

# FAMILY LAW REVIEW

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## ARTICLES

### **Family law affidavits – Justice Stephen Thackray**

This article is an edited version of a paper given at a practitioners' conference on the drafting of affidavits, prior to the introduction of the "less adversarial" procedures. Attention is drawn to relevant provisions of the *Family Law Act* and *Family Law Rules*. Practitioners are given hints about drafting affidavits that are likely to assist the ultimate consumer – the judge. Some examples of poorly drafted affidavits are given to provide guidance about what not to include in an affidavit. The author recognises the focus is on practice in Western Australia, where routinely "the practitioner" is both solicitor and counsel – and only some of the judges are "feral". ..... 65

### **Use of affidavits in the Family Court – Peter Hannan**

Trials in the Family Court are usually conducted on affidavits, with oral evidence confined to cross-examination and re-examination. In that sense Family Court trials are "paper trials" much like commercial trials in the State Supreme Courts when conducted using witness statements. That said "trial on affidavit" raises some peculiar evidential and forensic issues – which are often not considered in the standard works on evidence and trial advocacy. Those standard works tend to focus on the traditional common law trial where evidence in chief is adduced by question and answer. As with most other courts, interlocutory applications in the Family Court are conducted on affidavit evidence. Again, the use of affidavits, even in an interlocutory context, raises peculiar evidential and forensic issues which have been left largely untouched by the standard textbooks. The aim of this article is to provide practical guidance on the law relating to evidence adduced by affidavit in the Family Court, both at trial and on the hearing of interlocutory applications. .... 72

### **Judges receiving evidence directly from children – Justice Robert Benjamin**

Since 1976, Family Court judges in Australia have been generally reluctant to see children to ascertain their views. This article explores the concept of judges obtaining children's views directly from them and considers the advantages thereof and the reasons why judges may be reluctant. The author, a judge in the Family Court of Australia, discusses examples of proceedings where he has seen children directly, and looks at approaches adopted by different countries' courts, particularly the Family Court of New Zealand. .... 99

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