

4.7 Witnessing affidavits

What is an affidavit?

An affidavit is a written statement made and sworn under oath or affirmation before an authorised witness that the contents of their document are true and correct. The person making the affidavit, and who makes the oath or affirmation, is called the signatory, also known as the deponent.

The legislation governing administering oaths and witnessing affidavits is the *Oaths Act 1867* (the Act). Your role is to take the oath or affirmation and witness the signature of the signatory.

Why do people make affidavits?

Affidavits are often intended for use as evidence in a court of law. They are usually tendered to the court in lieu of verbal evidence. Therefore, they must be prepared and sworn as if they were evidence being given before a court.

The signatory must understand they commit an offence if they know information in their affidavit is false.

Affidavit forms


There is not one universal affidavit form that must be used – it will vary depending on the court or tribunal in which it will be used and the type of proceeding.

You as the witness are not expected to know or understand the rules for different proceedings. The responsibility to ensure the relevant form is being used is on the person making the affidavit.

What are my obligations when witnessing an affidavit?

1. You must take reasonable steps to verify:
 - the signatory's identity
 - the signatory's name matches the name of the signatory in the affidavit.
2. You must also satisfy yourself:
 - the signatory is making the document freely and voluntarily
 - the signatory understands the document.

It must be clear the signatory is freely and voluntarily making the document and is not being pressured or coerced. If you feel a family member, friend or carer is behaving in a way that is domineering or overbearing it is best practice to speak to the signatory alone.

 **Note:** If you are not satisfied the signatory understands the content or is not making the document freely and voluntarily, decline to witness it and explain why.

Requirements

The Act requires the signatory and the witness to include certain information and statements on the affidavit.

The signatory must ensure the affidavit contains the following statements:

1. *The contents of this affidavit are true, except where they are stated on the basis of information and belief, in which case they are true to the best of my knowledge.*
2. *I understand that a person who makes an affidavit that the person knows is false in a material particular commits an offence.*

You should not proceed to witness the statutory declaration unless it contains the required statements set out above.

If these statements are not included on the affidavit presented to you, ask the signatory to write the required statements above or as close to the execution section.

As the witness, you must include the following information on the affidavit:

- your full name
- your qualification (i.e. Justice of the Peace or Commissioner for Declarations).

Substitute Signatories


The Act allows a signatory to direct another person (called a substitute signatory) to sign the affidavit on their behalf. A substitute signatory cannot be:

- the person witnessing the affidavit
- if the affidavit is to be filed or admitted into evidence in a proceeding by or for a party - a person who is another party to the proceeding or a relation of another party to the proceeding.

The signatory and the substitute signatory must both be present with you at the same time. You should decline to witness the document if only one is in attendance.

If a substitute signatory is involved, you must:

- observe the signatory giving the direction to the substitute signatory to sign the document for them
- be satisfied the signatory is giving the direction freely and voluntarily
- check the affidavit includes the names of both the signatory and the substitute signatory.

 **Note:** The role of the substitute signatory is simply to sign the document for the signatory. The affidavit is made in the name of the signatory, and it is the signatory who must swear or affirm the contents of the affidavit are true and correct to the best of their knowledge and belief.

You should take reasonable steps to verify the identity of the substitute signatory (in addition to the signatory) and enter their name and the type of identification presented in your logbook. You must be satisfied that the substitute signatory is not a relation of any other party to the proceeding.


How do you witness an affidavit?

Follow the general procedure for witnessing signatures as outlined in chapter 4.1 then:


1. Take reasonable steps to verify:
 - the signatory's identity
 - the signatory's name matches the name of the signatory written on or in the affidavit.

This is a requirement of the *Oaths Act 1867*.
2. Check the requirements for the affidavit have been met.
3. Check if the affidavit has any special requirements, such as:
 - particular types of proof of their identity
 - personal knowledge of the signatory for a particular time.
4. Warn the signatory, at the outset, and check they understand that if they knowingly make an affidavit and they know the information is false they commit an offence.

Ensure the signatory understands that swearing an oath or making an affirmation is a solemn matter.
5. Check the signatory understands the contents of the affidavit and they are making the document freely and voluntarily.

 **Note:** If you are not satisfied the signatory understands the content or is not making the document freely and voluntarily, decline to witness it and explain why. This is a requirement of the *Oaths Act 1867*.
6. If you are satisfied the signatory understands the affidavit, administer the oath or affirmation as outlined in chapter 4.6.
7. Both you and the signatory or substitute signatory must sign the bottom of every page of the affidavit.
8. Have the signatory or substitute signatory sign the last page of the affidavit. Witness their signature and insert your full name and qualification.

This is a requirement of the *Oaths Act 1867*.

 **Note:** If a substitute signatory is required, ensure the affidavit includes the name of both the signatory and substitute signatory.
9. Record all relevant information in your logbook as outlined in chapter 2.4.

