

MAGISTRATES COURT FACT SHEET 47

AFFIDAVITS IN THE MAGISTRATES COURT

This fact sheet explains how to make and witness affidavits for use in the Magistrates Court of Western Australia.

What is an Affidavit?

An affidavit is a written statement prepared by a party, or a witness, which may be tendered as evidence to the Magistrates Court. An affidavit must be sworn or affirmed before an authorised witness.

Unless another written law provides otherwise, an affidavit for any purpose in Western Australia must be made in accordance with the provisions of the *Oaths, Affidavits and Statutory Declarations Act 2005 (WA)*.

How is an Affidavit made?

For a legally binding affidavit, the affidavit must conclude with a statement (known as a jurat) that specifies whether the affidavit was sworn or affirmed (by the person making the affidavit) in the presence of an authorised witness, and also specify where and when it was sworn or affirmed.

Once the written statement is prepared, the person who is making the affidavit must:

- (a) sign or personally mark the jurat, and each other page of the affidavit;
- (b) sign or initial any alteration (such as an insertion or erasure that has been made to the affidavit); and
- (c) in the presence of an authorised witness, say orally on oath, or orally affirm:
 - i. that he or she is the person named as the maker of the affidavit;
 - ii. that the contents of the affidavit are true;
 - iii. that the signature or mark is his or hers; and
 - iv. if necessary, that any attachment to the affidavit is the attachment referred to in it.

The person making the affidavit can sign each page of the affidavit and any alterations in the absence of the authorised witness.

The Magistrates Court cannot assist you in preparing an affidavit. Should you require assistance in preparing an affidavit, please seek independent legal advice.

Witnessing the affidavit:

After the person making the affidavit has:

- (a) signed the jurat, each page of the affidavit, and initialled any alterations; and
- (b) sworn or affirmed that he/she is the maker of the affidavit, and included any attachments,

Who can witness an affidavit?

The authorised witness must:

- (a) under or near the jurat, sign or personally mark the affidavit;
- (b) imprint or clearly write his/her name and qualification as an authorised witness; and
- (c) sign each page of the affidavit, initialling any alterations next to the initial of the maker.

For a legal practitioner, you must identify that you hold a current practice certificate, and have practiced law for at least two (2) years.

For a Justice of the Peace, you should include your registration number next to your signature.

An authorised witness for an affidavit that is made at a place within Western Australia is:

- (a) a Justice of the Peace;
- (b) an experienced legal practitioner, who has not participated in preparing the affidavit, or in the proceedings which the affidavit is intended to be used; or
- (c) a public notary; or
- (d) any registrar or clerk of a court, and any mining registrar.

Court authorised witnesses:

In the Magistrates Court of Western Australia, the Chief Magistrate has appointed some of the Court's staff to be a Court authorised witness for the Magistrates Court.

Those staff members are Registrars and Deputy Registrars, and may administer an oath or affirmation in or for any proceedings in the Magistrates Court. The appointment by the Chief Magistrate allows Deputy Registrars in the Magistrates Court to witness any affidavit that is made for use in the Magistrates Court.

What is an Oath?

The affidavit must be sworn or affirmed (by a person making the affidavit) in the presence of an authorised person.

OATH:

An oath is a solemn declaration to tell the truth, and makes reference to religion/God. When making an oath, it requires the deponent to understand the consequences of taking the oath, and that their conscience is bound.

In the Magistrates Court, an oath may begin with one of the following sentences:

- (a) "I swear by almighty God..."; or
- (b) "I swear by [*name of a deity recognised by his or her religion*] ..."; or
- (c) "I swear, according to the religion and beliefs I profess, ...".

What is an Affirmation?

AFFIRMATION:

An affirmation is a verbal, solemn and formal declaration that is made in place of an oath. The affirmation does not make reference to religion/God, and an affirmation has the same effect as an oath.

In the Magistrates Court, an affirmation usually begins with the following sentence: "I sincerely declare and affirm...", which

How to administer an oath/ affirmation:

replaces the first sentence of the oath.

