

Oaths, Affidavits and Statutory Declarations Bill 2005

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Western Australia

LEGISLATIVE COUNCIL

**Oaths, Affidavits and Statutory Declarations
Bill 2005**

A Bill for

**An Act about oaths, affidavits and statutory declarations and for
related purposes.**

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Oaths, Affidavits and Statutory Declarations Act 2005*.

5 **2. Commencement**

This Act comes into operation on a day fixed by proclamation.

3. Interpretation

In this Act, unless the contrary intention appears —

“prescribed consular official” means —

- 10
- (a) an Australian Consular Officer, or an Australian Diplomatic Officer, within the meaning of the *Consular Fees Act 1955* of the Commonwealth;
 - (b) a British consul or vice consul; or
 - (c) an official prescribed by the regulations to be a
- 15 prescribed consular official.

Part 2 — Oaths and related matters

4. Oaths, general form of

- 5 (1) If under this Act or any other law or the exercise of the Royal Prerogative a person has to take an oath, the form of the oath is to begin with one of the following, according to the person's preference —
- (a) I swear by Almighty God...;
- (b) I swear by [*name of a deity recognised by his or her religion*]...;
- 10 (c) I swear, according to the religion and the beliefs I profess,
- (2) The fact that at the time of taking an oath a person has no religious belief does not affect the validity of the oath.
- (3) Despite subsection (1) a person who has to take an oath may take an oath in any form or manner that he or she wants if the person before whom he or she is to take the oath is satisfied that —
- 15 (a) the oath will bind the person's conscience; and
- (b) the person understands the consequences of taking an oath.
- 20 (4) An oath taken under subsection (3) has the same force and effect as an oath taken under subsection (1).

5. Affirmation may be made instead of oath

- 25 (1) If under this Act or any other law or the exercise of the Royal Prerogative a person has to or may take an oath, the person is entitled to affirm instead.
- (2) If under this Act or any other law or the exercise of the Royal Prerogative a person has to take an oath and —
- 30 (a) the person says that the taking of an oath is contrary to his or her religious belief or conscience;

- 5
- (b) it is not reasonably practicable, without inconvenience or delay, at the time when and place where the oath has to be taken, to administer to the person an oath in a manner and form that will bind the person's conscience; or
 - (c) for any other sufficient reason the taking of an oath is found not to be appropriate,

the person may be required to affirm instead.

10 (3) An affirmation made instead of an oath has the same force and effect as the oath.

(4) The form of the affirmation is as follows —

I sincerely declare and affirm ... ,

which words replace those set out in section 4(1) as the beginning of any oath.

15 **6. Oaths and affirmations, who may administer**

(1) When a person appears as a witness before a court or a person acting judicially, any oath or affirmation the witness has to take or make may be administered or taken —

20 (a) in the case of a witness before a court, by the judicial officer who is presiding in the court or by a person on the staff of the court or of the judicial officer who is authorised to do so by the judicial officer; or

(b) in the case of a witness before a person acting judicially, by that person.

25 (2) Any registrar or clerk of a court, and any mining registrar appointed under the *Mining Act 1978*, may administer an oath to or take the affirmation of any person for any purpose.

(3) Any person who may lawfully administer an oath to a person may instead take the affirmation of the person.

7. Oaths and affirmations, how administered

- (1) Subject to section 4(3), the person (“**A**”) administering an oath to another person (“**B**”) must require B, in the presence of A —
- 5 (a) to hold or touch a religious text acceptable to B or, in the absence of such a religious text, to hold up one of B’s hands; and
- (b) to say aloud the words of the oath, either by repeating them after A or by reading them.
- (2) The person (“**A**”) taking the affirmation of another person
- 10 (“**B**”) must require B, in the presence of A, to say aloud the words of the affirmation, either by repeating them after A or by reading them.

