

Statutory Declaration Information Sheet



Australian Government

Attorney-General's Department

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General information

1. What is the difference between a statutory declaration and an affidavit?

An affidavit is a document which is used to give evidence in court proceedings. A statutory declaration is a document which is used to give evidence in most other circumstances.

2. What is the difference between a Commonwealth statutory declaration and a State or Territory statutory declaration?

Commonwealth statutory declarations are made on matters relating to the Commonwealth or the ACT. The *Statutory Declarations Act 1959* and the *Statutory Declarations Regulations 1993* set out the correct form to use for a Commonwealth statutory declaration and the penalties for making false declarations.

Aside from the ACT, each State and Territory has its own laws governing statutory declarations, including the correct form to use and the penalties which apply for false declarations. A State or Territory statutory declaration should be made in relation to matters which relate to a State or Territory law or government department.

3. When should I use a Commonwealth statutory declaration?

A Commonwealth statutory declaration can be used:

- in connection with the administration of any Department of the Commonwealth
- for the purposes of a law of the Commonwealth
- in connection with any matter arising under a law of the Commonwealth, or
- for the purposes of a law, or in connection with any matter arising under a law, of the Australian Capital Territory, Norfolk Island, the Territory of the Cocos (Keeling) Islands, the Territory of Christmas Island, the Australian Antarctic Territory, the Coral Sea Islands Territory, the Territory of Ashmore and Cartier Islands, and the Territory of Heard and McDonald Islands.

4. Where can I find information about State and Territory statutory declarations?

The ACT uses Commonwealth statutory declarations. However, if you need to make a State or Territory statutory declaration, you can access information through the following links.

NSW

www.lawlink.nsw.gov.au

NT

www.nt.gov.au/justice

QLD

www.justice.qld.gov.au

SA

www.justice.sa.gov.au

TAS

www.justice.tas.gov.au

VIC

www.justice.vic.gov.au

WA

www.justice.wa.gov.au

5. Is a Commonwealth statutory declaration the same as the declaration on the back of a marriage certificate?

No. The declaration on the back of a marriage certificate is prescribed by the *Marriage Act 1961* and is called a ‘Declaration by Party to Proposed Marriage’ (Form 14). This is not a Commonwealth statutory declaration.

6. Are there any penalties for making a false declaration?

Yes. When you make a statutory declaration, you are declaring that the statements in it are true. If you intentionally make a false statement in a statutory declaration, you could be charged with an offence and, if convicted, you could be fined or jailed, or both.

Under section 11 of the *Statutory Declarations Act 1959*, the penalty for making a false statement in a statutory declaration is 4 years imprisonment.

7. What law governs Commonwealth statutory declarations?

The *Statutory Declarations Act 1959* and the *Statutory Declarations Regulations 1993* set out the requirements for Commonwealth statutory declarations.

Please note that the Attorney-General’s Department cannot provide legal advice about statutory declarations.

Making a statutory declaration

27. Who may make a statutory declaration?
28. Where can I get a statutory declaration form?
29. Can I prepare my own statutory declaration form?
30. What should be included in the body of the statutory declaration?
31. What about attachments to the statutory declaration?
32. Can I scan and email a completed statutory declaration form?
33. How do I amend a statutory declaration?

8. Who may make a statutory declaration?

Anyone can make a statutory declaration under the *Statutory Declarations Act 1959*, including minors and retirees, as long as it is witnessed by an appropriate person. However, check with the agency or organisation that requested the statutory declaration for any additional requirements or limitations.

A company or organisation cannot make a statutory declaration itself. However, someone within the organisation with the relevant knowledge may make the statutory declaration.

9. Where can I get a statutory declaration form?

The Commonwealth statutory declaration form can be accessed free of charge in PDF or Word format at www.ag.gov.au/statdec.

If you do not wish to use the printed form, you may draw up your own, as long as it complies with the requirements in Schedule 1 to the Statutory Declarations Regulations.

For information about obtaining commercial quantities of the printed form, please contact CanPrint Communications:

CanPrint Communications PO Box 7456 Canberra Mail Centre ACT 2610 Tel: 1300 889 873 Email: sales@infoservices.com.au.

10. Can I prepare my own statutory declaration form?

Legal advice should be obtained if you propose to prepare a statutory declaration form that differs from the prescribed form.

11. What should be included in the body of the statutory declaration?

If you are uncertain as to what information should be included in the body of the statutory declaration, you should check with the agency or organisation that requested the statutory declaration.

There is no requirement under the *Statutory Declarations Act 1959* that attachments or supporting documents be provided for statements made in a statutory declaration. However, check with the agency or organisation that requested the statutory declaration for any such additional requirements or limitations.

12. What about attachments to the statutory declaration?

If an attachment is included, it must be accurately referred to or cited in the statutory declaration. The witness needs to be made aware of this; however, the witness does not need to sign the attachments. There is no prescribed form for attachments.

13. How do I amend a statutory declaration?

If the declaration has not yet been witnessed, start a new statutory declaration form. If the declaration has already been witnessed, each amendment needs to be made in front of the witness and both the declarant and witness need to initial at each amendment.

Getting a statutory declaration witnessed

14. Who may witness a statutory declaration in Australia?

Only certain people may witness a Commonwealth statutory declaration.

