

Statutory Declaration Information Sheet



Australian Government

Attorney-General's Department

1. What law governs Commonwealth statutory declarations?
2. When should I use a Commonwealth statutory declaration?
3. Who may witness a statutory declaration?
4. Are there any penalties for making a false declaration?
5. Can a person who is authorised to witness my statutory declaration also certify documents?
6. Who may witness a statutory declaration overseas?
7. What are my obligations as a witness?
8. I can witness a statutory declaration in the State or Territory where I live. Can I also witness a Commonwealth statutory declaration?
9. I can witness a Commonwealth statutory declaration. Can I witness a State or Territory statutory declaration?
10. Can an immediate family member witness my statutory declaration?
11. I see that Commissioners for Declarations can witness statutory declarations. Can I become a Commissioner for Declarations?
12. Can I become a Justice of the Peace?
13. What is the difference between a statutory declaration and an affidavit?
14. Where can I get a statutory declaration form?
15. Where can I find information about State and Territory statutory declarations?
16. Is a Commonwealth statutory declaration the same as the declaration on the back of a marriage certificate?

1. 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.

2. 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.

3. Who may witness a statutory declaration?

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.

4. 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.

5. 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, eg applying for a licence.

6. 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.

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.

7. 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).

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

Yes. 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.

9. 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.

10. 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.

11. 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, the Commonwealth no longer appoints people to that position. However, some States and Territories still appoint people as Commissioners for Declarations and, therefore, the Commonwealth Act permits such Commissioners to witness Commonwealth statutory declarations.

12. 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.

13. 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.

14. Where can I get a statutory declaration form?

The Commonwealth statutory declaration form can be accessed free of charge 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

15. 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

16. 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.