

Technical Bulletin: 01/24

Witnessing Commonwealth statutory declarations

Background

Amendments to the Commonwealth *Statutory Declarations Act 1959* allow for Commonwealth statutory declarations to be witnessed by video link. This bulletin provides information and outlines the process for witnessing these statutory declarations by video link and in person.

What is a Commonwealth statutory declaration?

A Commonwealth statutory declaration is a formal written statement used to set out facts, meet a requirement, or situations relating to matters under a law of the Commonwealth or of a Territory. They are also used in the administration of Commonwealth Departments i.e. Australian Taxation Office, Department of Health and Aged Care and Department of Home Affairs.

As a Justice of the Peace or Commissioner for Declarations, you are an approved witness under the Commonwealth *Statutory Declarations Act 1959* (the Act) and can witness a Commonwealth statutory declaration anywhere.

Why do people make Commonwealth statutory declarations?

Normally a person will be asked to complete a statutory declaration as part of a formal process, such as an application or as a legal requirement. The department or individual requesting the declaration will provide guidance and instructions on what the person should include in their declaration.

People of any age or nationality can make a Commonwealth statutory declaration.

Commonwealth statutory declaration forms

The statutory declaration must be in the approved form and can be witnessed either in person or by video link.

What are my obligations as an approved witness?

Before witnessing a Commonwealth statutory declaration you should:

- Be satisfied the signatory has the legal capacity to sign the declaration and understands what they are doing and the consequences.
- Ensure the signatory understands that making a declaration is a serious matter and they commit a Commonwealth criminal offence if they make a false statement in a declaration.
- Be satisfied the signatory is acting freely and voluntarily and are not being pressured into making the document.

Electronic signatures

Commonwealth statutory declarations can be witnessed by video link and the signatory may choose an online video conferencing platform such as Zoom, Microsoft Teams or Skype to have their statutory declaration witnessed.

The Act allows for statutory declarations to be:

- Made in the form of a physical or electronic document.
- Signed using a pen (wet ink) or electronic signature.
- Made in counterparts (where the signatory and witness sign separate, but identical copies of the same document).



The Act does not specify any method of electronic signing. It requires the document to be signed using an accepted method that:

- Identifies the person and indicates the person's intention in relation to the contents of the document.
- Is reliable as appropriate for the purpose for which the information was recorded.

This means you can electronically sign the document in a number of ways. For example you can:

- Paste a scanned image of your handwritten signature into a document.
- Sign on a touch screen (such as a tablet, smartphone or laptop) using a stylus or finger.
- Use an electronic platform which supports electronic signing of documents (such as DocuSign).
- Use a digital signature which uses encryption and decryption technology alongside a Public Key Infrastructure (PKI).

While electronic signatures can be made in a variety of ways, many of those ways are not appropriate for use on statutory declarations. It is not recommended that you, or the signatory, electronically sign the document by:

- typing a name in a Word version of the document
- clicking or ticking a button or box on a computer screen.

How do I witness a Commonwealth statutory declaration?

You can witness a Commonwealth statutory declaration either in person or by video link. The format of the declaration can either be a paper or electronic version of the approved form.

When witnessing a Commonwealth statutory declaration follow the general procedure for witnessing signatures as outlined in chapter 4.1 *Witnessing documents – general procedure* in your handbook then:

1. Meet with the signatory in person or using video link technology.

Note: When witnessing by video link technology there must be the ability for both you and the signatory to see and hear each other.

2. Whilst not mandatory you should:

- Take reasonable steps to satisfy yourself as to the identity of the signatory.
- Warn the signatory at the outset, and check they understand that if they knowingly make a declaration and they know the information is false they commit a Commonwealth criminal offence.

Note: You are not responsible for the truth or accuracy of what the signatory is declaring. The signatory holds the liability for committing an offence for making an intentional false statement. You cannot be charged or connected with the signatory if the signatory makes a false statement.

3. Ensure the signatory understands that making a declaration is a solemn matter.

4. Check the signatory understands their declaration and are making it freely and voluntarily.

If you are satisfied the signatory understands the declaration you must:

- Observe them sign the declaration either with a pen or electronically.
- Ensure they sign and date the bottom of any additional pages or attachments.
- Ensure they include their email address or telephone number beneath their signature.

Note: This means if you are witnessing using by video link, they may need to position the camera or share their screen so you can see them sign their declaration.

If witnessing electronically you may need the signatory to send you the signed document so you can apply your signature and other required information.

