

4.2 Witnessing Queensland and Commonwealth statutory declarations

Queensland Statutory Declarations

What is a Queensland statutory declaration?

Statutory declarations are written statements declaring something is true and correct. They carry a degree of formal authority that statements with only a signature do not. For matters dealt with by Queensland legislation, they are made under the *Oaths Act 1867* (Oaths Act).

The person making the declaration is called the declarant (also known as the signatory).

There is no requirement for a statutory declaration to be sworn or affirmed as they are not generally used in a court of law.

Why do people make Queensland statutory declarations?

A statutory declaration is intended to ensure the statement being made is truthful. It has the effect of putting the signatory on notice that the information they provide must be, in their conscientious opinion (e.g. to the best of their knowledge and belief) true and correct.


Some legislation requires information to be supplied in the form of a statutory declaration. In some cases, people choose to make a statement by way of a statutory declaration – not because there is a legal requirement to do so, but because they believe the statement will carry more weight as a result.

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

Queensland statutory declaration forms

In Queensland, the Department of Justice and Attorney-General has approved and published a statutory declaration form that complies with the requirements of the Oaths Act.

Two versions of the form are available, a print and electronic version – both are available online. The print version should be used if handwriting the contents of the statutory declaration, while the electronic version can be prepared on a computer or other electronic device, then printed out and signed on paper.


 **Note:** There is no legal requirement to use the approved forms. These forms simply provide a template in compliance with the requirements in the Oaths Act. A person can use another form or document to make a statutory declaration in Queensland, provided they comply with the requirements in the Oaths Act (highlighted further on in this chapter).

Most government forms and many other forms required by a wide range of statutory authorities and businesses follow the format of a statutory declaration. Others, such as insurance claim forms, include a statutory declaration at the end.

What are my obligations when witnessing a Queensland statutory declaration?

1. You must take reasonable steps to verify:
 - the signatory's identity
 - the signatory's name matches the name of the signatory written on or in the statutory declaration.
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 the document and explain why.

Requirements

The Oaths Act requires the signatory and the witness to include certain information and statements on the statutory declaration.

The signatory must ensure the statutory declaration contains the following statements:

1. *The contents of this statutory declaration are true and correct, 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 a declaration 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.

As the witness, you must include the following information on the statutory declaration:

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

Substitute signatories in Queensland

The Oaths Act allows a signatory to direct another person (called a substitute signatory) to sign the statutory declaration on their behalf.

A substitute signatory cannot be:


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


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

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 declaration 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 statutory declaration is made in the name of the signatory, and it is the signatory who must declare the contents of the statutory declaration are true and correct to the best of their knowledge and belief.


 **Note:** If the statutory declaration is to be used in a court proceeding, you must be satisfied the substitute signatory is not a relation of any other party to the proceeding.

Whilst not mandatory, 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.

How do I witness a Queensland statutory declaration?

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 statutory declaration.
2. Check the requirements for the statutory declaration have been met.
3. Check if the statutory declaration 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 a declaration and they know the information is false they commit an offence.
5. Check the signatory understands the declaration and they are making it 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 the document and explain why. This is a requirement of the *Oaths Act 1867*.
6. If you are satisfied the signatory understands the declaration, ask them:

Do you solemnly and sincerely declare that the contents of this declaration are true and correct to the best of your knowledge and belief?


Instruct the signatory to answer:

I solemnly and sincerely declare that the contents of this declaration are true and correct to the best of my knowledge and belief.

Or:

I do so declare.

8. Have the signatory or substitute signatory sign the declaration.

 **Note:** If a substitute signatory is required, ensure the statutory declaration includes the names of both the signatory and the substitute signatory.
9. Witness the signatory's declaration and insert your full name and qualification. This is a requirement of the *Oaths Act 1867*.
10. Record all relevant information in your logbook as outlined in chapter 2.4.

Things to bear in mind

Location


Under the Oaths Act, you can witness the signing of a statutory declaration anywhere. However, a statutory declaration under this Act will apply only to matters covered by Queensland law.

Check over the declaration

This is covered in the general witnessing chapter 4.1, and you should do this as a matter of course.

However, it is worth repeating here because you need to check there are no blank spaces, particularly in a document that requires the signatory to answer prepared questions.

