

**Government Response
to the
Victorian Parliament Law Reform
Committee's**

**INQUIRY into OATHS AND
AFFIRMATIONS WITH REFERENCE
TO THE MULTICULTURAL
COMMUNITY**

Introduction

The Government welcomes the Final Report of the Victorian Parliament Law Reform Committee (“the Committee”) pursuant to its inquiry into the Inquiry into Oaths and Affirmations with Reference to the Multicultural Community.

The Government takes this opportunity to thank the Committee for its efforts in undertaking the reference to consider the extent to which current legislation and associated practices in relation to the administration of oaths and affirmations in courts and affidavits are reflective of the diversity in the Victorian community. The Government is grateful for the Committee’s hard and careful work.

The Government is committed to ensuring that the people of Victoria may be confident that their laws strike the right balance of freedom of expression in this area and a reliable system of oaths and affirmations.

The Government responds to the Committee’s particular recommendations in the attached table. In most cases, the Government is supportive in principle of the Committee’s recommendations. For some recommendations, the Report will be of great assistance to the Government in its further consideration of the matters raised.

Table of Government Responses to the Law Reform Committee's Recommendations

Number	Recommendation	Response
19	That the current provisions 99-104 of the <i>Evidence Act 1958</i> (Vic) be repealed and replaced by provisions reflecting Division 2 (Oaths and Affirmations) (sections 21-24) and the Schedule-Oaths and Affirmations of the <i>Evidence Act 1995</i> (Cth).	The Government supports the review of sections 99 to 104 of the <i>Evidence Act 1958</i> (Vic) and will consult with interstate jurisdictions to determine whether a nationally consistent approach on oaths and affirmations can be developed.
20	That section 42 and Schedule 3 of the <i>Juries Act 2000</i> be amended to ensure that jurors have the right to choose to make an oath or an affirmation and that the court is required to inform them of this choice.	The Government supports the review of section 42 and schedule 3 of the <i>Juries Act 2000</i> and will consult with interstate jurisdictions to determine whether a nationally consistent approach on oaths and oath taking can be developed.
1	<p>That witnesses, jurors and others required to make an oath or affirmation in Victorian Courts and Tribunals be advised that:</p> <ul style="list-style-type: none"> • They can choose an affirmation or an oath with no statutory priority given to either option; • The oath can be in accordance with their religious belief with or without a sacred text; • They can ask the court for a list of oaths which are considered acceptable; • The list can be provided prior to their attendance at court or on request to court staff at the court on their appearance; and • Appropriate interpretation of the oath can be provided by court 	<p>The Government supports in principle the recommendation. To achieve this objective, information, along with the manual held at the court which lists the possible oaths, should be placed on court, tribunal and the Department of Justice legalonline websites. One other way of providing information to witnesses before they come to court would be to print it on the back of court summonses.</p> <p>+</p>

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	interpreters.	
2	That information be given to witnesses, jurors and others before they enter the courtroom, including but not limited to printing the information on the back of court summonses, on posters and in paper form in witness and jury waiting areas.	The Government supports in principle the recommendation and is aware that not all witnesses will read such information before attending court and therefore considers that courts and tribunals must make efforts to provide and disseminate the information on the court premises. Court Services will consider other mediums that could be employed to advise future witnesses of their rights.
3	<ul style="list-style-type: none"> That the information to witnesses, jurors and others on oaths and affirmations should be placed on the Department of Justice legalonline website and the websites of the various Courts and Tribunals in the Victorian jurisdiction. 	The Government supports in principle the recommendation. A single manual for use in all courts and tribunals could be developed and the manual will be placed on the Department of Justice website and the legalonline site.
4	That persons permitted to witness affidavits should be able to provide information to those swearing an affidavit and that information be provided by the Department of Justice and distributed by the Department of Justice in conjunction with relevant organisations	The Government supports in principle this recommendation. This could be managed by the Honorary Justices Registry.
5	That, in consultation with interested parties, the Department of Justice review and update the information relating to the system of oath taking and, in particular, alternative religious oaths in the procedural manuals of courts, tribunals and the Royal Victorian Association of Honorary Justices, with a view to compiling a single set of guidelines in the form of a manual which can be used by Victorian Courts, Tribunals and persons permitted to witness affidavits.	The Government supports in principle this recommendation. The manual could be placed on the Department of Justice website and the legalonline site.
6	<p>That the manual proposed in recommendation 5:</p> <ul style="list-style-type: none"> Be made available to courts and tribunals; Be distributed, where practicable, to the categories of persons permitted to witness affidavits and to their peak bodies; 	The Government supports in principle this recommendation. The Judicial College of Victoria, in developing new court and tribunal manuals and resources and when reviewing and updating existing court and tribunal manuals and resources, will include relevant information and guidelines to assist Victorian judicial officers.