5. Witness the signatory's signature, sign and date every page including any additional pages or attachments. If the document was signed:

- In person:
 - Witness their signature on the physical document.
 - Witness their signature on the electronic document.
- By video link:
 - Place your electronic signature on the document.
 - Print the signed copy of the document and witness their signature.
 - Print a counterpart of the document and witness in the usual manner.

6. You must include your:

- full name
- qualification and registration number
- address
- email address and/or telephone number.

Note: You do not need to apply your seal of office on the statutory declaration. You will meet your witnessing requirements by completing the witness sections listed on the statutory declaration.

Note: You can provide the following address details:

Justices of the Peace Branch
Lvl 6 154 Melbourne Street, South Brisbane 4101
1300 301 147 | jp@justice.qld.gov.au

7. Return the witnessed document to the signatory.

Note: When witnessing the signatory's signature by video link, you should sign and complete the witness sections and return it to the signatory at the same time during the video call.

8. Record all relevant information in your logbook as outlined in chapter 2.4 *Record keeping and logbooks*.

Frequently asked questions

Can I witness a Queensland statutory declaration by video link?

No. Only approved Justices of the Peace and Commissioners for Declarations under the *Oaths Act 1867* can witness Queensland statutory declarations by audio visual link.

Do I need to apply my seal of office?

No. You do not need to apply your seal of office if the document is in the form of an electronic document, or if you are signing the document electronically.

Can I make a digital seal of office to use when witnessing electronically?

No. You are not authorised to reproduce a seal of office issued by the Department of Justice and Attorney-General. You are not required to insert your seal of office on statutory declarations witnessed by video link.

What place should be included on the document?

The signatory should insert their location at the time of signing the document. If the signatory has concerns about disclosing their location, it is recommended that they use a general location (such as 'Queensland').

Do I have to witness Commonwealth statutory declarations by video link if I do not have the means to do so?

No. You are not obligated to witness a Commonwealth statutory declaration by video link in certain situations including but not limited to:

If you do not have:

- access to a computer or video link equipment
- limited knowledge on how to meet with the signatory by video link
- the ability to conduct the meeting by video link in a quiet and appropriate location
- approval from your employer to meet with a person by video link using your work computer or other electronic device
- limited knowledge on creating and using an electronic signature
- software or other applications used to meet by video link.

If you decline to witness the signatory's document by video link, explain to the signatory the reason.

Will the Justices of the Peace Branch reimburse me for the cost of printing?

No. There is no need to print the document if you apply an electronic signature.

You cannot charge the signatory for printing or copying services.

Can I witness other documents for Commonwealth matters using a video link?

No. Affidavits, deeds, and certifying documents are not covered under the *Statutory Declarations Act 1959*.

Can a recording of the witnessing of the statutory declaration be made?

The *Statutory Declarations Act 1959* does not require any party to record the witnessing of a Commonwealth statutory declaration by video link technology.

There may be times when the signatory wishes to record the signing of their document. This can only occur with the consent of all parties. If you do not wish to be recorded, you should advise the signatory at the time of making the meeting arrangements.

What equipment will I need to witness a statutory declaration by video link?

Regardless of how you will be signing the signatory's statutory declaration, you will need the following equipment to carry out your online witnessing role:

- a computer, tablet, mobile phone or other compatible device
- a stable internet connection
- a camera or webcam (if not integrated into your device)
- microphone and speakers (if not integrated into your device)
- your handbook and logbook.

How do I create an electronic signature?

If you are unsure about the process of creating an electronic signature, the internet provides numerous useful resources and instructions on integrating them into Microsoft Word and PDF files.

I have printed the signatory's document, witnessed their signature, and scanned and emailed it to the signatory. What do I do with the physical copy?

You must securely destroy the copy of the document that you physically signed if you have scanned and sent it to the signatory electronically.

You must delete the signatory's email and any attachments. Once you have deleted the files, you must also permanently delete them from your trash and or deleted items folder.

Where can I get more information?

Queensland legislation

www.legislation.qld.gov.au

Commonwealth legislation

www.legislation.gov.au

Statutory declarations

<https://www.ag.gov.au/legal-system/statutory-declarations>

Have your documents witnessed online by a JP or Cdec

www.qld.gov.au/onlinewitnessing

Forms

Commonwealth statutory declaration

www.ag.gov.au/legal-system/statutory-declarations

Damien Mealey

Director and Registrar

Justices of the Peace Branch

Department of Justice and Attorney-General