



## Evidence

### Information for Parties and Representatives

#### What is evidence?

Evidence is the information or material you present to the Court to support your case. This is usually in the form of witness testimony and documents.

If you tell the Court that something happened or is true, you must provide evidence of this. For example, if you are alleging that you worked 40 hours but were only paid for 30 hours, relevant evidence could include:

- Witness testimony evidence from yourself of working 40 hours and witness testimony of a co-worker who saw you working the 40 hours; and
- Document evidence of your pay slip showing you were paid for 30 hours.

It is your responsibility to prepare any evidence you intend to rely upon prior to trial.

Generally, the Court will follow set rules as to what evidence can be presented at trial and how it is to be presented. This is to ensure hearings are fair and decided on reliable evidence relevant to the matter. To be relevant, evidence must go towards proving a fact in dispute between the parties.

#### Discovery

Discovery is a process where each party gives to the other party any documents that are relevant to the case. Documents are discoverable whether they support a party's case or not. Discovery helps to avoid surprise, puts parties on an equal footing, highlights the issue(s) in dispute and is intended to promote a fair hearing for both sides. Discovery can be informal or formal.

- **Informal discovery** means the parties will discuss which documents they are able to provide to each other. They then provide each other with copies of the documents by agreement. Once a party has received a document, it is up to them whether they use it in their case. Parties may prefer this process because they do not have to comply with strict deadlines imposed by the Court, and they have greater control over the types of documents they can exchange.
- **Formal discovery** is where the Court makes orders requiring the parties to provide documents within set timeframes. Orders for discovery are often made by the Clerk of the Court if a matter does not settle at pre-trial conference. You can also make an application to the Court for formal discovery orders by lodging a [Form 6 – Application and supporting Form 7 – Affidavit](#).

#### Documents

Documents are any written, printed, or electronic materials that are presented to the Court to support or challenge a party's case. This may include contracts, pay slips, bank statements, text messages, emails, letters, reports, invoices, or any other records relevant to the issue(s) in dispute.

Documents submitted as evidence are usually attached to a witness statement. Documents, not attached to a witness statement, that you intend to provide as evidence at trial need to be lodged with the Court. The Court will make orders as to how and when these documents can be lodged. You should bring copies of all lodged documents with you to the trial.

If a document is not in English and you wish to rely upon it, then you are required to have it translated by a certified translator. The original document, its translation and the translator's certificate need to be lodged with the Court prior to trial.

## Witnesses

Witnesses have direct knowledge of events relevant to your case. They give evidence by telling the Court what they saw or heard. Witness evidence is provided by submitting written witness statements and/or by appearing in person to answer questions during a hearing. You can summons a witness who may be reluctant to appear. You can be a witness in your own case.

Witnesses are required to make an oath or affirmation when giving evidence. An oath or affirmation is a promise to tell the truth when giving evidence to the Court.

- **Oaths** require the witness to swear upon a religious text. If a witness wishes to swear upon a particular religious text, then the party relying on that witness should notify the Court of the text prior to the hearing.
- **Affirmations** involve the same promise without a religious text.

**Witness statement.** A witness statement details evidence to be given by that person. Each witness must have a separate witness statement. The witness statement needs to clearly state the identity of the witness and the nature of their relationship to the party(s). It must be written in numbered paragraphs and attach copies of any documents referred to in the witness statement. Witness statements must be lodged with the Court and attached to a [Form 29 – Multipurpose Form](#) under the heading 'Witness Statement of [insert the name of the witness]'. The witness statement should be in English or be translated by a certified translator and lodged with the Court together with the original statement.

**Oral evidence.** Witnesses may be examined-in-chief and re-examined (asked questions) by the party that called them and may be cross-examined (asked questions) by the opposing party to test their evidence. You should bring copies of the witness statements for all your witnesses to the trial.

- **Examination-in-chief** is where the party who calls the witness has an opportunity to ask the witness questions. If you are calling the witness, you should hand them a copy of their witness statement once they are in the witness box and ask them if their witness statement is true and correct, and if there are any changes or corrections they would like to make. There are some restrictions on the types of questions that can be asked. Questions cannot be leading. Another restriction is that questions must not be about matters that have no relevance to the issue(s) in dispute, unless the purpose of the question is to challenge the credibility of the witness. Sometimes the Court will order that the witness statement will take the place of the witness providing evidence-in-chief.
- **Cross-examination** is an opportunity for a party to test the evidence given by the other side's witnesses. Only one person is allowed to cross-examine a witness and leading questions are permitted. If you are cross-examining a witness, you must put to the witness the ways your case contradicts their evidence. You must give the witness an opportunity to comment on any evidence they might have an opinion on. If you do not put every relevant piece of evidence to the witness when you are cross-examining that witness, the Court may conclude that you do not challenge the witness' evidence on that point.

- **Re-examination** is an opportunity for the party who called the witness to clarify, explain or qualify any aspects of evidence the witness gave during cross-examination. You must not ask leading questions during re-examination.
- **Leading questions** are worded in a way that suggests an answer. The opposing party may object to a leading question. If an objection is sustained by the Court, the party may be asked to reword the question so that it is not leading.

An example of a leading question: "Didn't you see me working 40 hours last week?".

An example of a non-leading questions: "Did you see me work last week?" (Answer: "Yes") and "How many hours did you see me working last week?" (Answer: "40 hours").

## Submissions

Submissions are the factual and legal arguments that each party will make at hearing. The Court may ask parties to lodge a written outline of submissions, which means they should file a written summary of the arguments they will make at the hearing. At the hearing, each party can make brief opening submissions. At the end of the hearing, each party will have a further opportunity to highlight or explain various aspects of the evidence.

## Need more information?

Other Fact Sheets are available:

- [Hearings Fact Sheet](#)
- [Pre-trial Conferences Fact Sheet](#)
- [Audio and Video Link Attendance Fact Sheet](#)

And further information is available at the Court's website: [www.imc.wa.gov.au](http://www.imc.wa.gov.au).

The Registry can be contacted on (08) 9420 4467 or [registry@wairc.wa.gov.au](mailto:registry@wairc.wa.gov.au).

Court staff cannot give legal advice or opinion on the merits of any claim or potential claim. However, they can give information on:

- The processes of the Court.
- How to lodge forms.
- Other organisations that may be able to assist you.

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*The contents of this document should be used as a general guide only. This document is not intended to be an authority to be used in support of a case at hearing. This document is not a substitute for independent professional advice and users should obtain any appropriate professional advice relevant to their particular circumstances.*