Annexures and certificates of exhibits

Annexures

Annexures are documents and attached to the affidavit. Each annexure must be introduced and described in the body of the affidavit. Under the *Uniform Civil Procedures Rules 1999* (UCPR) annexures are referred to as exhibits.

Examples of annexures include (but are not limited to):

- financial statements
- medical records
- reports
- photographs
- any record of information that exists in digital form.

Annexures are normally marked with the letters 'A', 'B', 'C' and so on, but other references such as numerical markings, are acceptable.

If the annexure does not have a certificate of exhibit attached, you may mark the annexure with the following wording. Normally, there is no need for the deponent to sign or initial these annexures.

.....
*This page and pages to are the particulars marked “.....” referred to in the affidavit of
..... Sworn/Affirmed before me at this day of 20*
.....
Deponent *JP Qual/Cdec*

Certificate of exhibit

Under the UCPR each exhibit to an affidavit must have an identifying mark on it (such as letter or number), and the certificate in the approved form on it. It is acceptable for multiple annexures to be bound with one certificate of exhibit listing all annexures.

Where a certificate of exhibit is provided, you and the signatory/substitute signatory must sign the certificate. The annexures do not need to be individually signed or initialled.

If an annexure does not have a certificate of exhibit attached, ask the signatory to mark the annexure with the following wording.

.....
*Certificate of exhibit
Exhibit ‘A’ to the affidavit of (name of signatory) sworn [affirmed] (date)*
.....
Deponent / Substitute Signatory *Witness*
(delete whichever is not applicable) *(Description of witness)*

or

.....
Bound and marked ‘A’ - ‘B’ are the exhibits to the affidavit of (name of signatory) sworn [affirmed] (date)
.....
Deponent / Substitute Signatory *Witness*
(delete whichever is not applicable) *(Description of witness)*

Things to bear in mind

Here is a summary of the changes you will need to make to the wording of the form if the document is to be affirmed rather than sworn:

For oath	For affirmation, replace with
Make oath and say	Solemnly, sincerely and truly affirm and declare
Signed and sworn	Signed and solemnly, sincerely and truly affirmed and declared
Sworn herein	Affirmed herein

Frequently asked questions

What if I administer the oath/affirmation at the start?

You will need to make a slight alteration to the standard oath or affirmation if you decide to administer it at the start. After the phrase *‘the contents of this document’*, include the following words:

‘...and any further information I may supply either orally or in writing...’.

The standard written oath or affirmation on the bottom of the document need not be altered.

Can a mobile device be used to take a religious oath?

Yes. A mobile device containing a religious text can only be used if a physical copy is not available, as outlined in chapter 4.6.

What if the affidavit has more than one page?

If the affidavit is a multiple-page document, you and the signatory/substitute signatory must sign each page. Number each page ‘page 1 of 4’, ‘page 2 of 4’ and so on. Although placement of this on the page is not prescribed, it is normally done on the lower right-hand corner. The final page must be witnessed in the normal manner.

What if alterations or additions are made to the document?

As with all documents, any alterations or additions made to the document should be initialled by both you and the signatory/substitute signatory.

What if there is more than one affidavit to be witnessed?

You can administer an oath or affirmation simultaneously. Place the affidavits together and amend the oath or affirmation to include all affidavits.

Should I keep a record of the affidavits I witness?

Yes. Record all relevant information in your logbook as outlined in chapter 2.4.

Where can I get more information?

Queensland Courts

www.courts.qld.gov.au

Queensland legislation

www.legislation.qld.gov.au

Legal Aid Queensland

www.legalaid.qld.gov.au

Your rights crime and the law

www.qld.gov.au/law

Forms

Queensland Courts and tribunals affidavits

www.courts.qld.gov.au/forms

QCAT affidavit


www.qcat.qld.gov.au/resources/forms


4.7 Quick guide

Witnessing affidavits

Follow the general procedure for witnessing signatures as outlined in chapter 4.1 then:

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- Take reasonable steps to verify:
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 - the signatory's identity
 - the signatory's name matches the name of the signatory written on or in the affidavit.
 This is a requirement of the *Oaths Act 1867*.
-
- ② Check the requirements for the affidavit have been met.
-
- ③ Check if the affidavit has any special requirements.
-
- ④ Warn the signatory that if they knowingly make a false affidavit they commit an offence.
-
- ⑤ Check the signatory understands the contents of the affidavit and they are making the document freely and voluntarily. This is a requirement of the *Oaths Act 1867*.
-
- ⑥ Ask the signatory to make their oath or affirmation.

 **Note:** The signatory must make the oath or affirmation, not the substitute signatory.
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- ⑦ Both you and the signatory/substitute signatory sign each page of the affidavit.
-
- Have the signatory or substitute signatory sign the last page of the affidavit. Witness their signature and insert your full name and qualification.
- ⑧ This is a requirement of the *Oaths Act 1867*.

 **Note:** If a substitute signatory is required, ensure the affidavit includes the name of both the signatory and substitute signatory.
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- ⑨ Record all relevant information in your logbook as outlined in chapter 2.4.
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