

Writing An Affidavit: Tips and An Example

Introduction

Writing to a court standard may be a new area of work for PSP Funded Service Providers. It is understandably daunting for many caseworkers including Department of Communities and Justice staff.

Most Caseworkers experienced in writing affidavits will tell you they learnt from making mistakes and having to fix them. Mistakes are part of learning.

No two affidavits will be the same, as they are specific to the circumstances of each child or young person (child) and family. However, there are some rules which you must follow to ensure your affidavit conforms to the court expectation for structure and composition.

To be legally admissible at court, an affidavit's must be:

- 'sworn' or 'affirmed' as true by the deponent (author)
- witnessed by an authorised person, which is usually a justice of the peace or legal practitioner.

Do not include your feelings or personal judgements in your affidavit

Affidavits must also:

- include all relevant facts
- be written in the first person using an active voice
- use the correct naming conventions
- use the child or family's own words
- use descriptions of what you saw and heard rather than conclusions
- provide context to situations which could be misinterpreted
- date all records and include the time of the event and who was present

- divide information under appropriate headings and sub-heading
- list information in chronological order using full concise sentences
- number pages and annexures
- summarise annexures in the body of the affidavit, and annex them in full.

Remember, our perceptions of events and conversations are seen through our own lens, impacted by our life experiences and beliefs. Caseworker affidavits have a significant influence over court outcomes – ensure you are self-reflective and just.

Language is the power your words have on practice. It frames whose view of reality you are accepting and presenting to the court

Include all relevant facts:

Affidavits should contain comprehensive facts only, not your feelings or opinions. The exception to this is if you are a qualified expert and the opinions are on matters within your area of expertise, like a court clinician's assessment.

In a child protection context, facts are things you saw, heard, smelt, tasted or could feel, or things you can demonstrate. Rather than drawing conclusions on conversations, describe what you saw and heard, for example instead of saying 'Amy was upset' say 'I saw Amy crying'.

Casework staff must include all relevant information in their affidavit, even if it doesn't support their preferred outcome or draws attention to poor casework. Deliberately omitting evidence, misleading the court or giving false evidence is perjury.

Tip: When writing about conversations in an affidavit include:

- when the conversation took place?
- where it took place?
- who was present?
- use the child, young person or parents own words when possible

Write in the first person using an active voice:

Writing in the first person means writing from the author's point of view.

I saw Fatima cry and her shoulders were shaking.

Writing in an active voice describes a sentence where the subject performs an action stated by the verb, for example:

Mr Jones kicked Pearl on her left shin.

Writing in the first-person active voice is important in affidavit writing because it describes events from the authors perspective and ensures descriptions are clear.

I went to Pearl's school and spoke to her NOT Pearl was spoken to at school.

Use correct naming conventions:

It is very important to use consistent naming conventions throughout an affidavit. The first time you reference a person, you need to use their full name (first, middle and surname) and then in brackets list the name you will refer to them as for the remainder of the affidavit, and their relationship to the child or young person who is the subject of the application. For children, this is usually their first name. For professionals and adults, it is usually Ms or Mr Surname. You also need to include the date of birth for all subject children and adults, to ensure they are correctly identified to the court.

Example child: Pearl Anna Oswald, born 23 May 2010 ("Pearl")

Example professional: Jane Smith (“Ms Smith”), DCJ Manager Casework

Be mindful not to give more than one person the same abbreviation, especially when referencing grandparents.

You should use these same naming conventions for any abbreviated word in your affidavit. For example, the first time you refer to DCJ, write: The Department of Communities and Justice (DCJ) and then you can use DCJ for the remainder of the affidavit.

Use headings and list information in chronological order and be concise:

Affidavits can become very lengthy. To keep information clear, affidavits have a prescribed format:

- number each paragraph
- use headings and sub-headings to cluster similar information
- list facts chronologically within each heading
- use full sentences but be concise – every paragraph should describe an event or issue.
- tables can be useful to make information clear.

It is expected that the first few paragraphs of an affidavit will follow a similar format, that is:

1. who you work for and how long you have worked there?
2. the qualifications you hold
3. your relationship to the subject child or young person and the length of that relationship
4. who you report to
5. confirm you have access to records on the subject child or young person
6. affirm that the contents of the affidavit are true.

