

**IN THE SUPREME COURT OF VICTORIA
IN ITS PROBATE JURISDICTION**

S PRB [*Application No.*]

In the matter of the deceased estate of [*name*]

Application by:

[*Plaintiff's name*]

Plaintiff(s)

**AFFIDAVIT OF TESTAMENTARY CAPACITY BY A PERSON OTHER THAN A MEDICAL
PRACTITIONER OR LAWYER**

Date of document:

Filed on behalf of the Plaintiff

Prepared by: [*name and
address of lodging party*]

Ref: [*solicitors only*]

CODE: [*solicitors only*]

Tel: [*number*]

E-mail: [*e-mail address*]

Guidance for completing this affidavit

This affidavit should be completed by someone who knew the deceased well, such as a friend, family member or colleague.

It should explain your observations of the deceased shortly before, at the time of, and shortly after the will was made. Focus on your observations during that period.

Only include information that you personally saw, heard or experienced. Do not include information that is based only on what another person told you or information that you assume to be true. Give specific examples and dates if you can.

Complete the information requested wherever you see words in square brackets []. Before the document is signed, remove this guidance section and any instructions or examples in the document.

Complete each part below. If you cannot provide information about a particular matter from your own personal knowledge, write "I cannot provide evidence about this matter".

I, [*insert name and address*], [*occupation*] affirm/make oath and say that:

1. I am [*insert relationship to deceased, e.g. friend, neighbour, niece*] of [*insert full name of the deceased*] ("the deceased").
2. I have been asked to provide evidence concerning the testamentary capacity of the deceased in relation to a will dated [*date*] ("the will")

3. The observations set out in this affidavit primarily relate to the period from approximately *[date]* to *[date]*, being the period around the time the will was made.
4. I knew the deceased from approximately *[date]* until *[date]*.
5. During the period immediately before and after the will was made, I had regular contact with the deceased, usually *[frequency of contact e.g. daily, weekly]*.
6. I saw the deceased in the following settings: *[Describe where you regularly saw the deceased, for example, at home, social events, work, community activities]*.

7. Nature and effect of a will

The following matters led me to believe that the deceased understood they were making a will and understood its purpose:

- (a) *[Describe discussions you personally had with the deceased about their will or estate planning around the time the will was made.]*

8. Understanding assets

The following matters led me to believe that the deceased understood the general nature and extent of their property and assets:

- (a) *[Describe discussions or observations around the time the will was made concerning property, finances, investments, business interests or other assets.]*

9. Understanding possible beneficiaries

The following matters led me to believe that the deceased understood the people who may have expected to benefit from their estate:

- (a) *[Describe discussions about family members, dependants or other persons important to the deceased around the time the will was made.]*

10. Rational decision making

The following matters led me to believe that the deceased was capable of making rational decisions about how their assets should be distributed:

- (a) *[Describe discussions regarding reasons for gifts, exclusions, family relationships or other decisions around the time the will was made and explain why those decisions appeared sensible or logical to you.]*

11. Observations around the time the will was made

The following observations are relevant to the deceased's memory, understanding, communication, behaviour and decision-making around the time the will was made:

(a) *[Describe what you personally observed. For example, whether the deceased recognised people, remembered recent events, was able to hold a conversation, understood questions, communicated their wishes clearly, managed their daily affairs, or showed any confusion, forgetfulness or changes in behaviour. Give specific examples where possible.]*

12. The facts set out above are matters that I personally saw, heard or experienced.

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 by
the deponent

at *[place]*
on *[date]*

Before me:

Witness Full Name

Address

Qualification

A person authorised under section 19(1) of the *Oaths and Affirmations Act 2018* to take an affidavit.