Ask the signatory to cross them out or complete them. Ensure both you and the signatory initial them.

 **Note:** A signatory may withhold information in a document, such as an address or other personal details, if they have concerns it may jeopardise their safety if disclosed to another party. This information will be supplied to the receiving agency or court at the time of lodgement.

Commonwealth statutory declarations

What is a Commonwealth statutory declaration?

A Commonwealth statutory declaration is a formal written statement used to set out facts, meet a requirement, or situations relating to matters under a law of the Commonwealth or of a Territory. They are also used in the administration of Commonwealth Departments i.e. Australian Taxation Office, Department of Health and Aged Care and Department of Home Affairs.

You are an approved witness under the *Commonwealth Statutory Declarations Act 1959* (the Commonwealth Act) and can witness a Commonwealth statutory declaration anywhere.

Why do people make Commonwealth statutory declarations?

Normally a person will be asked to complete a statutory declaration as part of a formal process, such as an application or as a legal requirement. The department or individual requesting the declaration will provide guidance and instructions on what the person should include in their declaration.

People of any age or nationality can make a Commonwealth statutory declaration.

Commonwealth statutory declaration forms

The statutory declaration must be in the approved form and can be witnessed either in person or by video link.

What are my obligations as an approved witness?

Before witnessing a Commonwealth statutory declaration you should:

- Be satisfied the signatory has the legal capacity to sign the declaration and understands what they are doing and the consequences.
- Ensure the signatory understands that making a declaration is a serious matter and they commit a Commonwealth criminal offence if they make a false statement in a declaration.
- Be satisfied the signatory is acting freely and voluntarily and are not being pressured into making the document.

Electronic signatures

Commonwealth statutory declarations can be witnessed by video link and the signatory may choose an online video conferencing platform such as Zoom, Microsoft Teams or Skype to have their statutory declaration witnessed.

The Commonwealth Act allows for statutory declarations to be:

- Made in the form of a physical or electronic document.
- Signed using a pen (wet ink) or electronic signature.
- Made in counterparts (where the signatory and witness sign separate, but identical copies of the same document).

The Commonwealth Act does not specify any method of electronic signing. It requires the document to be signed using an accepted method that:

- Identifies the person and indicates the person's intention in relation to the contents of the document.
- Is reliable as appropriate for the purpose for which the information was recorded.

This means you can electronically sign the document in several ways. For example you can:

- Paste a scanned image of your handwritten signature into a document.
- Sign on a touch screen (such as a tablet, smartphone or laptop) using a stylus or finger.
- Use an electronic platform which supports electronic signing of documents (such as DocuSign).
- Use a digital signature which uses encryption and decryption technology alongside a Public Key Infrastructure (PKI).

While electronic signatures can be made in a variety of ways, many of those ways are not appropriate for use on statutory declarations. It is not recommended that you, or the signatory, electronically sign the document by:


- typing a name in a Word version of the document
- clicking or ticking a button or box on a computer screen.

How do I witness a Commonwealth statutory declaration?

You can witness a Commonwealth statutory declaration either in person or by a video link. The format of the declaration can either be a paper or electronic version of the approved form.


When witnessing a Commonwealth statutory declaration follow the general procedure for witnessing signatures as outlined in chapter 4.1 then:

1. Meet with the signatory in person or using video link technology.

 **Note:** When witnessing by video link technology there must be the ability for both you and the signatory to see and hear each other.

2. Whilst not mandatory you should.

- Take reasonable steps to satisfy yourself as to the identity of the signatory.
- Warn the signatory at the outset, and check they understand that if they knowingly make a declaration and they know the information is false they commit a Commonwealth criminal offence.


 **Note:** You are not responsible for the truth or accuracy of what the signatory is declaring. The signatory holds the liability for committing an offence for making an intentional false statement. You cannot be charged or connected with the signatory if the signatory makes a false statement.

3. Ensure the signatory understands that making a declaration is a solemn matter.

4. Check the signatory understands their declaration and are making it freely and voluntarily.

If you are satisfied the signatory understands the declaration you must:

- Observe them sign the declaration either with a pen or electronically.
- Ensure they sign and date the bottom of any additional pages or attachments.
- Ensure they include their email address or telephone number beneath their signature.