Number pages and annexures correctly:

Sequencing pages and annexures in affidavits is very important, as it helps to structure complex (and often lengthy) information and enables solicitors to quickly direct the magistrate to specific information:

- the pages of the affidavit must be sequenced numerically, i.e., page 1, page 2, page 3. Do not include annexures in this sequence.
- the pages of each individual annexure must be numbered numerically with the first page of each annexure being page 1.
- Annexures must be sequenced alphabetically, i.e., Annexure A, Annexure B, Annexure C. If there are more than 26 annexures, the 27th will be Annexure AA, and the 28th will be Annexure BB.

Annexures:

When referencing an annexure in the body of an affidavit write:

“Annexed hereto and marked “A” is a copy of.....”

Annexures must then be summarised, so the reader of the affidavit gets an understanding of the results before reading the full annexure.

Each annexure attached must have the following introduction:

“This page and the following _ page/s comprise/s of the document referred to as Annexure _ 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]”.

Some people prefer to use an annexure cover sheet * per annexure, as not all annexures will have room for the introduction.

For more information about affidavits see the [Affidavit: The Basics](#) factsheet.

Below is a fictional example of a high-quality affidavit.

**IN THE CHILDREN'S COURT
OF NEW SOUTH WALES
AT PORT MACQUARIE**

CASE NUMBER 2018/000111

Affidavit

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

Children and young person

Name Pearl Anna Oswald
23 May 2010

Application details

Type of application Care Application
Date application filed 28 March 2018

Affidavit

Name Sharon Porter
Address Short Street, Port Macquarie NSW, 2444
Date affirmed 29 June 2018

I affirm:

1. I am employed as a Caseworker at Department of Communities and Justice (“DCJ”) in Port Macquarie. I have been employed as a caseworker since 18 July 2015.
2. I hold a Bachelor of Social Studies from Southern Cross University and will complete a Master of Social Work at Deakin University by the end of 2018.

3. I have had, since 30 May 2017, and continue to have, the day to day responsibility for the casework in relation to Pearl Anna Oswald born 23 May 2010 (“Pearl”). My Manager is Jane Smith (“Ms Smith”).
4. I have access to the DCJ records relating to Pearl. I have read those files. Information referred to in this affidavit that is not known to me personally is contained in those records.
5. All information referred to in this affidavit is true and correct to the best of my knowledge.

Family Relationships

6. Sheree Oswald born 3 December 1987 (“Ms Oswald”) is the mother of Pearl.
7. Blake King born 6 January 1980 (“Mr King”) is the father of Pearl.
8. Ellen King born 7 March 1948 (“Ms King”) is the paternal grandmother of Pearl.
9. Tiara King born 24 October 1994 (“Tiara”) is the paternal half sibling of Pearl and Pearl’s current carer.
10. Elvis McNee born 10 November 1995 (“Elvis”) is Tiara’s husband and co-carer of Pearl.

11. Alex McNee born 12 February 2010 (“Alex”) is the son of Tiara and Elvis

12. Jenny Baker born 22 December 2000 (“Jenny”) is the paternal half sibling of Pearl.

Current proceedings

13. On 2 April 2018, an interim order was made by Port Macquarie Children’s Court allocating all aspects of parental responsibility for Pearl to the Minister for Department of Communities and Justice until further order.

14. On 30 April 2018, a finding was made by Port Macquarie Children’s Court that Pearl was a child in need of care and protection; and the matter adjourned to enable DCJ to carry out further assessment of the parents in light of the objectives set out in the Summary of Proposed Plan.

Pearl’s placement

15. Following her removal on 25 March 2018, Pearl was placed into an emergency placement with DCJ authorised carers in the Coffs Harbour area as there were no available placements in the Port Macquarie area.

16. On 4 April 2018, Pearl was transitioned to a placement with authorised carers with Wesley Dalmar, a PSP Funded Service Provider, in Port Macquarie. This placement ended unexpectedly on 17 April 2018 by reason of the death of one of the carers. No

other local placements were available and Pearl was subsequently moved to an emergency placement in Grafton.