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	<ul style="list-style-type: none"> • Be highlighted in training, information bulletins and by any other appropriate means to court staff, judges and others on a regular basis; and • Be placed on the Department of Justice website and the legalonline website. 	
7	<p>That the recommended manual should:</p> <ul style="list-style-type: none"> • Contain a clear statement that the forms of religious oath outlined in it are optional and that witnesses can choose their own form of oath; • Outline a suggested series of questions for court staff who administer the oath to ask of witnesses to ensure that witnesses are aware of their options and are able to make an informed choice; • Be updated on a regular basis to ensure that it remains relevant and appropriate 	<p>The Government supports in principle this recommendation.</p> <p style="text-align: right;">E</p>
8	<p>That:</p> <ul style="list-style-type: none"> • Those courts, tribunals and witnesses of affidavits that currently keep copies of religious texts retain such copies at their discretion; • The manual proposed in recommendation 5 contain guidelines for the appropriate handling of religious texts for those courts and tribunals which retain copies of them; • There be neither any requirement than an oath be taken on a religious text nor any impediment to an oath being taken on a religious texts (cf recommendation 19) 	<p>The Government supports in principle this recommendation. The manual could contain clear guidelines for the handling of these texts.</p>

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9	That the Evidence Act 1958 (Vic) be amended to incorporate provisions drawn from sections 135, 41, 102 and 103 of the Evidence Act 1995 (Cth).	Courts should have the capacity to deal appropriately with unjustified challenges to an oath or affirmation on the ground that the oath or affirmation was not binding on the witness's conscience. The Government wishes to give further consideration as to whether, in pursuit of this aim, the <i>Evidence Act 1958</i> (Vic) should be amended to incorporate provisions drawn from sections 135, 41, 102 and 103 of the <i>Evidence Act 1995</i> (Cth), and will consult with interstate jurisdictions to determine whether a nationally consistent approach can be developed.
10	That any cultural awareness education offered to judicial officers include education about the different religious and cultural practices associated with taking oaths in accordance with particular religions and in relation to the unfair prejudice effect which questioning or evidence about a witness's choice of oath or affirmation may have.	The Judicial College of Victoria in developing and delivering cultural awareness judicial education programs to Victorian judicial officers will have regard to these matters.
11	That the Department of Justice, in conjunction with the Victorian Multicultural Commission, review the cultural awareness training offered to court staff by Victorian courts and tribunals with a view to devising a compulsory, universal training course for such staff.	The Government supports in principle this recommendation. The Judicial College is currently incorporating cultural awareness training into the syllabus for the judiciary. The Diversity Issues Unit is currently undertaking an inventory of cultural diversity policy within the Department and will report its findings to the Judicial College and Court Services.
12	That cultural awareness training be compulsory for all Justices of the Peace and Bail Justices upon their appointment and periodically thereafter and that such training be fully funded by the government.	The Government supports in principle this recommendation.
13	That any amendments to the <i>Evidence Act 1958</i> be accompanied by a specific awareness campaign for lawyers by the Department of Justice, in conjunction with the Law Institute Victoria and the Victorian Bar Council, which incorporates	The Government supports in principle this recommendation. The Communications area of the Department of Justice could be engaged to undertake this work.

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	cultural issues concerning the oath and affirmation	engaged to undertake this work.
14	That the Department of Justice provide or co-ordinate compulsory training for government employees who are authorised to witness affidavits and who are regularly required to do so as part of their work	The Government supports in principle this recommendation.
15	That Justices of the Peace, government employees and all other groups in the list of persons who can witness affidavits, through their peak organisations or by any other practicable means, be provided with up-to-date information by the Department of Justice about the system of oath taking, alternative forms of oath and affirmations and associated cultural issues.	The Government supports in principle this recommendation.
16	That the Department of Justice, in co-operation with the Victorian Multicultural Commission and other appropriate organisations conduct a community awareness campaign to educate the community about how to become a Justice of the Peace to encourage applications from a diverse range of people	The Government supports in principle this recommendation. The Department of Justice, in cooperation with the Victorian Multicultural Commission, VOMA and the Ethnic Communities Council of Victoria could conduct the community awareness campaign during the annual Cultural Diversity Week -17-21 March.
17	That, to ensure that Justices of the Peace are drawn from the widest cross-section possible of the Victorian community, the Justices of the Peace Registry consider the linguistic, religious and cultural needs of local communities as well as involvement in community organisations when considering applications for appointment as Justice of the Peace	The Government supports in principle this recommendation.
18	That a review be undertaken into the roles and responsibilities of Justices of the Peace in Victoria, with particular focus on the appointment, accessibility and training of Justices of the Peace and the desirability of a periodic review of appointment.	The Government supports in principle this recommendation. Court Services have suggested that this could be the subject of a further Parliamentary Committee reference.