

CHAPTER 12:

OATHS AND AFFIRMATIONS

What is an Oath and an Affirmation?

An Oath is an attestation by which an individual signifies to a higher deity that they are bound in conscience to perform a particular act truthfully and faithfully. It follows that if a person does not act honestly or tell the truth when under Oath, tempting the higher deity would bring calamity upon that person.

Similarly, an Affirmation is a solemn and formal declaration that a statement is true; however, an Affirmation includes no reference to God. It can be made by someone who does not believe in a God or by an individual who has conscientious objections against swearing to a God. Provisions in state statutes or constitutions ordinarily allow Affirmations to be made as alternatives to Oaths.

There are also legal consequences in not telling the truth while under Oath. A person can be charged with perjury, which is a criminal offence.

The Role of the JP



So far in this guide, all the topics covered deal with witnessing the documents where an Oath or Affirmation is not required. From this point forward, that may change. Topics in subsequent chapters may involve you placing the deponent under Oath or Affirmation. This must be administered correctly by all JPs.



Handy Tips: Administering Oaths & Affirmations

- ✓ Rather than just assume that the deponent will swear on the Christian Bible, it is more appropriate to ask a question such as “I need to put you on Oath for this document – do you take an Oath on the Christian Bible?” Such a question should reflect some level of cultural sensitivity.
- ✓ When administering the Christian Oath, it is expected that the JP should provide the Bible. If you do not have a Bible, it is suggested that one be purchased, as you will often need it. With any Oath, other than the Christian Oath, it is the deponent's responsibility to provide the material (e.g., saucer, holy book, etc.). If they cannot provide the material, they will need to take an Affirmation, or you will have to decline to witness the document.
- ✓ If witnessing a particular type of document requires you to put somebody under Oath or Affirmation, then you must do so at the beginning of the procedure and in a way that is substantially in the format listed. To not do this may call the legal status of the document into question. You cannot refuse to administer an Oath or Affirmation if it is legally required.
- ✓ People of some faiths may object to you stating the words of the Oath in question. It may be worth checking first whether this is the case.

Background Information



Types of Oaths

The legislation relating to Oaths is found in the *Oaths Act 1867 (Qld)*. The Act notes that Oaths exist for a range of purposes. These include:

Oaths of Office or Allegiance

An example of such an Oath is.

"I, (insert name), do sincerely promise and swear that I will be faithful and bear true allegiance to Her.

Majesty, Queen Elizabeth the Second, as lawful Sovereign of the United Kingdom, Australia, and her other Realms and Territories, and to Her Heirs and Successors, according to law. So, Help Me, God!"

Oaths taken when sworn into a government or judicial position.

An example of such an Oath is.

"I, (insert name), do sincerely promise and swear that as a Justice of the Peace for the State of Queensland I will at all times and in all things do equal justice to the poor and rich and discharge the duties of my office according to the law to the best of my knowledge and ability without fear favour or affection."

Oaths taken where a juror is sworn in.

The following example is an Oath where a citizen is sworn in as a jury member at a criminal trial.

"I will conscientiously try the charges against the defendant (or defendants) and decide them according to the evidence. I will also not disclose anything about the jury's deliberations other than as allowed or required by law. So, help me, God".

Oaths taken where a witness is sworn in when giving evidence in court.

The following example is an Oath where a witness is sworn in at a civil trial.

"The evidence which I shall give to the court touching the matters in question between the parties shall be the truth, the whole truth and nothing but the truth. So, help me, God".

Oaths taken when authorising the issue of a warrant or a summons.

"I swear that the contents of this document and any further information I may supply orally or in writing are true and correct, so help me, God."

Oaths taken when witnessing an Affidavit.

"I swear that the contents of this document are true and correct to the best of my knowledge and belief, so help me, God."

An Oath of service that swears that a summons was served in a manner prescribed by law.

"I swear that the contents of this document and any further information that I may supply either orally or in writing are true and correct. So, help me, God".

Examples of different types of Oaths

The above Oaths are examples of Christian Oaths. Today, not every person believes in God, and not every person's religious beliefs are geared towards the worship of a Christian God. This has led to the advent of the Affirmation (an "Oath equivalent") that does not require God to bear witness. Indeed, a range of Oaths and Affirmations, based upon other faiths and beliefs are now accepted in the legal system. In the Queensland legal system, all of these "Oath equivalents" place an equal degree of legal onus on the person swearing them to tell "the truth, the whole truth and nothing but the truth."