17. On 15 May 2018, Pearl was transitioned to her current placement with Tiara and Elvis in Port Macquarie following their provisional authorisation as kinship carers.

18. Since 15 May 2018, I have carried out four home visits to Pearl in her placement with Tiara and Elvis, spending, on average, an hour there on each visit, talking to Pearl and her carers. On each occasion, being 18 May 2018, 25 May 2018, 8 June 2018 and 25 June 2018, I have observed Pearl as being happy and content in her placement with Tiara and Elvis. My observations of the interaction between Pearl, Tiara, Elvis and Alex suggest that Pearl has quickly developed a close and loving relationship with the family. Annexed and marked "A" is a copy of the home visit records.

Pearl's health, education and birth certificate

19. Upon coming into care in March 2018, Pearl was referred for an Out of Home Care Health Pathways assessment. She was determined to be in generally good health but needs extensive dental work. She has since attended an initial appointment with her dentist for urgent fillings and has more appointments scheduled in the next three months for less urgent work.

20. Since moving to her current placement in May 2018, Pearl has been enrolled at Eastport Primary School, the same school which Alex attends. On 28 June 2018, I had a telephone conversation with Mr Arnold, Pearl's teacher, who said to me words to the following effect:

“Pearl has settled in really well and despite being a little below what we would expect when she started is now generally in the mid-range of achievement. She gets on well with the other students and appears to have made some close friends”.

21. On 28 June 2018, I received a copy of Pearl’s birth certificate which shows that – previously unknown to DCJ – her middle name is “Anna”. Annexed hereto and marked with the letter “**B**” is a copy of the birth certificate. I have amended DCJ’s records accordingly and request that the Court’s file name be amended to reflect Pearl’s full name as registered.

Contact arrangements

22. On coming into care in March 2018, a contact schedule was devised for supervised weekly contact between Pearl and her mother, Ms Oswald. Pearl has had supervised contact with Ms Oswald on 8 occasions being 2 April 2018, 9 April 2018, 16 April 2018, 10 May 2018, 17 May 2018, 24 May 2018, 31 May 2018, 7 June 2018, 14 June 2018 and 28 June 2018. On each occasion, contact has run for approximately two hours.

23. Ms Oswald has missed three contact occasions: on 23 April 2018, she cancelled contact saying that she was unwell; on 30 April 2018, she missed the train to Grafton and contact could not proceed; and on 21 June 2018, she did not provide advance warning that she would not attend. I was subsequently advised by Ms Oswald that there had been an incident between her and Mr King a few days prior which prevented her from attending contact on that date. I give evidence about this incident subsequently herein.

24. Contact is generally supervised by an agency, Care Alternatives, and a report about each contact has been sent to DCJ. On the basis of those reports, which I have read, and my observations in the contact which I personally supervised on 28 June 2018, it appears that contact has been positive. Ms Oswald and Pearl have a close and warm relationship; and Ms Oswald is able to engage with Pearl for extended periods and to attend to her needs during the contact. Ms Oswald usually brings small gifts for Pearl and activities, such as games and colouring books, which they can do together. Copies of the supervised contact reports can be made available on request.
25. On coming into care in March 2018, Pearl's father, Mr King, was in jail, in Sydney, bail refused, with a provisional AVO in force which contained a condition that he not contact either Ms Oswald or Pearl. Accordingly, it was not then considered appropriate to arrange a contact schedule for him and Pearl.
26. Although Mr King was bailed and released from jail on 14 June 2018, he has since been taken back into custody after being charged with breach AVO and assault of Ms Oswald on 18 June 2018. I give evidence about this incident subsequently herein.
27. Pearl has had contact with her extended family on several occasions since entering her placement with Tiara and Elvis. This has included contact with Ms King and Jenny and is arranged directly between them and the carers.

Ms Oswald's progress in meeting the objectives outlined in the Summary Proposed Plan

28. The Summary Proposed Plan required that Ms Oswald:

- (a) demonstrate through supervised drug screens her abstinence from unlawful drug use;
- (b) maintain engagement with services including but not limited to FACS, Helping Hands Women's DV Assistance, Drug & Alcohol and Port Macquarie Neighbourhood Centre; and
- (c) not be involved in any incidents of domestic violence

Annexed hereto and marked with the letter "C" is a copy of Summary proposed Plan filed on 16 April 2018.

