

Practice Note 9 – Declarations and Affidavits with specific foreign legislation references

You may be asked to notarise declarations or affidavits in which the jurat refers to specific legislation of a particular country.

Australian Commonwealth declarations are expressed to be made under section 11 of the (Australian) Statutory Declarations Act 1959. That section provides:

“False declarations. A person must not intentionally make a false statement in a statutory declaration. Penalty: Imprisonment for 4 years”.

New Zealand notaries are authorised to take Australian Commonwealth Statutory Declarations. <https://www.ag.gov.au/legal-system/statutory-declarations/who-can-witness-your-commonwealth-statutory-declaration#find>.

In the case of Australian Commonwealth Statutory Declarations, there is no need to replace the Australian legislative reference in the jurat with the New Zealand Oaths and Declarations Act 1957.

The situation is less straight-forward with documents from some other countries. In particular, Fijian and South African documents often contain complicated or more onerous jurats than usual.

South African affidavits may refer to the document being *“deposed to in accordance with the regulations governing the administration of an oath as more fully set out in the Government Notice R1258 of the 21st July 1972, as amended by Government Notice 1648 dated 19 August 1977 and Government notice 903 dated the 10th of July 1998”*.

The following example of a jurat on a Fijian document was used in practice note 3:

“SWORN by the said XXX at this day of 20 before me after the contents hereof were read over and explained to him/her and he/she appeared fully to understand the meaning and effect thereof”

It is not advisable to take a statutory declaration under legislation with which you are not familiar, or to notarise a document with a jurat that purports to confirm facts not within your knowledge. In the rare cases where these situations arise, there are a number of options as follows:

1. Strike out or amend the wording as you see fit (including, if you prefer, a reference to the amendment, in your notarial certificate). This is not recommended practice, because there is the end user may reject the amended document. Nevertheless, if time is at a premium and if the signatory agrees and understands the risk, then this is remains an option.
2. Seek the consent of the party who has prepared/will be relying on the document, to amend the jurat wording as required. This is the preferred option, notwithstanding that that consent may be declined in some cases, in which case the notary may decline to proceed further.
3. Leave the wording unchanged, but qualify your notarial certificate, for example *“XX made the declaration/affidavit in my presence, but I have no knowledge of the laws of (applicable country), and confirm only that the declaration/affidavit was made in the manner which complies with the laws of New Zealand”*.