Christian Oath

Ask the deponent to take the Christian Bible in either hand or repeat the following words:

"I swear that the contents of this document are true and correct to the best of my knowledge and belief, so help me, God."

Alternatively, you can ask this as a question, to which the deponent must respond with, "So help me God."

In some of the later chapters of this guide, you will also notice that the words "and any other information you may provide orally or in writing" are added to the Oath. This wording is particularly recommended for situations where you are using your judicial discretion, e.g., interviewing a police officer who asks you to authorise a search warrant.

Chinese Oath

There are two forms of Chinese Oath.

1. A saucer is handed to the witness who takes it in his/her hands and, kneeling, breaks it into fragments whereupon he/she repeats after you the following words:

"I tell the truth and the whole truth - if not, as that saucer is broken, may my soul be broken by it."

You then say, "Are you bound by that Oath?"

The person making the Oath then says, "I am."

2. You light a match and say:

"You shall tell the truth, the whole truth and nothing but the truth, and if you do not tell the truth, your soul will be blown out like the match."

You then blow out the match and say: "Are you bound by that Oath?"

The person making the Oath then says, "I am."

Islamic Oath

The Holy Koran, or Qur'an, is used when taking an Islamic Oath. Ensure, where possible, that you do not touch it. The Koran should be wrapped by a person of that faith in a piece of plain white material.

You should ask the deponent to take the Koran in either hand or ask to place the other hand on their forehead. You ask the deponent to repeat the following words:

"In the name of Allah, the Beneficent, the Merciful. By Almighty Allah, in whose hands are my life, I promise to give the facts completely, truthfully, and sincerely to the best of my ability".

The deponent should then kiss the Koran at the completion of the Oath.

Jewish Oath

A Jewish Oath is sworn on the Old Testament, or the Five Books of Moses (the Pentateuch), some with the deponent's head covered, others with their head uncovered. The same form of Oath is used as for a Christian Oath, but the Old Testament or the Pentateuch is usually held in the right hand.

Buddhist Oath

With this Oath, all that is required is that the following words need to be repeated by the deponent after you.

"I declare, as in the presence of Buddha, that I am unprejudiced, and if what I shall speak shall prove false, or if by colouring the truth others shall be led astray, then may the three Holy Existences—Buddha, Dharma, and Pro Sangha—in whose sight I now stand, together with the Devotees of the Twenty-two Firmaments, punish me and also my migrating soul."

Examples of different types of Affirmations

Secular Affirmation

The most common form of Affirmation is the secular Affirmation, although other groups have their own specific Affirmations.

"I (insert name) do solemnly sincerely and truly affirm and declare that the contents of this document are true and correct to the best of my knowledge and belief."

Alternatively, you can ask this as a question, to which the deponent must respond with "I do." You will also notice in some of the later chapters of this guide that the words "and any other information you may provide orally or in writing" are added to the Affirmation. This wording is particularly recommended for situations where you are using your judicial discretion, e.g., interviewing a police officer who asks you to authorise a search warrant.

Affirmation for Quakers and Moravians (Section 18 Oaths Act 1867)

'I (insert name) being [or having been as the case may be] one of the people called Quakers [or one of the persuasions of the people called Quakers or of the united brethren called Moravians as the case may be] do solemnly sincerely and truly affirm and declare.'

Affirmation for Separatists (Section 19 Oaths Act 1867)

"I (insert name) do in the presence of Almighty God solemnly sincerely and truly affirm and declare that I am a member of the religious sect called separatists and that the taking of any Oath is contrary to my religious belief as well as essentially opposed to the tenets of that sect and I do also in the same solemn manner affirm and declare."

Frequently Asked Questions



Is it permissible to use a “bible substitute” such as a dictionary or a book?

When administering the Christian Oath, a copy of the Bible must be used.

I need to administer the Christian Oath, and I only have a copy of the Old Testament of the Bible. Is this sufficient?

The Justice of Peace Handbook, published by the Department of Justice and Attorney General, says that it is expected that any copy of the Bible will at least contain the New Testament.

According to the *Oaths Act 1867*, part 7, section 33:

(1) Any person taking any Oath on the Bible or the New Testament or the Old Testament, for any purpose whatsoever, whether in judicial proceedings or otherwise, shall, if physically capable of doing so, hold a copy of a Bible or Testament in the person's hand. Still, it shall not be necessary for the person to kiss such copy by way of assent.

