



# INQUIRY INTO OATHS AND AFFIRMATIONS WITH REFERENCE TO THE MULTICULTURAL COMMUNITY

## TERMS OF REFERENCE

The Victorian Parliament Law Reform Committee has been asked by the Legislative Assembly of the Victorian Parliament to inquire into the system of oaths and oath taking in Victorian courts and the making of statutory declarations and affidavits with reference to the *multicultural community*. In particular the Committee is to have regard to issues including, but not limited to:

- (a) the significance of sacred texts to witnesses, other parties and jury members of particular faiths;
- (b) the provision of a sufficient range of appropriate texts and minimum standards in this regard for all Victorian jurisdictions;
- (c) the provision of cultural awareness training to all court staff and persons before whom affidavits are sworn and the development of appropriate and sensitive practice by all such persons; and
- (d) whether the classes or groups of people currently permitted to witness affidavits and statutory declarations are sufficiently accessible to, and reflective of, the diversity of the Victorian community.

This information sheet is intended to assist organisations and individuals who wish to make a written submission and/or who would like to give oral evidence before the Committee at a public hearing. The questions in this paper are intended merely as an indication of the issues the Committee will be considering and should not be considered exhaustive.

## THE CURRENT LAW ON OATHS AND AFFIRMATIONS

Before giving oral evidence in a court or tribunal a witness must swear an oath or make an affirmation that the evidence they give will be the truth. An oath or affirmation is also required of jury members and people providing written evidence to a court (in the form of an “affidavit” which is discussed below). Hence the oath or affirmation is a legal mechanism to ensure the truthfulness of a person’s evidence.

The main source of law in Victoria on the system of oaths and oath taking and the making of affidavits and statutory declarations is the *Evidence Act 1958 (Vic)*.

### Swearing an Oath

The primary way of taking an oath is to swear on the Bible, starting with the words, “I swear by Almighty God.” Pursuant to the *Evidence Act* the court officer must administer the oath in this manner “without question:”

- unless the person about to be sworn voluntarily objects to taking the oath (or is physically incapable of doing so); or
- unless the court officer has reason to think that the standard form of oath (swearing on the Bible) would not be binding on the conscience of the person about to be sworn.

However, the *Evidence Act* also allows the oath to be administered in a manner appropriate to the religious belief of the person. The Act provides that: “any oath may be administered in any manner which is now lawful.” The different forms the oath can take in such cases is not defined in the Act but may be contained in procedural guidelines for tipstaff, associates and others who are authorised to administer oaths and affirmations.

## Making an affirmation

The *Evidence Act* allows witnesses and others to make an affirmation instead of an oath where:

- the person objects to being sworn; or
- it is not in the circumstances reasonably practicable without inconvenience or delay to administer an oath to a person in a manner appropriate to the religious belief of the person.

The affirmation contains no reference to the Bible or any other religious text. Instead of stating, “I swear by Almighty God,” the person starts with the words “I, A.B., do solemnly, sincerely, and truly declare and affirm ...”

The *Evidence Act* provides that the affirmation is “of the same force and effect as if the person had taken the oath.” It is important to note that the fact that the person who has taken an oath may have no religious belief does not affect the validity of the oath.

## ISSUES FOR DISCUSSION

Before examining the four sections of the terms of reference, it is important to consider global issues that will affect the overall conclusions of the Inquiry. One key question the Committee will consider is whether we should continue to have religious oaths at all or whether the system of oaths should be replaced by an affirmation or a solemn promise to tell the truth.

### Key Global Questions

Do you think that:

- the current rules in the *Evidence Act* are appropriate? (i.e. swearing on the Bible as the primary form of oath but accommodation of other religious oaths and affirmations).
- swearing the oath on the Bible should be removed as the primary form of oath and reference should simply be made to an appropriate religious oath binding on the person’s conscience?
- the system of oath-taking (whether on the Bible or any other sacred text) should be replaced by a non-religious affirmation or a solemn promise to tell the truth?

## The significance of sacred texts to witnesses, other parties and jury members of particular faiths

In this part of the Inquiry the Committee will consider evidence of *the importance people from different faiths place on sacred texts* when they are called upon to swear an oath. The Committee is particularly interested in receiving comments on the questions outlined below.

- How important is it that people be able to swear an oath on the sacred text of their own religion? For example, would members of particular cultural and religious groups believe that an oath or affirmation which does not take account of their particular religious beliefs is binding on their conscience? Do people consider taking an oath appropriate to their religious beliefs to be an expression of their freedom to practice their own religion?
- What are the practices associated with swearing on sacred texts? For example, are there particular rituals or handling procedures for sacred texts which must be observed for the oath to be valid? To what extent do judges, court officials and others understand and respect these practices?

## The provision of a sufficient range of appropriate texts and minimum standards in this regard for all Victorian jurisdictions

In this part of the Inquiry the Committee will consider whether there is currently an *adequate range of sacred texts and associated guidelines* for use of the texts and associated rituals in Victorian courts and tribunals. It will also look at the extent to which the same range of texts and appropriate standards are currently, and should be, made available by others who are authorised to witness affidavits (such as solicitors, justices of the peace, members of the police force, members of parliament and so on). The Committee would like to hear witnesses’ views on the following questions and any other related matters:

- Which sacred texts are currently made available in Victorian courts and tribunals? Does the practice vary depending on which court or tribunal it is? Which sacred texts are made available by solicitors and others who are authorised to witness affidavits?
- If you think that sacred texts should be made available, which ones should, as a minimum, be kept by courts and tribunals and by solicitors and others authorised to witness affidavits?

