access to relevant DCJ records relating to the children and the children's complete casework files of //abbreviated NGO//. The evidence I give in this affidavit has been sourced from these records unless otherwise stated.
8. The purpose of this affidavit is to provide an update on //first name of child//the children's// circumstances to support the Secretary's application for a guardianship order.

#### **BIRTH FAMILY**

9. //full name of mother// born //date of birth// is the mother of //first name of child// //the children//. //first name// currently resides in //location//. [Repeat if more than one mother].
10. //full name of father// born //date of birth// is the father of //first name of child// //the children//. //first name// currently resides in //location//. [Repeat if more than one father].
11. [If parents reside together use the following and delete the second sentence from paragraphs 9 and 10]. The parents currently reside in //location//.
12. //first name of child// //the children// have the following siblings who are not subject to this application:
  - a. //Name of Sibling1// (first name) [details of names, age, who residing with, details of any care orders if applicable].
13. [List other persons only if they are relevant to the Application – grandparents/aunts/uncles etc].
14. The //first name of child// //the children// is/are Aboriginal. [Identify if the child/children are Aboriginal and include their mob, country, family/kin etc]. Further details about the application of the Aboriginal Placement Principles and the //child/children's// cultural planning is set out under the corresponding heading below.

#### **PLACEMENT WITH THE GUARDIAN/S**

15. //Child's first name/ the children// has/have lived with //full name of guardian 1// (Mr/Mrs //guardian 1's surname// OR the prospective guardian, if a sole applicant), born //DOB//, and //full name of guardian 2// (Mr/Mrs //guardian 2's surname//, born //DOB// (collectively, the prospective guardians) continuously since //date.
16. At the time //first name of child// //the children// was/were placed with the prospective guardian/s, the //first name of child// was //age// years old and //child2// was //age// years old respectively.
17. The prospective guardian/s is/are //child's first name//the children's// authorised carer/s//relative/s//kin. [set out the carer's relationship with the children here]
18. //Child's first name /the children// currently reside/s with the prospective guardian/s in their home in //location//, NSW.
19. The other people living in the home with the child/ren are:
  - a. [list any other household member/s – including other children and adults. Provide a brief summary of their relationship to the prospective guardian/s and any other relevant information such as whether they are subject to a care order].
20. The prospective guardian/s also has/have the following biological/foster/adopted, child/children, who live independently:
  - a. //full name and date of birth//.

[Only include the above paragraph if they are significant people in the child's life and relevant to the Application. Please also indicate if the child or young person is subject to a care order].

## **GUARDIANSHIP ASSESSMENT**

21. //abbreviated NGO// engaged/ //full name of assessor//, //occupation title//, of //insert organisation// (Mr/Mrs //surname of assessor//) to conduct an assessment of the prospective guardian/s' suitability to be a guardian/s.
22. On //date in full//, (Mr/Mrs //surname of assessor//) proffered a report to //abbreviated NGO// recommending that // the prospective guardians be approved as guardians for the child//children. A copy of this guardianship assessment is annexed and marked “//X//” [If applicable add: The report has been redacted to //protect the identity of other children who are currently in the care of the guardian/s OR //who were previously in the care of the guardian/s or //other reasons//.]
23. The guardianship assessment made the following recommendations: [delete if inapplicable]

a. Recommendation 1

b. Recommendation 2

24. [Outline how the recommendations have been actioned, are in the process of being actioned or why they have not been actioned].
25. Since receiving the guardianship assessment report, I have continued to provide regular casework to //first name of child// //the children// and the prospective guardians. Evidence of such casework is referred to under the next section of this affidavit.
26. On //date in full//, a Suitability Statement regarding the proposed guardian/s was prepared on behalf of the Secretary and signed by //full name of person// role of person//. A copy of the Suitability Statement is annexed and marked “//X//”.
27. On //date in full//, //full name of person// role of person//, provided the prospective guardian/s with //include list information that is provided to guardians or any referrals made// and discussed making a financial plan with the prospective guardians.
28. Before agreeing to guardianship and the financial plan it was explained to the prospective guardian/s that a guardianship order would have important legal implications for them and for the //first name of child// //the children//. It was also explained that financial support in the form of aftercare would not be available.
29. The prospective guardians were encouraged to obtain independent legal advice in relation to guardianship. [ it is important that you attach any file notes/emails or letters to evidence same or any record where the guardians advised that that they did not wish to obtain legal advice etc].

**UPDATE ON THE //CHILD’S/CHILDREN’S// CIRCUMSTANCES**

[This section of the affidavit should be used to show that the guardians are able to provide a safe, nurturing, stable and secure environment for the child or young person and will continue to do so in the future (see s. 79A(3)(b)). Copies of any reports on the health, educational or social well-being of the child or young person that are available and relevant to the Care Plan should also be annexed to this affidavit or the Care Plan (see s. 79B (8) (c)).

