



# Information Fact Sheet 2a

## Family Court of WA Affidavit Information Sheet

### Introduction

The Family Court of Western Australia (FCWA) is a state court that deals with family law matters including divorce, and parenting and/or property/financial disputes. The parties to a proceeding will be required to file applications and other documents, including affidavits that must be sworn or affirmed before an authorised witness, such as a Justice of the Peace (JP).

Certain family law legislation sets out the requirements for the preparation of FCWA documents, including affidavits, however the procedures set out in the Oaths, Affidavits and Statutory Declarations Act 2005 (WA) for witnessing affidavits should be followed by JPs when dealing with affidavits prepared for use in the FCWA. Relevant legislation includes:

- The *Family Court Act 1997* (WA)
- The *Family Law Act 1975* (Cth)
- The Family Court Rules 2021 (WA)
- The FCWA Case Management Guidelines.

### Documents used in the Family Court of Western Australia

**Applications:** These forms gather information to facilitate the application process. A number of FCWA applications contain an affidavit that confirms the truthfulness and accuracy of the information provided. The affidavit must be sworn or affirmed before an authorised witness. Examples of such documentation include the [Application for Exemption from Fees \(Financial Hardship\)](#) and the [Application for Consent Orders](#).

**Affidavits:** Formal written statements of facts that may be used as evidence in court. Typically, an affidavit is submitted in support of an application or response, though they can stand alone. An affidavit must contain factual information, exclude opinions, and be sworn or affirmed before an authorised witness. Examples include the [General Affidavit](#), the [Affidavit for eFiling Application \(Divorce\)](#), and the [Affidavit of Service](#).

## Preparation of an Affidavit

There are some general rules about how a party should complete a [General Affidavit](#).

- The affidavit must be typed. Handwritten affidavits may be accepted only in circumstances of urgency, usually involving some immediate threat of harm to a child.
- The affidavit must be divided into numbered paragraphs.
- If the deponent intends to rely on a document as evidence, it may be attached to the affidavit. The attachment must then be referenced in the affidavit. The JP should confirm with the deponent that the documents are attached and referenced.
- Each attachment should be referred to in the affidavit by a letter, number, or a combination of both. This unique identifier must then be noted on the first page of each attachment.
- Each page of the affidavit and attachments must be numbered consecutively from the affidavit's first page to the last page of the final attachment.
- There are rules, and the court can make orders, about the length of affidavits and number of attachments allowed.
- Coversheets are not required for FCWA affidavit attachments.
- Previously, multiple copies of the affidavit had to be witnessed; this requirement no longer applies as the FCWA forms are uploaded/lodged via the eCourts Portal of WA.

## Witnessing the Affidavit

- Every affidavit submitted to the FCWA must be sworn or affirmed by the deponent in the presence of an authorised witness, such as a JP.
- The deponent will choose to make either an oath or affirmation, cross out the non-preferred option, and initial the cross-out.
- The jurat must be signed by the deponent and witnessed by the JP.
- The deponent and the JP must both initial any alterations, corrections, additions, or cross-outs in the affidavit.
- Depending on the document, the deponent and JP may be required to sign multiple pages of the affidavit. For example, the deponent and the JP must sign the bottom of each page of a [General Affidavit](#) in the designated area

## The Deponent is Incapable of Signing

Where the deponent is illiterate, blind or physically incapable of signing, the JP is to certify, at the end of the affidavit, that:

- a) the affidavit was read to the deponent;
- b) the deponent appeared to understand the affidavit; and
- c) for a deponent who is physically incapable of signing, that the deponent indicated that the contents of their affidavit are true

## Non-English-Speaking Deponents

If the deponent does not have an adequate command of English, an interpretation or translation of the affidavit and the oath must be read or given in writing to the deponent in a language that they understand.

The affidavit template will need to include an additional jurat including a certification from the interpreter. The JP will witness the additional affidavit completed by the interpreter or translator. The [Affidavit \(for non-English speaking person\)](#) template is available on the FCWA website.

## Common Documents Used by the FCWA

### [Affidavit for eFiling Application \(Divorce\)](#)

FCWA divorce applications are completed electronically via a web-based “wizard” application.

