

# Document witnessing

Royal Victorian Association of Honorary Justices

**(Sample extract only)**

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## Introduction

This module covers the essential skills and knowledge required by Honorary Justices to:

- witness statutory declarations
- receive affidavits
- witness Wills
- certify true copies of documents
- witness Power of Attorney documentation.

The module is designed to complement the Document Witnessing Training Course provided by the Royal Victorian Association of Honorary Justices.

### Feedback invited

Your feedback on this module and the training provided by the Association is vital and welcome.

Any comments may be sent in confidence to:

The Chairman – RVAHJ Training Committee

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Or email: [admin@rvahj.org.au](mailto:admin@rvahj.org.au)

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**(NB: This is an extract from comprehensive 70 page manual.**

## Glossary

Term	Meaning
Affidavit	A written document, frequently used in legal proceedings, which is sworn on oath (or affirmed) before a person with authority to administer such an oath.
Affirmation	A solemn and formal declaration in the nature of an oath. An affirmation is used when a person objects to swearing an oath.
Authorised person	A person authorised by the <i>Evidence Act 1958</i> to witness statutory declarations and receive affidavits. (Sometimes referred to as an authorised witness.)
Attestation	The statement at the end of a statutory declaration pertaining to the authorised witness.  The attestation must include: where and when the statutory declaration was declared; the signature and address of the witness; the printed name of the witness; and basis of authority of the witness.  Whilst not a legal requirement, it is useful to also include your JP or BJ registration number.
Annexure	A document incorporated into a statutory declaration or affidavit by reference.
Declarant	A person declaring a statutory declaration.
Deponent	A person swearing an affidavit.
Jurat	A memorandum at the end of an affidavit, stating where, when and before whom it was sworn.

## **The basics**

### **Record keeping**

Authorised persons must maintain a record of every document they witness, receive, or certify.

The record should include:

- the name of the declarant / deponent
- the type of document (SD / affidavit / Will / certified copy)
- date, time and location.

Options for record keeping include maintaining a 'Document Witnessing Register' with suitably ruled columns, or making a simple note in your business / personal diary.

In addition, more comprehensive records should be kept when witnessing the signatures of donors and testators. (Refer to the chapters on Wills, and Power of Attorney for more detail.)

These records will prove invaluable if later required to verify the circumstances of a document's completion.

Do not request a photocopy of any document.

### **Taking a fee is a criminal offence**

Honorary Justices provide an important voluntary service to the community.

It is a criminal offence for an authorised person to take or demand a fee or contribution, for:

- taking a statutory declaration
- receiving an affidavit.

### **Do not give legal advice**

Unless qualified as a legal practitioner or accountant, Honorary Justices must not offer legal or financial advice in relation to the contents of any statutory declaration, affidavit, Will or certified copy.

This is not the role of an Honorary Justice and may greatly prejudice the interests of the declarant and precipitate litigation against yourself.

If an individual seeks your legal or financial advice, refer them to:

- their solicitor or financial adviser
- a community legal centre
- Legal Aid Victoria.

## Statutory declarations

### What is a statutory declaration?

A Statutory Declaration (SD) is a written statement which is signed and formally declared in the presence of an authorised person.

Importantly:

- a SD requires the declarant to make a solemn declaration that the contents of the statement are true and correct
- the SD must be signed in the actual presence of the authorised person
- the declarant must acknowledge that making a false SD is a serious criminal offence (perjury) and that they are the person named in the SD.

### What is a statutory declaration used for?

A SD may be used for many purposes, such as:

- verification of insurance claims
- to support an applications for sick leave
- to transfer speeding fines to another person.

***A statutory declaration is a solemn declaration that the contents are true and correct***

### Why have a signature witnessed?

Having a signature witnessed by an authorised person provides the justice system with an independent and impartial witness to the completion of the document.

In some circumstances, authorised persons may be required to testify in court as to the completion of the SD.

To a lesser degree, having a document witnessed by an authorised person may also add to the solemnity of the completion of the document; ensuring that declarants appreciate they are making a solemn declaration about the truth of a legal document

## Components of a statutory declaration

A SD has four principal components:

- the declarant's details (name, address and optionally, their occupation.)
- the statement being declared
- the formal declaration
- the attestation (details of the authorised person witnessing the SD.)

<b>Statutory Declaration</b>	
<b>Declarant's details</b>	<p>I, Frances Mary Smith  of 444 Main Road, Terang  in the State of Victoria naturopath  do hereby solemnly and sincerely declare that</p>
<b>Statement</b>	<p><i>I was on holidays in Thailand during June 2005 and was not the driver of motor vehicle registered HBA-176 on the 14 June 2005.</i></p> <p><i>I do not know who the driver of the vehicle was on the 14 June 2005.</i></p>
<b>Declaration</b>	<p>and I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of an Act of Parliament of Victoria rendering persons making a false declaration punishable for wilful and corrupt perjury.</p> <p>.....  (Declarant's signature)</p>
<b>Attestation</b>	<p>Declared at Orbost  This twenty second day of December 2005  Before me: Snowy Rivers  (Authorised person's signature)  (Print full name) Jonathon Snowy Rivers  (Qualification as a auth. Person) Justice of the Peace  (Registration number) JP 123456  (Physical address.) 400 Marlo Road, Orbost, Victoria.</p>

***An authorised witness must actually see (witness) the declarant signing the statutory declaration.***

## **Firms partnerships companies and corporations**

A statutory declaration can only be made by a 'natural person'.

Where a company, group or club (i.e. an unnatural person) needs to declare a SD, the SD should be made by a natural person, such as the club president.

In these instances the SD should contain a sentence such as:

*I make this statutory declaration in my capacity  
as President of the Ballan Football Club*

Or:

*I, Simon Green of 15 Green Street, Greendale,  
Victoria, teacher, in my capacity as President of  
the Ballan Football Club, declare...*

## **Statutory declarations by minors**

Where the declarant is a minor, the authorised person should firstly satisfy themselves that the minor understands the contents of the SD, and the provisions of the *Evidence Act 1958* relating to making false declarations / perjury.

If the minor is under the age of 10 years, the authorised witness should take additional care, and if in doubt, refuse to witness the SD.

## **Joint declarations**

SDs may also be made jointly by two or more persons. (See Example A.)

In these circumstances:

- a single (slightly modified) SD is used
- every declarant must individually make the verbal declaration
- every declarant must individually sign the SD
- every declarant is severally liable for the truth and correctness of the SD.

## **Joint declaration sworn at different times**

Joint SDs may be declared by multiple declarants at different times and locations before different authorised persons.

In these circumstances, the SD will have an additional attestation clause to cater for the subsequent declarant and subsequent authorised person. (See Example B.)