

Victoria Police Manual

The Victoria Police Manual is issued under the authority of the Chief Commissioner of Police in s.60, Victoria Police Act 2013. Non-compliance with or a departure from the Victoria Police Manual may be subject to management or disciplinary action. Employees must use VPM Professional and ethical standards to inform the decisions they make to support compliance.

Affidavits and statutory declarations

Context

The *Oaths and Affirmations Act 2018* (the Act) sets out clear requirements for the making of affidavits and statutory declarations. The purpose of this policy is to provide instructions to members so that they may meet the requirements of the Act.

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Definitions

There are no specific definitions for this policy. Refer to the general VPM Dictionary for definitions and acronyms.

Responsibilities and procedures

1. Swearing and taking of affidavits

1.1 Overview

- An affidavit is a written statement, made by a person who has sworn or affirmed before a person authorised to administer the oath that the contents of the statement are true.
- In certain circumstances, evidence is required or allowed to be given by affidavit instead of oral testimony.
- Affidavits are required to support a range of applications to courts and non-judicial bodies and authorities. Most commonly members will prepare affidavits for the purpose of obtaining search warrants.

1.2 *Forms of oaths or affirmations*

- Schedule 1, of the Act sets out the mandatory introductory words for oaths and affirmations made in Victoria.

Form of oath

"I (name of person making the oath) swear (or promise) by Almighty God that the contents of this affidavit are true and correct."*

* or the person may name a god recognised by the person's religion.

Form of affirmation

"I (name of person making the affirmation) solemnly and sincerely affirm that the contents of this affidavit are true and correct."

- In the case of a child or a person with a cognitive impairment the words "I promise to tell the truth" may be used.
- Parts 2 to 4 of the Act set out the statutory requirements for oaths, affirmations and declarations within Victoria. In accordance with s.10 of the Act it is not a requirement for a religious text to be used in the taking of an oath and the oath remains effective even if the person who took it did not have a religious belief or did not have a religious belief of a particular kind.

1.3 *Process for swearing of affidavits*

- Section 19(1)(p) of the Act authorises a member who is of sergeant rank or above, or a member who is in charge of a police station to witness an affidavit in Victoria.
- Section 19(1)(q) of the Act authorises a VPS 4 (or equivalent) or above to witness an affidavit in Victoria.
- The person swearing the affidavit and the person witnessing the affidavit can be in the same physical location or it can be conducted via audio visual link.
- Section 27(1A) of the Act provides that if an affidavit has been signed and sworn or affirmed by audio visual link and the person witnessing the affidavit has used a scanned or electronic copy of the affidavit, the witness must state that:
 - the affidavit was signed and sworn or affirmed by audio visual link
 - the witness has used a scanned or electronic copy of the affidavit and not the original in completing the jurat requirements under subsection (1).
- For both in-person and audio visual link swearing of affidavits, the person witnessing must see the person sign the affidavit and then hear the person say the oath or affirmation.
- The person who the affidavit is sworn before must also sign the affidavit and legibly write, print or stamp their name, address and status (i.e. either sergeant rank or above or for the time being in charge of a police station, or VPS 4 (or equivalent) or above) and ensure that the place and date the affidavit is sworn or affirmed is written or printed above their signature. Signatures and initials may occur via electronic means.

- The written format of an affidavit does not vary whether it is sworn on oath or made on affirmation and is:

*"I (full name) of (address), (occupation or child) affirm /make oath and say: (statement to be sworn or affirmed in numbered paragraphs) the contents of this affidavit are true and correct and I make it knowing that a person making a false affidavit may be prosecuted for the offence of perjury *Sworn/*Affirmed at (place) *in the State of Victoria on (date) (signature of person swearing or affirming the affidavit contents, to be signed in front of the authorised affidavit taker) before me (signature of authorised affidavit taker) on (date) (name, statement of capacity in which the authorised affidavit taker has authority to take the affidavit, and personal or professional address in legible writing, typing or stamp)*

- If there are multiple pages to the affidavit the member witnessing should also sign at the foot of each page preceding the last and ensure that each page is numbered consecutively.
- Where an affidavit refers to a document, members must complete and attach a Certificate of Exhibit [Form 1500] identifying the document as an exhibit to the affidavit. One certificate is required for each document.
- Where an affidavit is witnessed via audio visual link and requires accompanying certificates for exhibits, these certificates can also be signed electronically.
- Documents relied upon as exhibits (e.g. call charge records, victim statements) must have an accompanying certificate attached. Should a document be referred to for context only, there is no requirement to attach a certificate.

