

STATUTORY DECLARATION

This declaration must be made before an authorised person. Only certain people may witness a Commonwealth statutory declaration. A list of people who can be witnesses is set out in Schedule 2 to the *Statutory Declaration Regulations 1993*. The Regulations and a separate 'list of signatories' can be accessed via a link at www.ag.gov.au/statdec.

WARNING: When you make a statutory declaration, you are declaring that the statements in it are true. If you intentionally make a false statement in a statutory declaration, you could be charged with an offence and, if convicted, you could be fined or jailed, or both.

The provision of false or misleading information in this declaration is subject to penalties under the *Statutory Declarations Act 1959* and the *Migration Act 1958*. The *Statutory Declarations Act* provides for penalties of up to 4 years imprisonment. Section 234 of the *Migration Act* carries a penalty of up to 10 years imprisonment for knowingly making a false statement in connection with a visa application.

COMMONWEALTH OF AUSTRALIA
Statutory Declaration

I, ⁽¹⁾ _____

do solemnly and sincerely declare that:

- (1) I have never been convicted of a crime or any offence in any country;
- (2) I have not been charged with any offence that is incomplete or awaiting legal action, nor am I aware of any investigation into my affairs that has the potential to lead to such charges;
- (3) I do not have any spent convictions under any spent convictions legislation in any country or any convictions on my police record;
- (4) I have not been found by a court to not be fit to plead, in relation to an offence, where the court has nonetheless found on the evidence available that I committed the offence; nor have I been acquitted of an offence on the grounds of unsoundness of mind or insanity;
- (5) I have not been found guilty of, nor had a charge proven against me for, a sexually based offence involving a child;
- (6) I have not been involved in conduct constituting an offence under one or more of sections 233A to 234A of the Migration Act 1958 (people smuggling), or an offence of trafficking in persons;
- (7) I have not been involved in conduct constituting, nor have I been charged with, or indicted for, the crime of genocide, a crime against humanity, a war crime, a crime involving torture or slavery or a crime that is otherwise of serious international concern;
- (8) I am not, nor have I been, a member of a group or organisation who has been or is involved in criminal conduct or any activities referred to above.
- (9) I do not have, nor have I had, an association with a group, organisation or person who has been or is involved in criminal conduct or any activities referred to above.
- (10) To the best of my knowledge I do not have any matters which are either unresolved or in which I have been, or am involved, that would bring into question whether or not I pass the character test⁽²⁾ as defined at Section 501 of the Migration Act 1958.

I fully understand the above, or the above has been fully explained to me by another person or interpreter who fully understands the above, such that I fully understand the above. And I make this solemn declaration by virtue of the *Statutory Declarations Act 1959*, and subject to the penalties provided by that Act for the making of false statements in statutory declarations, conscientiously believing the statements contained in this declaration to be true in every particular.

¹ Here insert name, address and occupation of person making the declaration.

² The *Character Test* is defined at section 501 of the *Migration Act 1958*. A copy is included in this form.

I understand that any incorrect information may result in refusal of my application or, if a visa has been granted, the cancellation of my visa. I understand that, if my visa is cancelled after entry to Australia, I will be required to leave Australia.

(3) _____

Declared at _____

this _____ day of _____ 2 _____

Before me,

(4) _____

(5) _____

³ Signature of person making the declaration.

⁴ Signature of person before whom the declaration is made.

⁵ Here insert name and title of person before whom the declaration is made.