The affidavit must be sworn or affirmed (by the person making the affidavit), in the presence of the authorised witness. The authorised witness will require the person making the affidavit to say aloud the words of the oath/affirmation, either by repeating them after the authorised witness, or by requiring the person making the affidavit to read the oath or affirmation. The wording of the oath/ affirmation will vary as follows:

Oath (Affidavit no attachments):

"I swear by Almighty God that this is my name and my signature, and the contents of this, my affidavit are true and correct".

Oath (Affidavit with attachments):

"I swear by Almighty God that this is my name and my signature, and that these are the exhibits or annexure referred to in my affidavit, and the contents of this, my affidavit are true and correct".

Affirmation (Affidavit no attachments):

"I sincerely declare and affirm that this is my name and my signature, and the contents of this, my affidavit are true and correct".

Affirmation (Affidavit with attachments):

"I sincerely declare and affirm that this is my name and my signature, and that these are the exhibits or annexure referred to in my affidavit, and the contents of this, my affidavit are true and correct".

When administering the Oath, the authorised witness may require that the person making the affidavit hold or touch a religious text (acceptable to the person making the affidavit).

Affidavits by blind or illiterate persons:

If the person making the affidavit is blind or illiterate, the authorised witness for the affidavit must:

- (a) read the document aloud to the person making the affidavit, or cause the document to be read aloud to the person making the affidavit, in the authorised witness' presence;
- (b) the authorised witness must satisfy themselves that the person making the affidavit understood what was read aloud; and
- (c) certify on the affidavit that:
 - i. the affidavit was read aloud to the person making the affidavit; and
 - ii. that the authorised witness is satisfied that the person making the affidavit understood what was read aloud.

Affidavits made by persons where English is not their first language:

Where the person making the affidavits first language is not English, they may make the affidavit in a language other than English, however, the affidavit is not admissible in the Magistrates Court unless:

- (a) the affidavit is translated into English by a suitably qualified translator; and
- (b) the translator makes an affidavit that:
 - i. sets out his/her qualifications as a translator;
 - ii. says the English translation is accurate; and
 - iii. has the English translation attached to it.

Example affidavit:

Please refer to the example affidavit overleaf.

This is a guide only. The content is subject to change.

If you are unsure about any of the information in this fact sheet, contact your nearest Court registry or seek legal advice.

Example: Form 2 – General Form of Affidavit

MAGISTRATES COURT of WESTERN AUSTRALIA (CIVIL JURISDICTION) GENERAL FORM OF AFFIDAVIT FORM 2	
Registry: Central Law Courts Phone: (08) 9425 2222 Fax: (08) 9425 2777	Case number: MINOR/1234/2019
Claimant	Adam Jones
Defendant	ABCD PTY LTD T/AS - ABCD FOODS

I, Adam Jones of
123 Jones Street, Perth in the State of Western Australia
 (full name and address) Customer Service Officer (occupation)

NOTE: (A)
 Deponent &
 Registrar's initials
 adjacent to
 each correction

(* Delete as applicable)
 having been duly sworn*affirmed* say on oath*affirm* the following:
 1. I am the Claimant (description of party) in this case.
 2. [Insert affidavit content here]

SWORN/AFFIRMED
 at East Perth this 10th day
 of May 20 19 in the presence of
James Edward Thompson [Signature]
 Registrar/Justice of the Peace/other authorised witness
Magistrates Court of Western Australia
[Signature] Deponent

NOTE: (D)
 Deponent's signature

NOTE: (C)
 Authorised witness
 signature

Each page is to be dated and signed by the person making the affidavit and the witness.

NOTE: (B)
 Authorised
 witness
 qualifications

Tick [-] appropriate box

Lodged by	<input checked="" type="checkbox"/> Claimant
	<input type="checkbox"/> Defendant or defendant's lawyer
	<input type="checkbox"/> Other
Address for service	<u>123 Jones Street</u> <u>Perth WA 6000</u>
Contact details	Telephone: <u>9123 456</u> Lawyer's ref: <u>-</u> Fax: <u>-</u> E mail: <u>aj@email.com.au</u>

as at 01/09/2008

NOTE: (E)
 Lodging parties
 details, including their
 address for service