1.4 **Circumstances where affidavits are used**

Common situations that require members to swear affidavits in accordance with the above requirements include:

- applying for a search warrant
- affirming the accuracy of a VARE recording [Form 267]
- vehicle impoundment processes under Part 6A, *Road Safety Act 1986*
- applying for an order directing a person to undergo a compulsory forensic procedure under ss.464T(1)(4), *Crimes Act 1958* [Form F19]
- application for an intervention order under the *Family Violence Protection Act 2008* or *Personal Safety Intervention Orders Act 2010*
- certificates relating to alcohol and drug testing under the *Road Safety Act*.

2. **Disclosure requirements**

2.1 **Purpose**

- If an affidavit has been sworn or affirmed incorrectly, a process has been introduced to address both past non-compliance with the legal requirements, as well as matters currently in progress.
- This process needs to be considered for all matters, particularly aged warrants filed at Police Enquiry and Data Sharing Department and matters where investigations were ongoing prior to November 2011, despite amendments to legislation.

2.2 Disclosure

- Section 165, *Evidence (Miscellaneous Provisions) Act 1958* may apply in circumstances where members have incorrectly sworn or incorrectly taken (witnessed) an affidavit prior to 12 November 2011 (or cannot recall whether they have done so correctly).
- Members who after 12 November 2011 have incorrectly sworn or taken (witnessed) an affidavit must immediately notify their work unit manager. The work unit manager will then assess the circumstances and seek advice from Professional Standards Command and Prosecutions Frontline Support (where appropriate) prior to taking any action.
- See **VPM Disclosure in criminal proceedings** regarding responsibilities about compliance with Victoria Police's duty of disclosure.

3. Inability to comply with requirements

- A court or tribunal may admit an affidavit into evidence that does not comply with the requirements of the Act if the affidavit states the reason why the person swearing the affidavit or the person witnessing the affidavit was unable to comply.
- The court or tribunal must be satisfied that it is in the interests of justice to admit the purported affidavit into evidence in accordance with s.28A(b) of the Act.

4. Statutory declarations

4.1 Overview

- A statutory declaration is a written statement that is signed and declared to be true and correct in the presence of an authorised witness.
- A statutory declaration may be used where sworn evidence in the form of an affidavit is not required, but a legally recognised statement is.
- Under the Act, a statutory declaration must be in the form prescribed by the regulations [Form 755].

4.2 Process of witnessing statutory declaration

- A person making a statutory declaration under the Act is required to read out the following prescribed words to the person witnessing their signature:
"I (name of person making the declaration) of (address), declare that the contents of this statutory declaration are true and correct."
- Section 30(2) of the Act authorises a police member, PSO, reservist or VPS 2 or above to witness a statutory declaration in Victoria.
- Statutory declarations may be witnessed via audio visual link and/or signed using a scanned or electronic version of the document. Where either or both occur, it must include a statement specifying the manner of making or witnessing the declaration and whether a scanned or electronic copy of the declaration was used.
- Copies of documents attached to a statutory declaration cannot be certified by audio visual link.

Related documents

- VPM Court processes
- Department of Justice and Community Safety information for affidavits, statutory declarations and certified copies.

Further advice and information

For further advice and assistance regarding this policy, contact your local prosecutions office. Further information is also provided on the Legal Service Department intranet page.

Update history

DATE UPDATED	SUMMARY OF CHANGE	FORCE FILE NUMBER
20/09/22	Converted from VPMG Affidavits to current VPM format and reviewed as part of VPM Review Project. Includes amendments to allow electronic means for affidavits and declarations under the <i>Oaths and Affirmations Act 2018</i>	FF-202120 1
22/11/22	Update reference from CCI 06/21 to VPM Disclosure in criminal proceedings	FF-193378