

# **INQUIRY INTO OATHS AND AFFIRMATIONS WITH REFERENCE TO THE MULTICULTURAL COMMUNITY**

## **PURPOSE:**

To provide a submission on behalf of the Magistrates' Court Victoria, to the Victorian Parliament Law Reform Committee, in relation to an Inquiry the Committee is undertaking into the oaths and affirmations with reference to the multicultural community in Victoria

## **BACKGROUND:**

An information sheet has been provided by the Committee, which specifies the Terms of Reference.

## **TERMS OF REFERENCE:**

The following submissions are made on behalf of the Magistrates' Court Victoria, which seeks to assist the Committee with its Inquiry.

**The information set out in the information sheet covering the current law on oaths and affirmations , swearing an oath and making an affirmation is correct.**

### **The significance of sacred texts to witnesses, other parties and jury members of particular faiths.**

An oath or affirmation is considered binding on the person making it and should not be entered into lightly or haphazardly, therefore it is vital that a deponent is fully aware of the importance of such oath or affirmation and their consequences.

Very clear and concise direction and written material is made available to all Court staff who deal with the taking of oaths, affirmations and declarations. A registrar's manual provides the procedures and rituals relating to the taking of oaths, affidavits, affirmations and statutory declarations, The various forms of the oaths and affirmations are spelt out along with the proper procedures and rituals to be taken when administering them.

The Manual is accessible to all staff, in paper form (Attachment 1) and in the Magistrates' Court Resource Centre (Attachment 2).

### **The provisions of a sufficient range of appropriate texts and minimum standards in this regard for all Victorian jurisdictions.**

All Magistrates' Courts throughout Victoria (includes Supreme Court, County Court, Children's Court, Coroners Court and Tribunals when sitting in country and metropolitan courts) are directed to retain a copy of the Bible and the Koran. Instructions are given to ensure that the handling of these texts are in the appropriate manner, for example the Koran must not be handled by non-believers unless covered by cloth.

There are no guidelines to a Court Officer to make a deponent aware of their right to take a culturally appropriate form of oath or affirmation. If a witness states he/she has no religious belief or taking the oath is contrary to a religious belief the magistrate determines the relevant form of oath or affirmation. Some magistrates advise deponents of the impact of taking an oath or affirmation and that they are bound by the evidence they are giving.

It is the view of the court that information should be provided to witnesses on the meaning of an oath, affirmation and the different forms of oaths. Witnesses should be asked if they feel bound by a particular form of oath or affirmation. In discussing this view concern was expressed that some people may not desire to reveal their religion to a packed court room.

### **The provision of cultural awareness training to all court staff and persons before whom affidavits are sworn.**

The Magistrates' Court undertakes intensive training for all staff.

Qualified and non-qualified Registrars' undertake extensive on-the-job training, which assists to increase their cultural awareness and appreciation of the needs of diverse members within the community.

During initial training, Trainee Clerks of Court are required to undertake and participate in an Induction program. During this time Trainees participate in a 'Moot Court', where they are required to swear witnesses using the various oaths including the interpreter's oath. They are also shown a 'Bad Bench Clerk' video that, in part, covers the swearing in of witnesses with a limited understanding of the English language.

Trainees are also required to attend a number of compulsory training courses. These include 'Client Services' training and a 'Working with Diversity' course, where one component includes assisting people from a non-English speaking background.

Current training initiatives are designed to adequately meet the requirements of staff so as to ensure the efficient service delivery to all members of the public.

There is at least one session on cultural diversity at the regular magistrates information sessions.

Bail Justices trained by the training staff of the Magistrates Court are also given information about appropriate oaths and affirmations.

### **Accessibility and diversity of classes of people currently permitted to witness affidavits and statutory declarations.**

Qualified staff appointed to witness affidavits and declarations are done so on a need basis to ensure adequate numbers are available to all members of the community. Prior to the appointment, staff must demonstrate an ability to assist all court-users including the diverse ethnic communities that exist in Victoria.

The court does not see a distinction between witnessing a statutory declaration and witnessing an affidavit/taking a sworn statement. Therefore the various professional groups should be entitled to also witness affidavits.

### **English as a second language and other issues.**

Court staff are directed to ensure that a deponent adequately understands the consequences of taking an oath. If it is apparent that this is not the case and it is determined that the deponent has an insufficient understanding of the English language, the services of an interpreter is called upon. Interpreters used in a court room are to be qualified at NATI level 3. Interpreters outside the courtroom should be at least NATI level 2. In criminal cases, Victims of Crime Assistance Tribunal matters and Crimes Family Violence hearings the informant or the court will organise an interpreter and the cost of an interpreter is borne by the Court. In civil cases parties are responsible for organising the attendance of an interpreter and the costs are awarded against the unsuccessful party. If an unrepresented party in a civil case requires an interpreter the court will organise for an interpreter to attend.

**The court does not believe that swearing on the bible, as the principal form of oath, is justified on the grounds of tradition. As previously stated each person should take a form of oath, or an affirmation, which they believe binds them to tell the truth.**

### **SUMMARY:**

The practices and procedures of the Magistrates' Court are bound by the legislation that governs it. The evidence taking process is determined by the *Evidence Act*, which the Court acts upon. As an oath or affirmation is binding on the person making it, it is for the Court to ensure that not only is a deponent made aware of this, but that the procedures and rituals relevant to the process are followed in accordance to the legislation.

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