This infers that if the Bible has either New or Old or both Testaments, it will be deemed acceptable as a Holy Book for Oaths.

Can I use an e-book copy of the Bible to administer the Christian Oath?

Following the previous question, an e-book Bible would most likely contain both the old and the new testaments, which would imply its use as acceptable. However, at the time of writing, the QJA could not find any evidence of it having been accepted by a judge in a court of law, and therefore using it could be risky.

Can I refuse to administer an Oath or Affirmation if the Oath/Affirmation being taken is against my personal beliefs?

You cannot refuse to administer an Oath or Affirmation under any circumstances where your duties require you to do so.

CHAPTER 13:**AFFIDAVITS*****What is an Affidavit?***

An Affidavit is a written statement used as evidence in court proceedings. It is often used to give evidence to a court without having to appear as a witness. It would follow that because the document replaces an appearance in court, an Affidavit must be sworn under Oath or Affirmation.

***Key Phrases***

Deponent	The person who makes an Affidavit.
Annexure	Any document that is physically attached to the Affidavit is called an annexure.
Exhibit	An item that remains separate from the Affidavit and is provided when the Affidavit is read.
Jurat	A statement on an Affidavit of when, where, and before whom it was sworn.

The Role of the JP

It is the JP's role to witness the Affidavit so that it can be used as evidence in a court of law. To do this, the Affidavit must be sworn, so the deponent must be placed under Oath.

***Handy Tips: Affidavits***

- ✓ When witnessing an Affidavit, the deponent must be placed under Oath or Affirmation, from the beginning, i.e., before you begin to ask any questions.
- ✓ An Affidavit must be in the correct format (check the background information in this chapter). If not, it may be invalidated by a court.
- ✓ Check for any annexures and/or exhibits. Ensure that these are appropriately endorsed and that they are referred to in the body of the Affidavit.
- ✓ The deponent and the witnessing officer must sign every page of the Affidavit, and it must also be endorsed with the seal of office and registration number. Even the slightest mistake – changes not initialled, page numbers missing, or annexures/exhibits not correctly endorsed may render the document invalid when viewed by a court.



Steps for witnessing an Affidavit

The following is the sequence that is recommended specifically for witnessing Affidavits. It must be remembered that, in addition to the sequence listed, you should always keep in mind all the general tips about witnessing documents discussed in chapter 4. At the end of this chapter, these steps have been outlined in a flowchart, which can be used as a “ready reckoner” when witnessing.

<p>1. Peruse the document and ensure that it is in the correct format.</p>	<p>A court will invalidate an Affidavit that is not correct in its entirety. See the requirements in the background information section of this chapter. Some courts have special requirements for the format of an Affidavit. See the sections in Chapter 14 relating to family law and domestic violence.</p>
<p>2. Ask the deponent if this is their document and ask for identification.</p>	
<p>3. Advise the deponent that you are required to administer an Oath / Affirmation. Ask the deponent whether they would prefer to take an Oath on the Christian Bible or if an Affirmation is desired.</p>	<p>If a Christian Oath is chosen, go to step 4. If not a Christian Oath or if an Affirmation is preferred, ask further questions about preference, and refer to chapter 12 re other Oaths and Affirmations for administration.</p>
<p>4. Ask the deponent to take the Bible in either of their bare hands and then say, “I swear that the contents of this Affidavit and any further information that I may supply either orally or in writing are true and correct, so help me God.”</p>	
<p>5. Ask the deponent whether any other JP has refused to witness this document.</p>	<p>This may help to pinpoint possible problems.</p>
<p>6. Ask the deponent if he/she understands the contents and practical effect of signing this document.</p>	
<p>7. Check the document for alterations.</p>	<p>Both parties must sign alterations.</p>
<p>8. Check the document for blank spaces.</p>	<p>Large blank spaces must be Z out and initialled by both parties</p>
<p>9. Check page numbering – (number each page 1 of 4, 2 of 4, etc.) in the lower right-hand corner.</p>	<p>Any additions need to be fully signed by both the deponent and the JP.</p>
<p>10. Check for any annexures or exhibits. Ensure that these are appropriately labelled and endorsed and that they are referred to in the body of the Affidavit.</p>	<p>Refer to the background information section of this chapter.</p>

<p>11. Ensure that the Affidavit is signed in front of you and that the deponent’s signature and your signature appears on every page (with your seal of office).</p>	
<p>12. Sign the Jurat (in blue or black) on the last page, affix the seal of office and insert your registration number.</p>	<p>Do not place the seal over your signature or sign over your seal.</p>
<p>13. Note the details of any questions asked and actions taken in your logbook.</p>	

