



Queensland

Uniform Civil Procedure (Affidavits and Statutory Declarations) Amendment Rule 2022

Subordinate Legislation 2022 No. 49

made under the

Oaths Act 1867

Supreme Court of Queensland Act 1991

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1 Short title

This rule may be cited as the *Uniform Civil Procedure (Affidavits and Statutory Declarations) Amendment Rule 2022*.

2 Commencement

This rule commences on 30 April 2022.

3 Rules amended

This rule amends the *Uniform Civil Procedure Rules 1999*.

4 Insertion of new rr 429W and 429X

Before rule 430—

insert—

429W Definitions for part

In this part—

sign, a document, has the meaning given by the *Oaths Act 1867*, section 1B.

witness, an affidavit, has the meaning given by the *Oaths Act 1867*, section 11.

429X References to witnesses, signatories and substitute signatories

In this part—

(a) a reference to a witness in relation to an affidavit has the same meaning as given to that reference by the *Oaths Act 1867*, section 13; and

(b) a reference to a signatory in relation to an affidavit has the same meaning as given to that reference by the *Oaths Act 1867*, section 13; and

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- (c) a reference to a substitute signatory in relation to an affidavit has the same meaning as given to that reference by the *Oaths Act 1867*, section 13.

5 Amendment of r 430 (Contents of affidavit)

Rule 430(1) and (2), ‘person making it’—
omit, insert—
signatory for the affidavit

6 Amendment of r 431 (Form of affidavit)

- (1) Rule 431(2) and (4), ‘person making it’—
omit, insert—
signatory for the affidavit
- (2) Rule 431(4), ‘person’s’—
omit, insert—
signatory’s

7 Replacement of r 432 (Swearing or affirming affidavit)

Rule 432—
omit, insert—

432 Swearing or affirming affidavit

- (1) The signatory or substitute signatory for an affidavit and the witness for an affidavit must sign each page of the affidavit.
- (2) Subrule (3) applies if—
 - (a) there is 1 signatory for the affidavit; or
 - (b) although there are 2 or more signatories for the affidavit, both or all of the signatories are not swearing or affirming the affidavit at the same time before the same witness.

- (3) A statement (the *jurat*) must be placed at the end of the body of the affidavit and must—
 - (a) state the full name of the signatory; and
 - (b) state whether the affidavit was sworn or affirmed; and
 - (c) state the day and the place the signatory made the affidavit; and
 - (d) be signed by the signatory in the presence of the witness; and
 - (e) be signed in accordance with the *Oaths Act 1867*; and
 - (f) otherwise be as in the approved form.

Note—

See also the *Oaths Act 1867*, sections 13B and 13E for other matters that must be stated in the jurat or otherwise included on the affidavit.

- (4) Subrule (5) applies if there are 2 or more signatories for the affidavit, 2 or more of whom are swearing or affirming the affidavit at the same time before the same witness.
- (5) In addition to any statement required under subrule (3), a statement (also the *jurat*) must be placed at the end of the body of the affidavit and must—
 - (a) state the full name of each of the signatories; and
 - (b) state, for each of the signatories, whether the affidavit was sworn or affirmed; and
 - (c) state the day and the place both or all of the signatories made the affidavit; and
 - (d) be signed by the signatories in the presence of the witness; and
 - (e) be signed in accordance with the *Oaths Act 1867*; and

[s 8]

(f) otherwise be as in the approved form.

Note—

See also the *Oaths Act 1867*, sections 13B and 13E for other matters that must be stated in the jurat or otherwise included on the affidavit.

(6) For this rule, the *place* a signatory made an affidavit is the place the signatory was located when the affidavit was made.

8 Amendment of r 433 (Certificate of reading or signature for person making affidavit)

(1) Rule 433(1), from ‘If’ to ‘person taking the affidavit’—

omit, insert—

If the witness for an affidavit considers that the person making it is incapable of reading the affidavit, the witness

(2) Rule 433(1)(a), ‘person’s’—

omit, insert—

witness’s

(3) Rule 433(2), from ‘If’ to ‘person taking the affidavit’—

omit, insert—

If the witness for an affidavit considers that the person making it is physically incapable of signing the affidavit, the witness

(4) Rule 433(2)(a), ‘person’s’—

omit, insert—

witness’s

(5) Rule 433—

insert—

Note—

See also the *Oaths Act 1867*, parts 4 and 6A for provisions allowing a substitute signatory to sign a document at the direction of a signatory.

9 Amendment of r 434 (Alterations)

Rule 434(2)—

omit, insert—

- (2) The affidavit may be filed but, unless the court orders otherwise, may be used only if the interlineation, erasure or other alteration—
 - (a) has been initialled by the signatory or substitute signatory for the affidavit in the same way the signatory or substitute signatory signed the affidavit; and
 - (b) has been initialled by the witness for the affidavit in the same way the witness signed the affidavit.
- (3) To remove any doubt, it is declared that an affidavit must not be altered after it has been made, signed and witnessed under the *Oaths Act 1867*, whether the affidavit is in the form of a physical document or an electronic document.
- (4) In this rule—

electronic document has the meaning given by the *Oaths Act 1867*, section 1B.

physical document has the meaning given by the *Oaths Act 1867*, section 1B.