Character Test

- (6) For the purposes of this section, a person does not pass the '*character test*' if:
- (a) the person has a substantial criminal record (as defined by subsection (7)); or
 - (aa) the person has been convicted of an offence that was committed:
 - (i) while the person was in immigration detention; or
 - (ii) during an escape by the person from immigration detention; or
 - (iii) after the person escaped from immigration detention but before the person was taken into immigration detention again; or
 - (ab) the person has been convicted of an offence against section 197A; or
 - (b) the Minister reasonably suspects:
 - (i) that the person has been or is a member of a group or organisation, or has had or has an association with a group, organisation or person; and
 - (ii) that the group, organisation or person has been or is involved in criminal conduct; or
 - (ba) the Minister reasonably suspects that the person has been or is involved in conduct constituting one or more of the following:
 - (i) an offence under one or more of sections 233A to 234A (people smuggling);
 - (ii) an offence of trafficking in persons;
 - (iii) the crime of genocide, a crime against humanity, a war crime, a crime involving torture or slavery or a crime that is otherwise of serious international concern;whether or not the person, or another person, has been convicted of an offence constituted by the conduct; or
 - (c) having regard to either or both of the following:
 - (i) the person's past and present criminal conduct;
 - (ii) the person's past and present general conduct;
- the person is not of good character; or
- (d) in the event the person were allowed to enter or to remain in Australia, there is a risk that the person would:
 - (i) engage in criminal conduct in Australia; or
 - (ii) harass, molest, intimidate or stalk another person in Australia; or
 - (iii) vilify a segment of the Australian community; or
 - (iv) incite discord in the Australian community or in a segment of that community; or
 - (v) represent a danger to the Australian community or to a segment of that community, whether by way of being liable to become involved in activities that are disruptive to, or in violence threatening harm to, that community or segment, or in any other way; or
 - (e) a court in Australia or a foreign country has:
 - (i) convicted the person of one or more sexually based offences involving a child; or
 - (ii) found the person guilty of such an offence, or found a charge against the person proved for such an offence, even if the person was discharged without a conviction; or
 - (f) the person has, in Australia or a foreign country, been charged with or indicted for one or more of the following:
 - (i) the crime of genocide;
 - (ii) a crime against humanity;
 - (iii) a war crime;
 - (iv) a crime involving torture or slavery;
 - (v) a crime that is otherwise of serious international concern; or
 - (g) the person has been assessed by the Australian Security Intelligence Organisation to be directly or indirectly a risk to security (within the meaning of section 4 of the *Australian Security Intelligence Organisation Act 1979*); or
 - (h) an Interpol notice in relation to the person, from which it is reasonable to infer that the person would present a risk to the Australian community or a segment of that community, is in force.

Otherwise, the person passes the *character test*.

Substantial criminal record

- (7) For the purposes of the character test, a person has a *substantial criminal record* if:
- (a) the person has been sentenced to death; or
 - (b) the person has been sentenced to imprisonment for life; or
 - (c) the person has been sentenced to a term of imprisonment of 12 months or more; or
 - (d) the person has been sentenced to 2 or more terms of imprisonment where the total of those terms is 12 months or more; or
 - (e) the person has been acquitted of an offence on the grounds of unsoundness of mind or insanity, and as a result the person has been detained in a facility or institution; or
 - (f) the person has:
 - (i) been found by a court to not be fit to plead, in relation to an offence; and
 - (ii) the court has nonetheless found that on the evidence available the person committed the offence; and
 - (iii) as a result, the person has been detained in a facility or institution.

Concurrent sentences

- (7A) For the purposes of the character test, if a person has been sentenced to 2 or more terms of imprisonment to be served concurrently (whether in whole or in part), the whole of each term is to be counted in working out the total of the terms.

Example: A person is sentenced to 2 terms of 3 months imprisonment for 2 offences, to be served concurrently. For the purposes of the character test, the total of those terms is 6 months.

Periodic detention

- (8) For the purposes of the character test, if a person has been sentenced to periodic detention, the person's term of imprisonment is taken to be equal to the number of days the person is required under that sentence to spend in detention.

Residential schemes or programs

- (9) For the purposes of the character test, if a person has been convicted of an offence and the court orders the person to participate in:
- (a) a residential drug rehabilitation scheme; or
 - (b) a residential program for the mentally ill;
- the person is taken to have been sentenced to a term of imprisonment equal to the number of days the person is required to participate in the scheme or program.

Pardons etc.

- (10) For the purposes of the character test, a sentence imposed on a person is to be disregarded if:
- (a) the conviction concerned has been quashed or otherwise nullified; or
 - (b) both:
 - (i) the person has been pardoned in relation to the conviction concerned; and
 - (ii) the effect of that pardon is that the person is taken never to have been convicted of the offence.

Conduct amounting to harassment or molestation

- (11) For the purposes of the character test, conduct may amount to harassment or molestation of a person even though:
- (a) it does not involve violence, or threatened violence, to the person; or
 - (b) it consists only of damage, or threatened damage, to property belonging to, in the possession of, or used by, the person.

Definitions

- (12) In this section:
- court* includes a court martial or similar military tribunal.
 - imprisonment* includes any form of punitive detention in a facility or institution.
 - sentence* includes any form of determination of the punishment for an offence.

Note 1: *Visa* is defined by section 5 and includes, but is not limited to, a protection visa.

Note 2: For notification of decisions under subsection (1) or (2), see section 501G.

Note 3: For notification of decisions under subsection (3), see section 501C.