Part 3 — Affidavits

8. Definitions

In this Part —

5 “**experienced lawyer**” means a legal practitioner who has held a practice certificate for at least 2 years and who holds a current practice certificate;

“**practice certificate**” has the meaning given by the *Legal Practice Act 2003*.

9. Affidavits, how made

10 (1) Unless another written law provides otherwise, an affidavit for any purpose in this State must be made in accordance with this section.

(2) The affidavit must conclude with a statement that says —

15 (a) it is sworn or affirmed, as the case requires, by the person making it in the presence of an authorised witness; and

(b) where and when it is sworn or affirmed.

(3) The person who is making the affidavit must —

20 (a) sign or personally mark the statement required by subsection (2) 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 —

25 (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

30 (iv) if necessary, that any attachment to the affidavit is the attachment referred to in it.

- (4) The requirements of subsection (3)(a) and (b) need not be complied with in the presence of an authorised witness.
- (5) After the maker has complied with subsection (3)(c), the authorised witness must —
- 5 (a) under or near the statement required by subsection (2) —
- (i) sign or personally mark the affidavit; and
- (ii) imprint or clearly write his or her name and qualification as an authorised witness;
- 10 (b) sign or personally mark each other page of the affidavit; and
- (c) sign or initial any alteration in the affidavit that has been signed or initialled by the maker.
- (6) An authorised witness for an affidavit that is made at a place within Western Australia is —
- 15 (a) a Justice of the Peace;
- (b) an experienced lawyer, unless excluded by subsection (7);
- (c) a public notary within the meaning of the *Public Notaries Act 1979*; or
- 20 (d) any person referred to in section 6(2).
- (7) An experienced lawyer who has participated in any way in preparing an affidavit, or in the proceedings in which an affidavit is intended to be used, is not an authorised witness for the affidavit.
- 25 (8) An authorised witness for an affidavit that is made at a place outside Western Australia is —
- (a) a judge of a court of that place, or a magistrate or justice of the peace of or for that place;
- 30 (b) a notary public;

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(c) a prescribed consular official who is performing official functions at that place; or

(d) a person who has authority under the law of that place to administer an oath to another person.

5 (9) Subsections (6), (7) and (8) do not affect any other written law that expressly provides for an affidavit to be made before a person other than a person referred to in the subsections.

10. Court authorised witness may witness affidavit for use in court

10 (1) In this section —

“chief judicial officer” —

(a) of the Supreme Court, means the Chief Justice;

(b) of the District Court, means the Chief Judge of the court;

15 (c) of the Family Court, means the Chief Judge of the court;

(d) of the Magistrates Court, means the Chief Magistrate of the court;

20 (e) of the Children’s Court, means the President of the Court;

“court staff” of a court, includes any person employed as an associate, orderly or other assistant to a judicial officer of the court.

25 (2) The chief judicial officer of a court may appoint any person who is on the court’s staff but who, under section 9(6), is not an authorised witness for affidavits, to be a court authorised witness for the court, and may at any time cancel such an appointment.

30 (3) The appointment must be in writing and be kept in the court’s records.

- (4) A person's appointment as a court authorised witness ceases when the person ceases to be on the court's staff or when it is cancelled by the chief judicial officer of the court, whichever happens first.
- 5 (5) For the purposes of section 9, a court authorised witness is an authorised witness for any affidavit that is made for use in the court for which the officer is appointed and section 9, with any necessary changes, applies accordingly.

Part 4 — Statutory declarations

11. When a statutory declaration may be made

- 5
- (1) A person may make a statutory declaration about any matter at any time, for any purpose and without the need for any legal authority to do so other than this section.
 - (2) Subsection (1) does not affect the operation of any law that requires a person to make a statutory declaration for a purpose.