\*\*\*\* Once the guardianship assessment is more than 6 months old, note this and refer to details of any relevant casework undertaken from that date to evidence that the prospective guardians remain suitable persons and that guardianship remains the preferred permanency goal confirming no major changes have occurred. \*\*\*\*

30. //first name of child// //the children// Case Plan was reviewed on //date in full//. A copy of that Case Plan is is annexed and marked “//X//”.

31. I am satisfied that guardianship remains the preferred permanency goal for the //first name of child// //the children// and is in his/her/their best interests.
32. As part of my ongoing casework, I have conducted regular home visits with //child's first name/the children// and the prospective guardian/s. During these visits, I have observed //child's first name/the children//, 's interaction with the proposed guardian/s and have found that //child's first name/the children//, appear to have //describe the relationship// with the proposed guardian/s be settled and secure in their placement. I have annexed and marked “//X//” a copy of the file note of my home visit of //date//.

[You should annex recent home visit or other records that provides evidence of the child/young person's relationship with the prospective guardians such as, recording the caseworker's observations of the child/children's with the prospective guardians and that demonstrates that the prospective guardians will provide a safe, nurturing and secure environment.]

33. [If applicable] On //date in full//, // child's first name/the children// //was/were// assessed by //name of medical practitioner//. I have annexed and marked “//X//” a copy of that assessment.

[You should annex the most recent report from the child/children's medical practitioner if one is available. This may be the annual health review. You may annex additional documents if the child has a number of medical needs that are or have been treated by different medical practitioners. Consider whether it is necessary to redact this information where it identifies the child's location. Alternatively, these reports can be annexed to the child's Care Plan instead of the affidavit.]

34. //Child's first name/the children// is/are enrolled in //name of school//. I have annexed and marked “//X//” a copy of the child/children's school reports for //date//.

[If there is reason to believe that the disclosure of this information or any high level identification information, to the birth parents, would adversely affect the safety, welfare or well-being of the child/children, proposed guardians or a member of their family, then this information should not be included in the affidavit and should be redacted from any documents annexed – see s. 149I of the Care Act.]

35. [You should annex any other available reports that may be relevant to the child/children's health, school/educational or social well-being. Alternatively, these reports can be referred to here and a copy annexed to the child's new Care Plan].
36. [You should also annex any section 82 report filed within the last 2 years].

37. [The President of the Children's Court has requested that photographs of the child/children also be annexed. If a photograph is provided on any other annexure – such as a Care Plan or Case Plan or on a home visit record, then there is no need to annex this again here].

## **FAMILY TIME ARRANGEMENTS**

[Use this section to describe the current contact arrangements between the child/children and the birth parents. Identify whether there is any proposal to vary the current contact arrangements and what contact will look like post guardianship orders. Include any evidence and your opinion about whether the proposed guardians will be able to facilitate contact post orders without the support of the NGO or DCJ].

[The contact arrangements need to be set out in the child's new Care Plan. You must file a new Care Plan before the court will make a guardianship order. Wherever possible this Care Plan should be filed with this Application and this affidavit. If the Care Plan is ready to be filed with this affidavit, you may refer to that document below to evidence future contact arrangements]

\*\*\* if we intend to seek a contact order with the guardianship order, you will also set out the evidence for this here\*\*\*\*

[See examples below]

38. //Child's first name/the children// is/are previous Care Plans filed on //date in full//, outlined //unsupervised/supervised// family time arrangements between //child/the children// //the mother/the father// or the parents// to occur a minimum of //insert// times per year. [Create separate paragraphs in mother and father's contact is different].
39. [if applicable, refer to any contact order made in relation to the child/ren and indicate how contact progressed during and subsequent to its expiry].
40. [Indicate whether the frequency and duration of family time the child/ren are having with their parent/s is as per the Care Plan. Use separate paragraphs for each parent if these arrangements are different].
41. [If the family time is different from what was set out in the Care Plan (ie has it been reduced as a parent is not engaging or is in custody etc or it has increased) provide the details and dates of such changes].
42. //Child's first name/the children's// family time arrangements //is /was// supervised by //insert service provider// // until //date in full // when the prospective guardian/s commenced supervising family time.

