

Witnessing affidavits for the Supreme Court of Queensland outside of Australia

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The Oaths Act Queensland

Under Section 41 of the *Oaths Act Queensland*^[1], an affidavit can be taken by a person authorised to administer an oath **under the law of the State of Queensland**. Further, under the Act, if the affidavit is taken outside of Australia it can be taken by a person authorised to administer an oath under the law of the place in which the affidavit is taken. Part (2) of Section 41 provides that the Section 41 applies to an affidavit taken for Queensland law whether it is taken inside or outside Queensland (including outside of Australia).

Are consular officers' authorised people within the meaning of Section 41?

Under the Queensland *Australian Consular Officers' Notarial Powers and Evidence Act 1946*, an Australian consular officer is defined as a person appointed to hold or act as an ambassador, high commission, minister, head of mission, commissioner, chargé d'affaires, counsellor or secretary at an embassy, consul general, consul, vice consul, trade commissioner or consular agent. An authorised employee means an employee of the Commonwealth authorised under section 3(c) of the *Consular Fees Act 1995* (Cth)^[2] or the Australian Trade Commission authorised under Section 3(d) of the *Consular Fees Act*.^[3]

Where an affidavit is required for the purposes of any Court matter in Queensland and it is an act that a notary public could do, it may be sworn in any country outside of the Commonwealth before an Australian Consular Officer or authorised employee exercising his or her functions in that country or place.^[4] The affidavit shall have the effect as if it was sworn before any lawful authority in Queensland.^[5]

^[1] 41 Who may take affidavits

- (1) A person's affidavit may be taken by any of the following persons without a commission being issued for the purpose—
- a justice, commissioner for declarations or notary public under the law of the State, the Commonwealth or another State;
 - a lawyer;
 - a conveyancer, or another person authorised to administer an oath, under the law of the State, the Commonwealth or another State;
 - if the affidavit is taken outside Australia – a person authorised to administer an oath under the law of the place in which the affidavit is taken.

(2) This section applies to an affidavit taken for Queensland law, whether it is taken inside or outside Queensland (including outside Australia).

(3) In this section – taken includes received and sworn.

^[2] Being an employee of the Commonwealth authorised, in writing, by the Secretary of the Department: Section 3 (c) of the *Consular Fees Act 1955* (Cth).

^[3] Being “an employee of the Australian Trade Commission authorised, in writing, by the Secretary of the Department” Section 3 (d) of the *Consular Fees Act 1955* (Cth).

^[4] Section 3 (1) *Australian Consular Officers' Notarial Powers and Evidence Act 1946* (Qld).

^[5] *Ibid*, Section 3 (1A).