12. Statutory declarations, how made

- 10
- (1) Unless another written law provides otherwise, a statutory declaration for any purpose in this State must be made in accordance with this section.
 - (2) The statutory declaration must be in the form in Schedule 1.
 - (3) The person who is making the statutory declaration must —
 - 15 (a) sign or personally mark the statutory declaration;
 - (b) sign or initial any alteration, such as an insertion or erasure, that has been made to the statutory declaration; and
 - (c) in the presence of an authorised witness declare orally —
 - 20 (i) that he or she is the person named as the maker of the statutory declaration;
 - (ii) that the contents of the statutory declaration are true;
 - (iii) that the signature or mark is his or hers; and
 - 25 (iv) if necessary, that any attachment to the statutory declaration is the attachment referred to in it.
 - (4) The requirements of subsection (3)(a) and (b) need not be complied with in the presence of an authorised witness.

- (5) After the maker has complied with subsection (3)(c), the authorised witness must —
- (a) sign or personally mark the statutory declaration;
 - (b) sign or initial any alteration in the statutory declaration that has been signed or initialled by the maker; and
 - (c) imprint or clearly write his or her name and qualification as an authorised witness.
- (6) An authorised witness for a statutory declaration is —
- (a) for a statutory declaration that is made at a place in Western Australia —
 - (i) any person described in the second column of Schedule 2; or
 - (ii) any person before whom, under the *Statutory Declarations Act 1959* of the Commonwealth, a statutory declaration may be made;
 - (b) for a statutory declaration that is made at a place outside Western Australia but within Australia —
 - (i) any person who, under the law of that place, has authority to take or receive a statutory, solemn or other declaration; or
 - (ii) any person before whom, under the *Statutory Declarations Act 1959* of the Commonwealth, a statutory declaration may be made;
 - (c) for a statutory declaration that is made at any other place —
 - (i) a prescribed consular official who is performing official functions at that place;
 - (ii) a person who is a justice or notary public under the law of that place;
 - (iii) a person who has authority under the law of that place to administer an oath to another person or to take, receive or witness a statutory, solemn or other declaration.

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- (7) Regulations may amend Schedule 2 by adding a new item to it or by deleting or amending an item in it.

Part 5 — Miscellaneous

13. Affidavits and declarations by blind or illiterate people

- 5 (1) If the person making an affidavit or statutory declaration is blind or illiterate, the authorised witness for the document must —
- (a) read the document aloud to the person, or cause the document to be read aloud to the person in the authorised witness's presence;
- 10 (b) satisfy himself or herself that the person understood what was read aloud; and
- (c) certify on the document —
- (i) that the document was read aloud to the person; and
- 15 (ii) that the authorised witness is satisfied that the person understood what was read aloud.
- (2) Subsection (1) is additional to section 9 or 12, as the case may be.

14. Affidavits and declarations by people not conversant with English

- 20 (1) If the person making an affidavit is not sufficiently conversant with English to be able to make the affidavit in English, the person may make the affidavit in another language but the affidavit is not admissible in a court or by a person acting judicially unless —
- 25 (a) the affidavit is translated into written English by a suitably qualified translator; and
- (b) the translator makes an affidavit —
- (i) that sets out his or her qualifications as a translator;
- 30 (ii) that says the English translation is accurate; and
- (iii) that has the English translation attached to it.

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- (2) Subsection (1), with any necessary changes, applies to and in respect of a statutory declaration as if each reference in the subsection to “affidavit” were a reference to “statutory declaration”.

5 **15. Rubber stamp signatures not to be used**

- (1) A person who is the maker of, or the witness to, an affidavit or statutory declaration must not use a rubber or other stamp to make the person’s signature or personal mark.

- 10 (2) Subsection (1) does not prevent a person from using a rubber or other stamp on an affidavit or statutory declaration to imprint the person’s name near the person’s signature or mark to identify whose signature or mark it is.

- 15 (3) An affidavit or statutory declaration that is signed by the maker or witness with a rubber stamp is not admissible in a court or by a person acting judicially.

16. Non-compliance with form or procedure, effect of

- 20 (1) The validity of an oath, affirmation or statutory declaration is not affected by the fact that the person taking or making it does not use the exact words required as long as the words actually used do not materially affect the substance of the exact words and are not likely to mislead.