(a) Compliance with supervised drug screens

29. On 18 April 2018, Ms Oswald signed an agreement to participate in supervised random urinary drug screens ("UDS"). It was a condition of that agreement that Ms Oswald would be notified about the UDS by text message; and that any failure, without good reason, to attend for UDS as required would be treated as a test positive for drug use. Annexed hereto and marked with the letter "D" is a copy of that agreement dated 18 April 2018.

30. I required Ms Oswald, by text message sent to her mobile phone, to attend for random UDS on 12 occasions being 19 April 2018, 26 April 2018, 2 May 2018, 11 May

2018, 16 May 2018, 24 May 2018, 1 June 2018, 5 June 2018, 8 June 2018, 13 June 2018, 20 June 2018 and 26 June 2018.

31. Of the 12 required attendances, Ms Oswald missed 3 appointments without explanation; tested positive for methamphetamine on 5 occasions; and provided clean screens on 3 occasions. Details are provided below. Annexed hereto and marked with the letter “E” is a copy of the UDS results provided to FACS for the occasions on which Ms Oswald attended.

32. On 19 April 2018, Ms Oswald tested positive for methamphetamine.

33. On 26 April 2018, Ms Oswald tested positive for methamphetamine.

34. On 2 May 2018, Ms Oswald tested positive for methamphetamine.

35. On 11 May 2018, Ms Oswald provided a clean screen.

36. On 16 May 2018, Ms Oswald provided a clean screen.

37. On 24 May 2018, Ms Oswald provided a clean screen.

38. On 1 June 2018, Ms Oswald provided a clean screen.

39. On 5 June 2018, Ms Oswald did not attend for UDS and did not provide an explanation.
40. On 8 June 2018, Ms Oswald tested positive for methamphetamine.
41. On 13 June 2018, Ms Oswald tested positive for methamphetamine.
42. On 20 June 2018, Ms Oswald did not attend for UDS and did not provide an explanation.
43. On 26 June 2018, Ms Oswald did not attend for UDS and did not provide an explanation.

(b) Engagement with services

44. On 18 April 2018, I had a meeting with Ms Oswald and to discuss the objectives outlined in the Summary proposed Plan. It was in this meeting that Ms Oswald signed the agreement to undergo UDS. I also provided Ms Oswald with information about and referrals to a number of services which I believed might be able to assist her in addressing some of the issues which has led to Pearl's entry into care including, specifically, the DV service and the Neighbourhood Centre to provide assistance with parenting programs. Ms Oswald said to me words to the following effect: *"I am going straight down there to sign up for the courses. I want to be the best mother I can be for Pearl"*.

45. On 9 May 2018, I had a further meeting with Ms Oswald. She said to me words to the following effect: *“I have started a 6 week DV course at helping Hands; it started last week. I have also signed up with the Neighbourhood Centre to do the Triple P and Circle of Security parenting courses. They both start next week. Mr King kept ringing me from jail so I reported it to the Police as a breach of the AVO. I have also changed my mobile number”*. She then provided me with her new mobile number.
46. On 8 June 2018, I telephoned the Helping Hands DV service to enquire about Ms Oswald’s progress. I spoke to the Coordinator who said to me words to the following effect: *“Ms Oswald signed up to do the course in early May and attended the first two sessions but we haven’t seen her since that time. I left a few messages on her phone but she didn’t call back”*.
47. On 8 June 2018, I telephoned the Neighbourhood Centre to enquire about Ms Oswald’s progress in the parenting courses. The Coordinator said to me words to the following effect: *“Ms Oswald signed up to do the courses in early May and attended the first two sessions but we haven’t seen her since early June”*.
48. As a result of this information, I attempted to contact Ms Oswald by phone on 11 June 2018, 14 June 2018 and 15 June 2018. On each occasion I left a voice message when the call went to message bank; and I also forwarded text messages asking her to call me urgently. I did not receive any response.
49. On 20 June 2018, in company with Caseworker Robin Fox, I attended Ms Oswald’s home. I knocked several times without answer and we were about to leave when the door opened and Ms Oswald appeared. She was unsteady on her feet and was

hanging on to the door frame as if for support. I noticed a bruise on her face. Her eyes were red and her pupils dilated. When she recognised me, she said words to the following effect: *“Please go away. I’m not feeling well. I will come and see you tomorrow or the next day”*. Her speech was slurred. This was quite different to her usual presentation on the previous occasions I have seen her.

