

What is a statutory declaration?

A statutory declaration is a written document setting out certain facts to the best of the knowledge or belief of the person making it and is made subject to the provisions of certain legislation. A prescribed functionary (someone authorised by the appropriate Act to take the declaration) must witness the declarant's signature.

Statutory declarations must be made pursuant to the legislation applicable in the state, territory or country in which they are made. See the FAQ *Statutory declarations sworn outside NSW* on LPI website www.lpi.nsw.gov.au.

In New South Wales, statutory declarations are made pursuant to the provisions of the *Oaths Act 1900*. The Act prescribes penalties for making a false declaration and/or for taking (witnessing) a declaration without authority (that is, by someone who is not a prescribed functionary).

A statutory declaration made in New South Wales must be in the form, or to the effect of the form, in either the Eighth or Ninth Schedule of the *Oaths Act 1900*.

Eighth Schedule declaration

I, ..., do solemnly and sincerely declare that..., and I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the *Oaths Act 1900*.

Ninth Schedule declaration

I, ..., of (residence), do hereby solemnly declare and affirm that [the facts to be stated according to the declarant's knowledge, belief, or information, severally]. And I make this solemn declaration, as to the matter (or matters) aforesaid, according to the law in this behalf made – and subject to the punishment by law provided for any wilfully false statement in any such declaration.

New requirements for identification

The *Identification Legislation Amendment Act 2011* inserts a new Part 6 into the *Oaths Act 1900*

introducing new requirements for the identification of a person making a NSW statutory declaration or affidavit.

From 30 April 2012, authorised witnesses (usually Justices of the Peace or solicitors) who witness statutory declarations or affidavits will be required to:

- see the face of the person making the statutory declaration or affidavit, unless there is a 'special justification'
- confirm the person's identity by sighting an identification document, unless they have known the person for 12 months, and
- certify on the statutory declaration or affidavit that these requirements have been met.

Authorised witnesses

Authorised witnesses in New South Wales are:

- justice of the peace (JP)
- notary public
- commissioner of the court for taking affidavits
- solicitor (with a current practising certificate issued under Part 2.4 Division 3 of the *Legal Profession Act 2004*)
- other person by law authorised to administer an oath.

A statutory declaration is similar to an oath and can only be made by a natural person. A statutory declaration on behalf of a corporation can be made by a director, secretary or some other authorised officer of the corporation who should state their name and source of knowledge and authority in making the statutory declaration.

A statutory declaration by an attorney (i.e. someone appointed under a power of attorney) must be made and signed in the name of that attorney. The attorney must only declare facts to the best of their knowledge or belief.

Information contained
in this document was correct at
time of publication, but may have
been superseded

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This fact sheet must not be relied on as legal advice. For more information about this topic, refer to the appropriate legislation.
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