- 25 (2) The validity of an oath, affirmation, affidavit or statutory declaration is not affected by the fact that the required procedure for taking or making it is not followed exactly as long as the procedure actually followed substantially complies with the required procedure.

17. Pretending to be an authorised witness, offence of

5 If a person who is not an authorised witness for affidavits or for statutory declarations pretends to be, or asserts that he or she is, such an authorised witness in the knowledge that he or she is not, the person commits an offence.

Penalty: Imprisonment for 12 months.

18. Regulations

10 The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.

Schedule 1 — Form of statutory declaration

[s. 12]

I,

[name, address and occupation of person making the declaration]

5

sincerely declare as follows —

[insert content of the statutory declaration; use numbered paragraphs if content is long]

This declaration is true and I know that it is an offence to make a declaration knowing that it is false in a material particular.

10

This declaration is made under the *Oaths, Affidavits and Statutory Declarations Act 2005* at *[place]* on *[date]* by —

[Signature of person making the declaration]

in the presence of —

[Signature of authorised witness]

15

[Name of authorised witness and qualification as such a witness]

**Schedule 2 — Authorised witnesses for statutory
declarations**

[s. 12(6)(a)]

Item	Formal description	Informal description
1.	A member of the academic staff of an institution established under any of the following Acts — <ul style="list-style-type: none">• <i>Curtin University of Technology Act 1966</i>;• <i>Edith Cowan University Act 1984</i>;• <i>Murdoch University Act 1973</i>;• <i>University of Notre Dame Australia Act 1989</i>;• <i>University of Western Australia Act 1911</i>;• <i>Vocational Education and Training Act 1996</i>.	Academic (post-secondary institution)
2.	A member of any of the following bodies — <ul style="list-style-type: none">• Association of Taxation and Management Accountants (ACN 002 876 208);• CPA Australia (ACN 008 392 452);• The Institute of Chartered Accountants in Australia (ARBN 084 642 571);• National Institute of Accountants (ACN 004 130 643);• National Tax & Accountants' Association Limited (ACN 057 551 854).	Accountant
3.	A person who is registered under the <i>Architects Act 2004</i> .	Architect
4.	An Australian Consular Officer within the meaning of the <i>Consular Fees Act 1955</i> of the Commonwealth.	Australian Consular Officer
5.	An Australian Diplomatic Officer within the meaning of the <i>Consular Fees Act 1955</i> of the Commonwealth.	Australian Diplomatic Officer
6.	A bailiff appointed under the <i>Civil Judgments Enforcement Act 2004</i> .	Bailiff

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Schedule 2 Authorised witnesses for statutory declarations

Item	Formal description	Informal description
7.	A person appointed to be in charge of the head office or any branch office of an authorised deposit-taking institution carrying on business in the State under the <i>Banking Act 1959</i> of the Commonwealth.	Bank manager
8.	A member of Chartered Secretaries Australia Limited (ACN 008 615 950).	Chartered secretary
9.	A pharmaceutical chemist within the meaning of the <i>Pharmacy Act 1964</i> .	Chemist
10.	A chiropractor within the meaning of the <i>Chiropractors Act 1964</i> .	Chiropractor
11.	A person registered as an auditor or a liquidator under the <i>Corporations Act 2001</i> of the Commonwealth.	Company auditor or liquidator
12.	A judge, master, magistrate, registrar or clerk, or the chief executive officer, of any court of the State or the Commonwealth.	Court officer
13.	A member of the Australian Defence Force who is — <ul style="list-style-type: none">• an officer within the meaning of the <i>Defence Force Discipline Act 1982</i> of the Commonwealth;• a non-commissioned officer within the meaning of that Act with 5 or more years of continuous service; or• a warrant officer within the meaning of that Act.	Defence force officer
14.	A dentist within the meaning of the <i>Dental Act 1939</i> .	Dentist
15.	A medical practitioner within the meaning of the <i>Medical Act 1894</i> .	Doctor
16.	A member of the Institution of Engineers, Australia, other than at the grade of student.	Engineer