50. I could see past her into the living room and I noticed what appeared to be a bong on the table. I formed the view, based on her presentation and what I had seen, that she was affected by some substance and made the decision that it was not appropriate to continue to talk to her further. I said words to the following effect: *“OK, Sheree, we’ll go, but please come and see me soon. We need to talk about what’s going on with you at the moment”*.

51. Later that day, I received a telephone call from someone who identified themselves as being a concerned resident in the street in which Ms Oswald lives. This person said to me words to the effect: *“I know you took her daughter into care; you should know that the Police were there again a couple of days ago and arrested her no-good partner for assaulting her again”*.

52. On 22 June 2018, I received a response from NSW Police to an urgent request for information which I had made the previous day under Chapter 16A, seeking updated information about Mr King and Ms Oswald. According to the information provided, there had been no report made by Ms Oswald to Police about an alleged breach of AVO committed by Mr King while in gaol, as she had told me on 9 May 2018.

53. Furthermore, the information showed that Mr King had been released from gaol on 14 June 2018 but had been subsequently arrested and placed on remand after being charged with a breach AVO and assault of Ms Oswald on 18 June 2018. The information recorded by Police alleged that Mr King had been arrested at Ms Oswald's house on 18 June 2018; that both appeared to be affected by drugs; that Ms Oswald was bleeding from a cut to her forehead; and that Ms Oswald alleged to Police that she had allowed Mr King to stay at her house because he had nowhere else to go; but that he became violent when she refused to have sex with him and asked him to leave. I have requested but not received consent from Police to annex the 16A response to this Affidavit.

54. On 25 June 2018, Ms Oswald came to see me at the Port Macquarie CSC. Caseworker Antrobus took contemporaneous notes. I said to her: "*Tell me what happened on 18 June 2018*". She said to me words to the following effect: "*I was at home and suddenly he burst in through the door and started to attack me. He kept saying that I was the reason that he had been sent to prison. I started screaming and someone must have called the Police*".

55. I said to Ms Oswald words to the following effect: "*Sheree, I've seen the Police records. They say that you told them that you invited him there as he had nowhere to go; and that you were both affected by drugs. You need to tell me the truth*".

56. Ms Oswald started to cry and said words to the following effect: "*I'm sorry, I thought if I told you the truth I would never get Pearl back. I've been lonely and felt sorry for him and he kept saying that he'd changed and was ready to be a proper partner and father again after his time in prison. He had a little bit of ice that someone had given him and we agreed that we would just have a taste and start over again clean the*

next day. It was only after he had been there a few hours that he turned nasty when I told him that I didn't want to sleep with him that night. I'm so sorry. That's why I didn't come to contact on 21 June, because I felt so bad about what happened; and why I am like I am today. Please give me another chance. It was only that one day that I took ice."

57. I said to her words to the effect: "*Sheree, I have your UDS results for 8 June and 13 June 2018. They were both positive for methamphetamine. And you didn't show up for the screen on 20 June either. It wasn't just that one day was it?*"

58. Ms Oswald started crying again and didn't answer my question.

Future Plans for the child

59. On 28 June 2018, I participated in a meeting involving my manager, Jane Smith, Casework Specialist Trudy Valentine and Manager Client Services, Frank Johns. A collective decision was made that, in light of the events described herein, restoration of Pearl to either of her parents is not a realistic possibility at present.

60. Accordingly, on 29 June 2018, I made a referral to seek a Guardianship assessment report in relation to Tiara and Elvis for long term care of Pearl; and a further referral for a Family Group Conference ("FGC") to discuss that and other possible options. I have since been advised that the likely timeframe for receipt of the guardianship assessment is 4 to 6 weeks; and between 6 and 8 weeks for the convening of a FGC.

Signature

Affirmed at

Signature of deponent

Date

Before me:

Name of witness

Capacity Justice of the Peace 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

Signature

Date

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