A list of people who can be witnesses is set out in Schedule 2 to the *Statutory Declaration Regulations 1993*. The Regulations and a separate 'list of signatories' can be accessed via a link at www.ag.gov.au/statdec.

15. Who may witness a statutory declaration overseas?

A statutory declaration can be made overseas provided that it is witnessed by a person who falls within one of the categories in Schedule 2 to the Regulations and has a connection to Australia. For example:

Example 1

A doctor who is registered to practise medicine in Australia may witness a Commonwealth statutory declaration when he or she is overseas.

A doctor who is registered to practise medicine in a foreign country (and not in Australia) cannot witness a Commonwealth statutory declaration.

Example 2

A member of a police force in Australia may witness a Commonwealth statutory declaration overseas.

A police officer of a foreign police force cannot witness a Commonwealth statutory declaration.

If you need to make a Commonwealth statutory declaration overseas, you should be able to contact a person listed under Schedule 2 as an authorised witness at the nearest Australian Embassy, High Commission or Consulate.

16. Can a witness charge for witnessing a Commonwealth statutory declaration?

There is no statutory restriction under Commonwealth law preventing witnesses from charging.

17. Can a person who is authorised to witness my statutory declaration also certify documents?

The *Statutory Declarations Act 1959* only authorises a person to witness a Commonwealth statutory declaration. The Act does not authorise that person to certify documents.

Usually, anyone who sights an original document can certify copies of the document as true copies. Generally, a person can certify a document without

having to hold a particular office. However, in some cases, a law will specify the type of person who must certify a copy of a document if it is to be acceptable for certain purposes, e.g. applying for a licence. If unsure, check with the agency or organisation that requested the certified documents.

18. Can an immediate family member witness my statutory declaration?

If the family member falls within a class of persons authorised to witness a Commonwealth statutory declaration, the family member can witness your statutory declaration.

19. What is a Notary? Can any Notary witness a statutory declaration?

A notary (also known as a Notary Public or Public Notary) takes oaths, signs and witnesses documents for use within Australia, and also performs similar functions in respect of international documents.

The Notary must be appointed in Australia (under the relevant State or Territory legislation) in order to witness a Commonwealth statutory declaration.

Information for witnesses

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37. I see that Commissioners for Declarations can witness statutory declarations. Can I become a Commissioner for Declarations?
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20. What are my obligations as a witness?

A witness should do the following:

- check the identity of the person making the statutory declaration by asking if he or she is the person whose name appears on the declaration
- check, to the extent possible, that the person is competent to make the statutory declaration, and
- remind the person making the statutory declaration that he or she will be claiming that the statements in the declaration (and any exhibits) are true and that there are penalties for making false statements.

It is also prudent for a witness to check that the statutory declaration does not contain any blanks (the witness and the declarant must provide all the information requested on the form, including name, address and occupation/qualification).

21. I can witness a statutory declaration in the State or Territory where I live. Can I also witness a Commonwealth statutory declaration?

Yes – if the declaration is made within the State or Territory where you are an authorised witness. The *Statutory Declarations Regulations 1993* state that a person who is authorised to witness statutory declarations of a particular State or Territory can witness a Commonwealth statutory declaration where it is made in that State or Territory.

For example, a person who is authorised by the Victorian *Evidence Act 1958* to witness Victorian statutory declarations can witness a Commonwealth statutory declaration that is made in Victoria.

22. I can witness a Commonwealth statutory declaration. Can I witness a State or Territory statutory declaration?

It depends. You will be able to if the State or Territory law states that a person who is authorised to witness a Commonwealth statutory declaration can witness a statutory declaration of that State or Territory. You will also be able to do so if the State or Territory law says a person of your occupation or status is authorised to witness the statutory declaration.

23. I see that Commissioners for Declarations can witness statutory declarations. Can I become a Commissioner for Declarations?

Although the *Statutory Declarations Act 1959* allows Commissioners for Declarations to witness a Commonwealth statutory declaration, since 1991 the Commonwealth no longer appoints people to that position. The Commonwealth register for Commissioners for Declarations has not been maintained since 1992.

24. Can I confirm whether I am a Commissioner for Declarations?

People previously appointed as a Commissioner for Declarations under Commonwealth law may assume that they still hold this title if they have not received notification that their appointment has been revoked.

In addition, some States and Territories still appoint people as Commissioners for Declarations and, therefore, the Commonwealth Act permits such Commissioners to witness Commonwealth statutory declarations.

25. Can I become a Justice of the Peace?

The Commonwealth does not appoint Justices of the Peace. If you wish to become a Justice of the Peace, you will have to apply in your State or Territory.

26. Can I get authority to witness statutory declarations?

Schedule 2 to the *Statutory Declaration Regulations 1993* sets out the categories of people authorized to witness Commonwealth statutory declarations. The list is reviewed and amended from time to time.

Professional bodies may write to the Attorney-General's Department to seek to have that body considered when the Regulations are next reviewed. Any extensions to the list would only occur where there is a demonstrated genuine unmet need in the community that would be fulfilled with the addition of the proposed group.

You should note that if a class of people is authorised to witness statutory declarations under the legislation of any State or Territory, that class is already authorised to witness Commonwealth statutory declarations in that State or Territory, in accordance with the *Statutory Declaration Regulations 1993*.