

Making a Statutory Declaration

Explaining the Oaths and Affirmations Act 2018

This information sheet explains how to make a statutory declaration in Victoria in accordance with the *Oaths and Affirmations Act 2018*.

New laws

The laws about making a statutory declaration will change on 1 March 2019 when the *Oaths and Affirmations Act 2018* commences. There will be new laws about what must be in a statutory declaration, who can witness it and the penalties for false statutory declarations.

From 1 March 2019 to 1 January 2020, if a person makes a statutory declaration under the old laws (under the *Evidence (Miscellaneous Provisions) Act 1958*), the statutory declaration will still be valid.

After 1 January 2020, a statutory declaration made on the “old” form will no longer be valid.

What is a statutory declaration?

A statutory declaration is a legal document, the contents of which a person declares, in the presence of an authorised witness, to be true and correct. It is a criminal offence to make a false statutory declaration. The maximum penalty is 600 penalty units or five years imprisonment or both.

It is useful to check whether the organisation for which the statutory declaration is being prepared has any specific witnessing requirements.

Who can witness a statutory declaration?

There is a range of people who are authorised under the Act to witness statutory declarations. For a full list of who is authorised to witness statutory declarations, refer to the attached list titled “*Authorised Statutory Declaration Witnesses*”.

How is a valid statutory declaration made?

The person making the statutory declaration and the person witnessing the statutory declaration must be together and in front of one another. Each person must:

- sign or initial any changes that have been made to the original statutory declaration,
- sign or initial each page of the statutory declaration, and
- sign and date the statutory declaration.

The person making the statutory declaration must say, in front of the witness:

- I, [full name of person making declaration] of [address], declare that the contents of this statutory declaration are true and correct.

The person making the statutory declaration must, in the section provided on the form, legibly write, type or stamp their name, address and occupation on the statutory declaration.

The person witnessing the statutory declaration must, in the section provided on the form, sign and write, type or stamp their name, personal or professional address (professional address is preferred), and their qualification as a statutory declaration witness.

Example

[signature]

Jenny Law
1 Smith Street Melbourne Victoria 3000
Public Servant Grade 4

What should be done if the statutory declaration refers to other documents?

If the statutory declaration refers to one or more other documents, the following steps must be followed for each document:

- attach a certificate to the document that identifies it as an exhibit to the statutory declaration, and
- ensure that both the person making the statutory declaration and the witness sign the certificate.

There is no limit on the number of documents that can be attached to a statutory declaration.

What if a person needs assistance to make a statutory declaration?

- A person making a statutory declaration may need help with translation, writing or reading or other assistance.
- Any person who helps with these tasks must clearly write or stamp on the front page of the statutory declaration:
 - their name and address, and
 - the help they provided to the person making the declaration (e.g. translation assistance).
- The person witnessing the statutory declaration is allowed to provide this help to the person making the statutory declaration.
- If the help is given by an Australian legal practitioner, a licensed conveyancer or a person assisting someone to prepare a Victim Impact Statement, they do not need to comply with this requirement.

What must a statutory declaration witness do if a person is illiterate, blind, or has a cognitive impairment?

- If the person making the statutory declaration is illiterate, or blind, or has a cognitive impairment, the witness must read the document aloud to the person.
- The witness must also write on the front of the document that they have read the document to the person.

What must a witness to a statutory declaration do if a person has a disability that prevents them from complying with the usual process of making a statutory declaration?

If the person making the statutory declaration has a disability that makes it difficult for them to follow the usual process, the witness may make reasonable modifications to the usual process to help the person to make the statutory declaration.

Examples of reasonable modifications

Example 1

A person who has a hearing impairment may read and sign the oral declaration instead of saying it aloud.

Example 2

A person who is unable to speak may be able to read or listen to the statutory declaration being read and nod assent.

Can a statutory declaration witness charge a fee for this service?

A justice of the peace is not permitted to charge for witnessing a statutory declaration. The law does not prohibit other statutory declaration witnesses charging a fee or asking for small donation to a charity in lieu of a fee, however, witnessing statutory declarations is usually regarded as a public service.

Who can witness a Victorian statutory declaration outside Victoria?

A statutory declaration for use in Victoria can be witnessed by:

- any person listed on the attached list titled “*Authorised Statutory Declaration Witnesses*” who happen to be outside Victoria at the time
- certain consular officials (see the attached list titled “*Authorised Statutory Declaration Witnesses*”), or
- a person who is authorised to administer an oath or affirmation in that place.