

Affidavits

The *Childrens Court Rules 1997* dictate what an affidavit should look like, and the information that it should contain. A Form 25 is the prescribed form for Childrens Court matters. In most cases a departmental officer is the applicant, and the information provided in an affidavit is aimed at supporting the application.

The CSO is responsible, in consultation with a court coordinator, for providing an acceptable standard of evidentiary material and ensuring that the most relevant information is before the court to inform the court's decision.

Note: The information contained in the application form for a child protection order is an unsworn document and is not considered evidence. Therefore, the applicant can **not** rely solely on it. Further, and **only** where necessary (for example, where something relevant and/or significant has occurred necessitating updating the court) for a subsequent mention date, the CSO will file an affidavit outlining any updated evidence during the adjournment period.

Roles and responsibilities

The applicant for a matter is responsible for the completion of an affidavit as supporting material for the application.

The CSO with case responsibility, is responsible for the completion of an affidavit for subsequent mention dates, to assist the court with updated evidence during the adjournment period – for example, a 'supplementary affidavit'.

The court co-ordinator is responsible for ensuring:

- the correct structure and format are used
- the content provides the best evidence and is consistent with the nature of the order applied for.

The team leader is responsible for approving the content of the affidavit.

Writing the affidavit

An affidavit outlines the evidence of the case to the court. It is important to set the scene and to ensure the evidence is written in a clear manner, without departmental jargon, so that the child's parents, the court and all relevant legal representatives are able to understand the content.

The following information is provided to guide and assist departmental officers in the process of completing an affidavit:

A. Purpose of an affidavit

When drafting an affidavit, the CSO needs to keep in mind:

- that an affidavit tells the story of a matter to someone who knows nothing about it, and who has little time to get across the relevant and pertinent issues
- wherever possible, the affidavit should be simple to read and easy to follow
- that the reader does not have the same level of knowledge of the case that you do, and therefore, the affidavit must 'set the scene'.

B. Establishing the grounds of the application

The affidavit outlines the following evidence, taking into consideration the *Child Protection Act 1999*, section 9, 10, 59 and 61:

- what the child protection concerns are – wherever possible, this should be 'new' information and should not merely duplicate 'old' information (the court is interested only in what justifies the current application and not what was used to justify a previous application)
- why the child is in need of protection
- why the order sought is the least intrusive – for example, the most appropriate, taking into account all the circumstances
- the case plan for the child
- the evidence you are relying on to support your decision-making
- wherever possible, the child's views and wishes in regards to the child protection order sought.

Where the application is in relation to an Aboriginal or Torres Strait Islander child, the affidavit also includes evidence relating to the requirements of the *Child Protection Act 1999*, section 6 and 83.

Do's when completing an affidavit

- ask yourself, why do you want that information before the court?
- why is it relevant?
- what does it tell the court?
- is the information your best evidence, or do you need to seek further reports, affidavits or assessments?
- consider seeking affidavits from persons who have direct knowledge about the matter – at the time of seeking these affidavits, advise the author of their likelihood to be subpoenaed, or required for cross examination by other parties should the application proceed
- inform the other parties (parent/s legal representatives and the separate representative) of the department's assessment, and what order you are seeking.

Do not's when completing an affidavit

- do not simply include a paragraph by paragraph summary of events on the file since you have had responsibility for the matter
- do not only attach or include a case history (for example, a copy and paste case notes) of a family into an affidavit without ensuring relevance and whether it supports the application
- do not identify notifier details in the affidavit, in accordance with the confidentiality provisions of the *Child Protection Act 1999*, section 186.

C. Contents and structure of an affidavit

1. Basic chronology

A chronology is a good starting point for working on your affidavit. A basic timeline (which you should be able to establish from your file notes) will give you the skeleton outline of what you need to cover.

At this point you need to:

- establish who, what, why and how
- outline relevant dates, names of parties and places.

The above details are what lawyers and the court will be interested in. If it is not there, you will be asked about it.

Note: If you do not have **direct** knowledge of this information, then the chronology should be exhibited to your affidavit, with a brief summary contained in the body of the affidavit, linking the relevance of the chronology to the application.

2. Headings

Use headings to assist in understanding, but carefully consider whether headings placed at random (for example, family group meetings) actually break the flow of the story and make it disjointed.

Other options could be to bold the words family group meeting where they appear in the text of the affidavit to make them easy to find or cross refer the reader to other paragraphs of the affidavit where you deal with family group meetings. Requiring the reader to move all over the document should be avoided.

3. Family trees (genograms)

Ask the question, with complex family units, do you need to exhibit a family tree? The answer is **yes** because:

- you are telling the other parties, and ultimately the decision-maker, 'who is who' in this family
- providing this detail from the outset helps, especially with issues like sibling or extended family member contact.

Note: Wherever possible, provide full names, dates of birth, ages and clearly define relationships between family members – for example, biological father, half brother or step sister.

D. Case plans

Attach a current case plan for the child and summarise the key points to ensure you explain why you seek the current proposed order.

Ensure that the affidavit clearly outlines the rationale for the case planning and the order sought.

Ensure that the case plan goal, outcomes and actions match the child protection order sought and address the stated child protection concerns.

Note: The *Child Protection Act 1999*, section 59, requires that an order should not be made without a case plan. A case plan will evolve over time and may need to change and adapt to the family's progression. A thorough and detailed case plan may mean that a matter can settle and will get the support of the parent's legal representative and the separate representative, so that a hearing is unnecessary and the application can be dealt with in a timely manner.

E. Rationale for current application being the 'least intrusive' order

Be clear that 'least intrusive' does not mean that you should not be seeking a long-term order. Be realistic, and with thorough case planning, it will be easier to determine the appropriate order to seek.

Remember that the ultimate question is whether the order you seek addresses the child protection concerns, and clearly justify why that is so. The principles of the *Child Protection Act 1999*, section 5, need to be addressed, and ultimately ask, what is in this child's best interests?