 **Note:** This means if you are witnessing using a video link, they may need to position the camera or share their screen so you can see them sign their declaration.


If witnessing electronically you may need the signatory to send you the signed document so you can apply your signature and other required information.


5. Witness the signatory's signature, sign and date every page including extra pages or attachments. If the document was signed:

- In person:
 - Witness their signature on the physical document.
 - Witness their signature on the electronic document.
- By video link:
 - Place your electronic signature on the document.
 - Print the signed copy of the document and witness their signature.
 - Print a counterpart of the document and witness in the usual manner.


6. You must include your:

- full name
- qualification and registration number
- address
- email address and/or telephone number.

 **Note:** You do not need to apply your seal of office on the statutory declaration. You will meet your witnessing requirements by completing the witness sections listed on the statutory declaration.

 **Note:** You can provide the address details of the Justices of the Peace Branch as outlined in chapter 1.2.

7. Return the witnessed document to the signatory.

 **Note:** When witnessing the signatory's signature by video link, you should sign and complete the witness sections and return it to the signatory at the same time during the video call.

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

Frequently asked questions

Can I witness a Queensland statutory declaration by video link?

No. Only approved Justices of the Peace and Commissioners for Declarations under the *Oaths Act 1867* can witness Queensland statutory declarations by audio visual link.

What if the Queensland statutory declaration has more than one 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, in the same place on each page.

There is no legal requirement to sign or initial every page of a Queensland statutory declaration. However, it is good practice to initial every page. The final page must be witnessed in the normal manner by signing your name.

Do I need to use a Bible or other religious text to administer the declaration?

Bibles or other religious text are not required for statutory declarations as they are not sworn or affirmed. However, if a signatory wishes to swear or affirm their statutory declaration using a Bible or religious text, they can (provided there is one available).

Can someone under the age of 18 make a statutory declaration?

There is nothing in law that precludes someone who is under 18 years of age making a statutory declaration.

You need to be satisfied the signatory understands the nature and content of the declaration and that they must tell the truth.

Can more than one person sign the same statutory declaration?

Sometimes the receiving agency requires more than one person to make a declaration. You can execute such a document, however it must be legible and the appropriate wording used, such as changing 'I' to 'we'.

What if there are attachments to the statutory declaration?

Attachments must be referred to and described in the body of the declaration. Each attachment should be marked with the following:

This is the [type of document] or copy of the [type of document] marked with the letter 'A' referred to in the [name of main document] declared before me on this day of 20

The signatory has presented with a previous version of a Queensland statutory declaration.

Can I witness it?

Yes. Ask the signatory to handwrite the required statements and information (outlined previously in this chapter) on the document so it complies with the requirements of the Oaths Act.

What place should be included on the document?

The signatory should insert their location at the time of signing the document. If the signatory has concerns about disclosing their location, it is recommended that they use a general location (such as 'Queensland').

Should I keep a record of the statutory declarations I witness?

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

Do I need to apply my seal of office when witnessing a Commonwealth statutory declaration electronically?

No. You do not need to apply your seal of office if the document is in the form of an electronic document, or if you are signing the document electronically.

Can I make a digital seal of office to use when witnessing a Commonwealth statutory declaration electronically?

No. You are not authorised to reproduce a seal of office issued by the Department of Justice and Attorney-General. You are not required to insert your seal of office on statutory declarations witnessed by video link.

Do I have to witness Commonwealth statutory declarations by video link if I do not have the means to do so?

No. You are not obligated to witness a Commonwealth statutory declaration by video link in certain situations including, but not limited to, if you do not have:

- access to a computer or video link equipment
- limited knowledge on how to meet with the signatory by video link
- the ability to conduct the meeting by video link in a quiet and appropriate location
- approval from your employer to meet with a person by video link using your work computer or other electronic device
- limited knowledge on creating and using an electronic signature
- software or other applications used to meet by video link
- If you decline to witness the signatory's document by video link, explain to the signatory the reason.

Can I witness other documents for Commonwealth matters using a video link?

No. Affidavits, deeds, and certifying documents are not covered under the *Statutory Declarations Act 1959*.

Can a recording of the witnessing of the Commonwealth statutory declaration be made?