Item	Formal description	Informal description
17.	The secretary of an organisation of employees or employers that is registered under one of the following Acts — <ul style="list-style-type: none"> • <i>Industrial Relations Act 1979</i>; • <i>Workplace Relations Act 1996</i> of the Commonwealth. 	Industrial organisation secretary
18.	A member of the National Insurance Brokers Association of Australia (ACN 006 093 849).	Insurance broker
19.	A Justice of the Peace.	Justice of the Peace
20.	A legal practitioner within the meaning of the <i>Legal Practice Act 2003</i> .	Lawyer
21.	The chief executive officer or deputy chief executive officer of a local government.	Local government CEO or deputy CEO
22.	A member of the council of a local government within the meaning of the <i>Local Government Act 1995</i> .	Local government councillor
23.	A member of the Australasian Institute of Chartered Loss Adjusters (ACN 074 804 167).	Loss adjuster
24.	An authorised celebrant within the meaning of the <i>Marriage Act 1961</i> of the Commonwealth.	Marriage celebrant
25.	A member of either House of Parliament of the State or of the Commonwealth.	Member of Parliament
26.	A minister of religion registered under Part IV Division 1 of the <i>Marriage Act 1961</i> of the Commonwealth.	Minister of religion
27.	A nurse within the meaning of the <i>Nurses Act 1992</i> .	Nurse
28.	A registered optometrist within the meaning of the <i>Optometrists Act 1940</i> .	Optometrist
29.	A registered patent attorney under the <i>Patents Act 1990</i> of the Commonwealth.	Patent attorney
30.	A physiotherapist within the meaning of the <i>Physiotherapists Act 1950</i> .	Physiotherapist
31.	A podiatrist within the meaning of the <i>Podiatrists Registration Act 1984</i> .	Podiatrist
32.	A police officer.	Police officer

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Schedule 2 Authorised witnesses for statutory declarations

Item	Formal description	Informal description
33.	The person in charge of an office established by, or conducted by an agent of, Australia Post within the meaning of the <i>Australian Postal Corporation Act 1989</i> of the Commonwealth.	Post office manager
34.	A registered psychologist within the meaning of the <i>Psychologists Registration Act 1976</i> .	Psychologist
35.	A public notary within the meaning of the <i>Public Notaries Act 1979</i> .	Public notary
36.	An officer of the Commonwealth public service.	Public servant (Commonwealth)
37.	A person who is employed under the <i>Public Sector Management Act 1994</i> Part 3.	Public servant (State)
38.	The holder of a licence under the <i>Real Estate and Business Agents Act 1978</i> .	Real estate agent
39.	The holder of a licence under the <i>Settlement Agents Act 1981</i> .	Settlement agent
40.	The Sheriff of Western Australia and any deputy sheriff appointed by the Sheriff of Western Australia.	Sheriff or deputy sheriff
41.	A licensed surveyor within the meaning of the <i>Licensed Surveyors Act 1909</i> .	Surveyor
42.	A person employed as a member of the teaching staff within the meaning of the <i>School Education Act 1999</i> or as a teacher of a non-government school within the meaning of that Act.	Teacher
43.	A member, registrar or clerk, or the chief executive officer, of any tribunal of the State or the Commonwealth.	Tribunal officer
44.	A registered veterinary surgeon within the meaning of the <i>Veterinary Surgeons Act 1960</i> .	Veterinary surgeon



Defined Terms

*[This is a list of terms defined and the provisions where they are defined.
The list is not part of the law.]*

<u>Defined Term</u>	<u>Provision(s)</u>
chief judicial officer	10(1)
court staff.....	10(1)
experienced lawyer.....	8
practice certificate	8
prescribed consular official.....	3