

Making an Affidavit

Explaining the Oaths and Affirmations Act 2018

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

What is an affidavit?

An affidavit is a written statement that is sworn on oath or affirmed before a person who is authorised by law to take (i.e. witness) an affidavit.

When a person swears an oath or makes an affirmation they are testifying that the contents of the affidavit are true and correct.

Affidavits are most often used in courts and tribunals.
A person making an affidavit is called a deponent.

A person making a false statement by affidavit commits the criminal offence of perjury. The maximum penalty is 15 years imprisonment.

What must be included in an affidavit?

If an affidavit is going to be used in legal proceedings then the court or tribunal that will hear the matter may have special requirements. The deponent is responsible for contacting the court or tribunal or their own lawyer about this.

Who is authorised to take an affidavit?

A range of people are authorised to take affidavits, including Australian legal practitioners and Honorary Justices. For a complete list of those authorised to take an affidavit, refer to the list in the attached document titled "*Authorised Affidavit Takers*".

What do I need to do to make a valid affidavit?

The deponent must swear an oath or make an affirmation that confirms that the contents of the document are true and correct. The oath or affirmation will be administered by the authorised affidavit taker.

Wherever the deponent is required to provide a signature, this must happen in the presence of the authorised affidavit taker. The authorised affidavit taker and the deponent must:

- sign or initial any alteration to the affidavit
- sign each page of the affidavit
- sign the affidavit, and
- if the affidavit refers to a document, sign a certificate attached to the document identifying the document as an exhibit to the affidavit.

The person authorised to take the affidavit will need to:

- complete the section at the end of the document stating when and where the affidavit was made ('the jurat'), and
- write, stamp or type their name and address and statement of the capacity in which they have authority to take the affidavit.

If the deponent is illiterate, blind or has a cognitive impairment, the affidavit taker must:

- read the affidavit to the deponent, and
- certify in or below the jurat that the affidavit was read to the deponent.

Completing the jurat

The jurat will usually take the following form:

Sworn / Affirmed at [insert suburb or town] in the State of Victoria, on [date].

[Signature of deponent, to be signed in front of the authorised affidavit taker]

Before me, *[signature of person receiving the affidavit]* on [date].

[Print, stamp or type name, address and capacity in which the affidavit taker has authority to take the affidavit (e.g. Australian legal practitioner)]

A person authorised under section 19(1) of the **Oaths and Affirmations Act 2018** to take an affidavit.

What is an oath or affirmation?

An oath is a solemn promise made before a god or deity to tell the truth.

An affirmation is a solemn promise to tell the truth. It is of equal weight to an oath.

When making the affidavit, the deponent is required to make an oath or affirmation that confirms the contents of the document are true and correct. A child or a person with a cognitive impairment may make a promise to tell the truth and can make an affidavit provided they have legal capacity to do so. That is, they must be able to understand that they are making a legal promise to tell the truth, and that being untruthful under oath or affirmation is an offence.

The deponent should be offered a choice between making an oath or affirmation.

An individual is not required to be religious to make an oath and a religious text does not need to be used.

The *Oaths and Affirmations Act 2018* now prescribes the oath or affirmation to be used when a person takes an affidavit.

Prescribed words for oaths

I, [name of person making oath], swear [or promise] by Almighty God [or name of a god recognised by the person's religion] that the contents of this affidavit are true and correct.

Prescribed words for affirmations

I, [name of person making affirmation], solemnly and sincerely affirm that the contents of this affidavit are true and correct.

Prescribed words for a child or deponent with a cognitive impairment

I, [name of person making the promise], promise that I have told the truth in this affidavit and it is correct.

Reasonable modifications can be made for a person who has a disability that would prevent them from making the affirmation or oath in the prescribed way. (See below for examples.)

Examples of reasonable modifications

Example 1

A deponent who has a hearing impairment may read and sign an oath or affirmation instead of saying it aloud.

Example 2

A person who is unable to speak may be able to listen to an oath or affirmation being read and nod assent.

What does the authorised affidavit taker need to do if the affidavit refers to other documents?

If the affidavit refers to another document, the authorised affidavit taker will need to:

- attach a certificate (which may be supplied by either the deponent or the authorised affidavit taker) to the document that identifies it as an exhibit to the affidavit,
- ensure that both the authorised person and the deponent sign the certificate in front of each other, and
- date the certificate and write, stamp or type below your signature your name, address (professional address preferred) and say how you are authorised to take the affidavit.

There is no limit to the number of documents that can be attached to an affidavit.

What if the deponent needs an interpreter?

If the deponent needs an interpreter to make an affidavit for legal proceedings, the relevant court or tribunal should be consulted. Courts and tribunals may have special requirements when an interpreter is used in making an affidavit.

What if the affidavit is being made outside Victoria?

If a deponent, who is making an affidavit intended for use in Victoria, is interstate or overseas, then special rules apply. For a complete list of those authorised to take these affidavits, refer to the list in the attached document titled "*Authorised Affidavit Takers*".

Can an affidavit taker charge a fee for taking an affidavit?

A person, such as a lawyer, can charge a fee for preparing the content of an affidavit but no one can charge a fee for the tasks associated with taking an affidavit - administering an oath or affirmation, witnessing and signing the affidavit.

Different rules apply to public notaries when they deal with documents for use overseas. Fees can be charged for 'notarial acts' by public notaries and this may include taking affidavits.