43. The proposed guardian/s **has/have** not reported any recent concerns with the family time arrangements. **[Delete if inapplicable]**.
44. **[Include a paragraph as to the proposal for contact after the guardianship order is made (including frequency/duration/ if supervision is required and who will supervise/ will family time remain the same, increase, decrease or be subject to the child/guardians/parents wishes). Or refer to the relevant section of the new Care Plan that outlines these arrangements]**
45. From the date of the guardianship order, the prospective guardian/s will continue to supervise contact.
46. **[Describe the frequency and duration of face to face and telephone contact with any other significant persons who the child/ren are to have contact with (such as siblings etc) and indicate if and how the prospective guardians are able to facilitate after the guardianship order is made].**

## CARE PLAN

**[This section relates to the development of a **new** Care Plan which supports the permanency goal of guardianship. It is important that a Care Plan be developed and filed at the time of filing this application and affidavit ]**

47. On //date//, new Care Plan was developed for **child's name/each child**. A copy of that Care Plan has been filed with this application and affidavit.

## ABORIGINAL AND TORRES STRAIT ISLANDER PLACEMENT PRINCIPLES AND CULTURAL PLANNING **[delete if inapplicable]**

**[If a child is an Aboriginal or Torres Strait Islander the child's placement with the proposed guardian needs to comply with the Aboriginal and Torres Strait Islander Placement Principles at s.13 of the *Children and Young Person (Care and Protection) Act*, (s.79A(3)(c). Add evidence here of compliance, including Aboriginal consultation etc.)]**

48. **[include details to indicate that placement principles have been considered]**
49. **//Child's first name/the children's// cultural plan is set out in the Care and Cultural Plan filed with this Application.**
50. **//Add any evidence of how the prospective guardian/s has/have demonstrated that they have maintained the child's cultural connections to date// [Note: It is not necessary to include this evidence here if it is already included in the Care and Cultural Plan].**

## **BIRTH PARENTS' VIEWS ON GUARDIANSHIP [delete if inapplicable]**

[This section of the affidavit should include information on the birth parents' views on the guardianship application, if available. The parents are required to be given notice of the Application and have a right to be heard and participate in the proceedings.]

51. On //date//, I telephoned the //mother/father/ parents// OR met with the //mother/father/parents// in person to discuss DCJs' decision to seek a guardianship order for //child's first name/the children//. During this conversation, I explained to the //mother/father/parents// that he/she/they would receive a copy of the guardianship order and would have the opportunity to get some advice and to have the order explained to him/her at Court. The //mother/father/parents// said //"use the words of the parents"//. Other matters were also discussed. A copy of my file note of this conversation is annexed and marked ""//X//".
52. On //date//, //date// and //date//, I attempted to telephone/visit the //mother/father/parents// in order to discuss //abbreviated NGO's// decision to seek a guardianship order for the children. I was unable to reach them via telephone/home visit on each occasion. A copy of the file note records of my attempts is annexed and marked "//X//".
53. As of the date of //affirming/swearing// this affidavit, I have been unable to obtain the //mother/father/parents/ on the application.

## **CHILD/YOUNG PERSONS VIEWS ON GUARDIANSHIP**

54. [The Court will appoint a legal representative to act for the child or young person in relation to this application. The child/young person's legal representative will obtain the child's views. If the child is 12 or older, the child needs to give their consent to a guardianship order. If the child consents to the order, the child's legal representative will obtain and witness that consent. It is still appropriate for caseworkers to speak to the child prior to the matter going to court to ascertain the child's understanding and views on guardianship. This should be set out in the affidavit however the formal form of consent will be taken after proceedings have commenced and a DLR has been appointed.]

## **PREVIOUS CHILDREN'S COURT PROCEEDINGS**

[This section is for the purpose of assisting the court in making a finding of no realistic possibility of restoration to the parents. See below example.]

55. On //date//, //child's first name/the children// was/were //assumed/removed// from the care of the //mother/father/parents//.



56. On *//date//*, the Secretary filed an application, initiating care proceedings in the Children's Court at *//location//*.
57. On *//date//*, the Children's Court found that there was no realistic possibility of the children being restored to the care of the *//mother or father//*. Final orders were made as referred to in paragraph 7 above.

## Signature

Affirmed at *//location//*

Signature of deponent

Date *//date//*

Before me:

Name of witness

Capacity Justice of the Peace/ Solicitor ☐ Other [please specify]

Registration number

I certify the following matters concerning the person who made this affidavit (the deponent):

1. I saw the face of the deponent; or [delete whichever option if inapplicable]
- I did not see the face of the deponent because the deponent was wearing a face covering but I am satisfied that the deponent had a special justification for not removing the covering.

2. I have known the deponent for at least 12 months; or [delete whichever option if inapplicable]

I have confirmed the deponent's identity using the following identification document:

Identification document relied on:

3. I have signed a counterpart of the affidavit, or [delete whichever option is inapplicable]

I have countersigned a scanned copy of the signed affidavit sent to me electronically by the deponent,

having witnessed the signature by audio visual link in accordance with section 14G of the *Electronic Transactions Act 2000*.

Signature

Date *//date//*

[NOTE: The deponent and witness must sign each page of the Affidavit]