In this process, the party/parties answer a series of questions, and the form is ‘built’ from the responses provided. When parties have completed the questions, they are required to download and print a draft copy of their divorce application to show to the authorised person who will witness their signature on their affidavit. The application will include a ‘preview’ watermark.

The party must take their draft application and an Affidavit for eFiling Application (Divorce) to an authorised witness for signing. If the parties are filing a joint application, both applicants are required to sign a copy of the affidavit. The parties do not need to attend together to have the document witnessed and can sign separate affidavits.

Clause 4 of the affidavit confirms that the deponent has shown the application preview to the JP:

*4. I have shown my Divorce application to the authorised witness.*

If a physical copy of the application is unavailable when signing, the deponent may show the JP a copy by accessing the eCourts Portal of WA on a laptop or mobile device (including ‘phone).

If the deponent insists that the affidavit be signed without the preview application form being available, and the JP finds the situation uncomfortable or aggressive, they may strike through Clause 4. The deponent and the JP will need to initial the strikethrough and sign the jurat.

The deponent should be informed that the Registrar has sole discretion over dealing with their Divorce Application with the affidavit in this amended form, and that a refusal to show the application to the JP may delay the divorce process.

## General Affidavit

- Ensure the deponent has sequentially numbered each page, from the first page of the affidavit to the last page of the attachments (if any).
- The swear/affirm option appears twice on page 1, where the deponent's name is written, and where the date of witnessing is noted. Cross out the option that is not required, and both the JP and deponent are to initial next to the amendment.
- The deponent and witness must sign at the bottom of each page in the designated area.
- Complete the jurat.

## Case Information Affidavit (Form NP3)

- An 11-page application that concludes with an affidavit on page 11.
- Witnessing each page of the application is not required.
- Witness the jurat.

## Affidavit of Service (Form 7)

- Confirm that the person signing as the deponent is the server noted on the affidavit in **Part A**.
- Confirm that the documents referred to in **Part B** have been served, and all served documents are noted. Some servers may incorrectly request witnessing before serving the documents.
- Confirm which method of service was used in **Part C**.
- Sign each page of the affidavit.
- Complete the jurat on the appropriate page as noted in **Part C**, either **Part D** Service by hand or **Part E** Service by post or electronic communication.

## Application for Consent Orders (Form 11)

- The applicant and respondent do not need to attend together to have the application witnessed. They may choose to have the document witnessed at another time, in a different location, or before a different JP.
- The applicant and respondent are to sign each page of the application; this does not need to be done in the presence of the JP.
- The applicant must sign the affidavit in **Part I: Affidavit of Applicant**.
- The respondent must sign the affidavit in **Part J: Affidavit of Respondent**.
- Complete the jurat.

## [Application for exemption from fees – financial hardship \(Form NP14\)](#)

- An affidavit is found on the last page of the application in **Part G: Affidavit of Applicant**.
- The application pages do not need to be witnessed.
- Complete the jurat.

### **Other FCWA documents containing an affidavit:**

- [Affidavit of Proof of Identity](#)
- [Affidavit of Proof of Signature](#)
- [Financial Statement \(Form 13\)](#)
- [Financial Statement \(PPP500\)](#)
- [Case Information Affidavit \(PPP500\)](#)
- [Affidavit of Translation of Marriage Certificate](#)
- [Affidavit of Translation](#)
- [Notice of Child Abuse and Family Violence \(or Risk\) \(Form 4\)](#)
- [Response to an Application for Divorce \(Form 3A\)](#)
- [Application – Contravention \(Form 18\)](#)
- [Application – Contempt \(Form 19\)](#)

PDF and WORD copies of these documents are all available on the [FCWA website](#).

The information on this Fact Sheet has been approved by the Family Court of Western Australia and is offered as a guide only.

For any queries, you may contact:

Justices of the Peace Branch

GPO Box F317

PERTH WA 6841

Phone: 9425 2524

Email: [jps@justice.wa.gov.au](mailto:jps@justice.wa.gov.au)