The *Statutory Declarations Act 1959* does not require any party to record the witnessing of a Commonwealth statutory declaration by video link technology.

There may be times when the signatory wishes to record the signing of their document. This can only occur with the consent of all parties. If you do not wish to be recorded, you should advise the signatory at the time of making the meeting arrangements.

Will the Justices of the Peace Branch reimburse me for the cost of printing or other expenses related to witnessing a Commonwealth statutory declaration electronically?

No. There is no need to print the document if you apply an electronic signature.

You cannot charge the signatory for printing or copying services.

What equipment will I need to witness a Commonwealth statutory declaration by video link?

Regardless of how you will be signing the signatory's statutory declaration, you will need the following equipment to carry out your online witnessing role:

- a computer, tablet, mobile phone or other compatible device
- a keyboard (if not integrated into your device)
- a stable internet connection
- a camera or webcam (if not integrated into your device)
- microphone and speakers (if not integrated into your device)
- your handbook and logbook.

I have printed the signatory's Commonwealth statutory declaration, witnessed their signature, and scanned and emailed it back to the signatory. What do I do with the physical copy?

You must securely destroy the copy of the document that you physically signed if you have scanned and sent it to the signatory electronically.

You must delete the signatory's email and any attachments. Once you have deleted the files, you must also permanently delete them from your trash and/or deleted items folder.

How do I create an electronic signature?

If you are unsure about the process of adding an electronic signature, the internet provides numerous useful resources and instructions on integrating them into Microsoft Word and PDF files.

Where can I get more information?

Queensland legislation

www.legislation.qld.gov.au

Commonwealth legislation

www.legislation.gov.au

Statutory declarations

www.ag.gov.au/legal-system/statutory-declarations

Have your documents witnessed online by a JP or Cdec

www.qld.gov.au/onlinewitnessing

Forms

Queensland statutory declaration

www.publications.qld.gov.au/dataset/statutory-declaration

Commonwealth statutory declaration

www.ag.gov.au/legal-system/statutory-declarations

4.2 Quick guide

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 - the signatory's identity
 - the signatory's name matches the name of the signatory written on or in the statutory declaration.This is a requirement of the *Oaths Act 1867*.


 - ② Check the requirements for the statutory declaration have been met.

 - ③ Check if the declaration has any special requirements.

 - ④ Warn the signatory that if they knowingly make a false declaration, they commit an offence.

 - ⑤ Check the signatory understands the declaration and they are making it freely and voluntarily. This is a requirement of the *Oaths Act 1867*.

 - ⑥ Ask the signatory to make their declaration.
 **Note:** The signatory must make the declaration, not the substitute signatory.

 - ⑦ Have the signatory or substitute signatory sign the declaration.
 **Note:** If a substitute signatory is required, ensure the statutory declaration includes the names of both the signatory and the substitute signatory.


 - ⑧ Witness the signatory's declaration and insert your full name and qualification. This is a requirement of the *Oaths Act 1867*.

 - ⑨ Record all relevant information in your logbook as outlined in chapter 2.4.
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4.2 Quick guide

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- ② Whilst not mandatory you should take reasonable steps to identify the signatory and warn them at the outset that if they knowingly make a false declaration they commit a criminal offence.
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- ③ Ensure the signatory understands that making a declaration is a solemn matter.
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- Check the signatory understands their declaration and are making it freely and voluntarily. If you are satisfied the signatory understands the declaration you must:
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 - Observe them sign the declaration either with a pen or electronically.
 - Ensure they sign and date the bottom of any additional pages or attachments.
 - Ensure they include their email address or telephone number beneath their signature.
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- Witness the signatory's signature, sign and date every page including any additional pages or attachments. If the document was signed:
- In person:
 - Witness their signature on the physical document.
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 - Witness their signature on the electronic document.
 - By video link:
 - Place your electronic signature on the document.
 - Print the signed copy of the document and witness their signature.
 - Print a counterpart of the document and witness in the usual manner.
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- ⑥ You must include your full name, qualification and registration number, address, email address and/or telephone number.
 -  **Note:** You can provide the address details of the Justices of the Peace Branch as outlined in chapter 1.2.
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- ⑦ Return the witnessed document to the signatory.
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- ⑧ Record all relevant information in your logbook as outlined in chapter 2.4.
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