- What other (if any) minimum standards should there be for administering oaths and affirmations to people of particular cultural and religious backgrounds? For example, should courts and tribunals provide information to witnesses, jurors etc on the different ways in which they can take an oath?

### **The provision of cultural awareness training to all court staff and persons before whom affidavits are sworn**

In this part of the Inquiry the Committee will look at the *cultural awareness training* offered to judges, court staff and others authorised to administer (or, in the case of judges, pass judgment on the validity of) oaths, affirmations and affidavits.

- What, if any, cultural awareness training is currently offered to judges and court staff? Is there any training and are there any guidelines specifically directed at how oaths and affirmations should be administered to people who practice non-Christian religions?
- What, if any, cultural awareness training is currently offered to justices of the peace, the police, solicitors, members of Parliament, notaries public and all other persons before whom affidavits can be sworn (or affirmed)?
- How adequate is the training offered? How could it be improved? Can you give examples of good practice and poor practice by court staff and others before whom affidavits can be sworn or affirmed?
- To what extent do persons from different ethnic backgrounds and cultural traditions understand the purpose of taking an oath or making an affirmation? Is the significance of the oath explained to them? Are they made aware of their right to take a culturally appropriate form of oath or affirmation?
- Can you give examples of situations where the oath or affirmation which a witness, juror or other party has taken has been challenged (either by the person administering the oath or later by counsel in the course of proceedings) on the grounds that it does not reflect the witness's particular religious beliefs (for example where a Buddhist swears on the Bible, as happened in one reported court decision) or otherwise to infer that the witness is not truthful (for instance, based on stereotypes about ethnicity)? How do and should court officers and others decide whether the oath is binding on the witness's conscience?

### **Accessibility and diversity of classes of people currently permitted to witness affidavits and statutory declarations**

*Affidavits* are documents which generally contain the written evidence of a person which will be relied upon in court proceedings. Such persons (known in this context as “deponents”) must swear or affirm their affidavit in a broadly similar way to taking an oath or affirmation before giving oral testimony.

A *statutory declaration* is a declaration made in writing. In contrast to affidavits, statutory declarations are not sworn or affirmed but rather the witness makes a solemn declaration that the statements made in the statutory declaration are true.

The *Evidence Act* sets out the list of persons who may witness the signing of a statutory declaration. These include justices of the peace, lawyers, various court officers, certain police officers, municipal councillors, school principals, bank managers, ministers of religion and various registered professionals such as doctors, dentists, vets and pharmacists.

The classes of persons who can witness affidavits are somewhat more limited although they do include the additional classes of judges, judges' associates, masters and masters' associates. They also include justices of the peace or bail justices, various defined court officers, current or former members of Parliament, lawyers and notaries public, certain police officers and council officers. However, most of the various professional groups whose members are authorised to witness statutory declarations (including doctors, vets, pharmacists, school principals, bank managers, ministers of religion etc) are *not* allowed to witness affidavits. In addition to these categories, the Act allows affidavits of prisoners to be sworn before the prison “keeper” or “gaoler.”

- Are the current classes of people sufficiently accessible to different ethnic communities? Do they understand and respect the religious practices of different ethnic communities?
- Do you think that people from different cultural backgrounds are adequately represented in the current classes of people?
- Should the current classes of people be extended and if so, which other groups should be allowed to witness affidavits and statutory declarations?

## English as a second language and other issues

The Committee would also like to hear your views on matters related to this Inquiry, including (but not limited to) the ones set out below.

- How appropriate and accurate are the translations of the sacred oaths of different religions?
- What provision is made for witnesses for whom English is a second language? Are interpreters readily made available for the swearing of oaths and affidavits?
- Is there a problem with *ethnic stereotyping* or a *conflation of ethnicity and religion*? For instance, are assumptions made that people from a particular ethnic background will necessarily be of a particular religion?
- What do you think about the argument that swearing on the Bible as the principal form of oath is justified on the grounds that this is a part of cultural traditions still dominant in Australia today?

## TO MAKE A SUBMISSION

There is no specific method for organising or presenting a submission. You may submit a letter, a short report or commentary or a longer research document. Supplementary materials, such as videos, objects and photographs, are accepted and can be returned at the end of the Inquiry.

The Committee asks you to assist by sending your *signed* submission to the Committee offices by the due date, either *in hardcopy*, on disk or *by email*, with a signed authentication sent separately.

If you are signing on behalf of an organisation, please indicate your position in the organisation and/or who has authorised the submission.

## Confidentiality

All submissions are treated as public documents unless confidentiality is requested. The Committee may make submissions available to the public and may print submissions and extracts of submissions at its discretion.

The Committee intends to make submissions available on its web-site. If you wish all or part of your submission to be confidential, please specify this when you lodge your submission. The Committee will notify you of its decision. If you wish to publish your submission to the Inquiry you must first obtain the consent of the Committee.

## Parliamentary privilege

Submissions and statements made at public hearings are protected by parliamentary privilege. This means that nothing in a submission can give rise to legal action against the author or be subject to proceedings in a court of law.

## Members of the Law Reform Committee

Mr Murray Thompson, MLA (Chairman)  
Hon Dianne Hadden, MLC (Deputy Chair)  
Hon Ron Bowden MLC  
Hon Peter Katsambanis, MLC  
Mr Telmo Languiller, MLA  
Ms Andrea McCall, MLA  
Mr Bob Stensholt, MLA

## The Inquiry Timetable

The deadline for submissions is **19 July 2002**. The Committee is planning to hold public hearings on 1-2 August 2002. To make an appointment to speak at the hearing please contact the Committee Secretariat.

## Contact Details

Please contact the secretariat on (03) 9651 3644 for further information and the arrangements for public hearings. **Submissions should be addressed to:**

**Executive Officer**  
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