Background Information

Format of an Affidavit



Because an Affidavit is used as a substitute for oral evidence, its format is governed by the rules of evidence. A sample Affidavit format is set out although these vary a little from court to court:

AFFIDAVIT
_____ **COURT**

I, (full name of person making Affidavit) _____

Of (Insert residential or business address) _____

MAKE OATH AND SAY THAT:

1. _____

2. _____

SIGNED and SWORN by the above-named deponent at (place)
this _____ day of, 20 xx, before me:

Justice of the Peace\Commissioner for Declarations

Signature of the Deponent

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You will notice several standard features on the sample Affidavit above. These are outlined in sections 431 and 432 of the *Uniform Civil Procedures Rules 1999* (Qld) as being compulsory in an Affidavit. The main points are:

- ✓ an Affidavit will contain the words “MAKE OATH AND SAY THAT” or “SOLEMNLY SINCERELY and TRULY AFFIRM AND DECLARE THAT.” The former wording is used when the deponent takes an Oath, while the latter wording is used when the deponent takes an Affirmation;
- ✓ the paragraphs containing evidence must be numbered consecutively, with each paragraph being as far as possible confined to a distinct portion of the subject.
- ✓ the Affidavit must be prepared in the first person. (i.e., “I saw ...).
- ✓ towards the end, it will contain the words “SIGNED and SWORN by the above-named deponent” or “SIGNED and SOLEMNLY, SINCERELY AND TRULY AFFIRMED AND DECLARED by the above-named deponent.” The former wording will be used when the deponent takes an Oath, while the latter wording is used when the deponent takes an Affirmation. This section of the Affidavit is the **Jurat**;
- ✓ each page must be numbered (e.g., 1 of 3, 2 of 3, etc.), and
- ✓ each page must be signed by both you, as witnessing officer, and the deponent.

Annexures and Exhibits.

Both annexures and exhibits, if used, **must be referred to in the body of the Affidavit and must be given a special (written) notation by the witnessing officer.**

Each annexure or exhibit must be marked with a letter, number, or another identifying mark, for example, Exhibit ‘A.’ The mark referred to in the Affidavit should be placed on the annexure/exhibit where it can be easily read, for example, near the top of the page. For an annexure/exhibit that is only one page long, the following statement must be included on the annexure/exhibit and should also be signed by you as the witnessing officer:

“This is the annexure (exhibit) marked [*insert an alphabetical letter, e.g.,* “A”] referred to in the Affidavit of [*insert name of deponent*], sworn (affirmed) before me this [*insert date*] day of [*insert month, year*]. [*Insert your signature, full name, seal of office and registration number*]”

This wording is referred to as an **annexure note** or a **certificate of exhibit**.

If the annexure or exhibit is more than one page long, the following statement must be included on the **first** page of the annexure/exhibit, wherever there is sufficient space and signed by you as the witnessing officer:

“This and the following [*insert number of pages*] pages are the annexure/exhibit marked [*insert an alphabetical letter, e.g.,* “A”] referred to in the Affidavit of [*insert name of deponent*], sworn/affirmed before me this [*insert date*] day of [*insert month, year*]. [*Insert your signature, full name, seal of office and registration number*]”

Some courts have their own pre-printed annexure notes or certificates of exhibit, and if provided, the pre-printed form should be attached to the front of the annexure or exhibit and signed accordingly. This occurs instead of writing the above wording on the first page of the annexure or exhibit.

Affidavits sworn by non-English speaking deponents.

For more information on this, refer to chapter 19, which deals with people with special needs.

Frequently Asked Questions***If presented with an Affidavit that does not meet all the Uniform Civil Procedures Rules 1999 (Qld) requirements, should I still witness the document?***

Most Affidavits are prepared by a solicitor and will be correctly formatted. Some are standard forms that courts have developed. You could advise the deponent that the document does not meet all the requirements and that a court might invalidate it, but JPs are not in the business of legal advice. If the deponent insists that you witness the document in the form it is in, you should go ahead and witness.

Resource and Reference Materials – Affidavits



Checklists

Following is a flowchart that can be used to guide you when witnessing an Affidavit. It must be remembered that, in addition to the sequence listed, you should always keep in mind all the general tips about witnessing documents discussed in chapter 4.