10 Amendment of r 435 (Exhibits)

(1) Rule 435(6)—

omit, insert—

- (6) The certificate—

[s 10]

- (a) must be signed by the signatory or substitute signatory for the affidavit in the same way the signatory or substitute signatory signed the affidavit; and
 - (b) must be signed by the witness for the affidavit in the same way the witness signed the affidavit.
- (2) Rule 435(7), ‘taken under rule 433, only the person who took’—
omit, insert—
made under rule 433, only the witness for
- (3) Rule 435(9), after ‘apply if’—
insert—
an affidavit is filed in physical form and either
- (4) Rule 435(9)(a) and (b), ‘an affidavit’—
omit, insert—
the affidavit
- (5) Rule 435—
insert—
 - (11A) If an affidavit is filed in electronic form with 1 or more exhibits, an index must be filed with the affidavit listing—
 - (a) the body of the affidavit; and
 - (b) the exhibits and related certificates; and
 - (c) the number of pages in each exhibit that is a document.
- (6) Rule 435(11A) and (12)—
renumber as rule 435(12) and (13).

11 Amendment of r 439 (Examination of person making affidavit)

(1) Rule 439, heading, ‘person making’—

omit, insert—

signatory for

(2) Rule 439(1), ‘person making it’—

omit, insert—

signatory for the affidavit

(3) Rule 439(2), (3), (4) and (6), ‘person who made’—

omit, insert—

signatory for

(4) Rule 439(5)(a) and (b), ‘person making’—

omit, insert—

signatory for

12 Amendment of r 441 (Affidavit taken before party)

Rule 441, ‘taken’—

omit, insert—

witnessed

13 Amendment of r 959A (Definition for part)

(1) Rule 959A, heading, ‘Definition’—

omit, insert—

Definitions

(2) Rule 959A—

insert—

electronic document has the meaning given by the *Oaths Act 1867*, section 1B.

physical document has the meaning given by the

Oaths Act 1867, section 1B.

14 Amendment of r 963 (Alterations)

- (1) Rule 963, heading, after ‘Alterations’—

insert—

**to documents other than affidavits and
statutory declarations**

- (2) Rule 963, before subrule (1)—

insert—

- (1AA) This rule does not apply in relation to a document that is an affidavit or a statutory declaration.

Notes—

- 1 See rule 434 for alterations to affidavits.
- 2 See rule 963A for alterations to statutory declarations.

- (3) Rule 963(3), note, ‘subrules (1) to (3)’—

omit, insert—

subrules (2) to (4)

- (4) Rule 963(1AA) to (3)—

renumber as rule 963(1) to (4).

15 Insertion of new r 963A

After rule 963—

insert—

963A Alterations to statutory declarations

- (1) This rule applies if there is an interlineation, erasure or other alteration in any part of a statutory declaration.
- (2) The statutory declaration may be filed but, unless the court orders otherwise, may be used only if the interlineation, erasure or other alteration—

-
- (a) has been initialled by the signatory or substitute signatory for the statutory declaration in the same way the signatory or substitute signatory signed the statutory declaration; and
 - (b) has been initialled by the witness for the statutory declaration in the same way the witness signed the statutory declaration.
- (3) To remove any doubt, it is declared that a statutory declaration must not be altered after it has been made, signed and witnessed under the *Oaths Act 1867*, whether the declaration is in the form of a physical document or an electronic document.
- (4) In this rule—
- (a) a reference to a witness in relation to a statutory declaration has the same meaning as given to that reference by the *Oaths Act 1867*, section 13; and
 - (b) a reference to a signatory in relation to a statutory declaration has the same meaning as given to that reference by the *Oaths Act 1867*, section 13; and
 - (c) a reference to a substitute signatory in relation to a statutory declaration has the same meaning as given to that reference by the *Oaths Act 1867*, section 13.
- (5) In this rule—
- witness*, a statutory declaration, has the meaning given by the *Oaths Act 1867*, section 11.

16 Insertion of new r 967A

After rule 967—

insert—

[s 17]

967A Filing of affidavits and statutory declarations made using counterparts

- (1) If an affidavit or a statutory declaration is made using counterparts under the *Oaths Act 1867*, all of the counterparts must be filed at the same time.
- (2) In this rule—
counterpart, for a document, has the meaning given by the *Oaths Act 1867*, section 1B.

17 Amendment of r 975A (Application of particular provisions to electronically filed documents)

- (1) Rule 975A(5), (6) and (8), definition *alterable paper form*, ‘rule 963(1) and (2)’—

omit, insert—

rule 963(2) and (3)

- (2) Rule 975A(7)—

insert—

Notes for subrules (5) to (7)—

- 1 See rule 434 for alterations to affidavits.
- 2 See rule 963A for alterations to statutory declarations.

18 Amendment of r 975C (Electronic filing of sworn or affirmed documents)

- (1) Rule 975C, heading, ‘sworn or affirmed documents’—

omit, insert—

affidavits and statutory declarations

- (2) Rule 975C(1)—

omit, insert—

- (1) An affidavit or a statutory declaration made in the form of an electronic document may be filed electronically only if the document is sent to the

registry in an electronic file format approved, for the purpose of this rule, by the principal registrar of the court for the registry.

(1A) An affidavit or a statutory declaration made in the form of a physical document may be filed electronically only if the document is sent to the registry—

(a) as an imaged document; and

(b) in an electronic file format approved, for the purpose of this rule, by the principal registrar of the court for the registry.

Examples of electronic file formats for subrules (1) and (2)—

pdf, jpg, html

(3) Rule 975C(2), ‘filing the document’—

omit, insert—

filing an affidavit or a statutory declaration mentioned in subrule (2)

(4) Rule 975C(3), ‘subrule (2)’—

omit, insert—

subrule (3)

(5) Rule 975C(1A) to (3)—

renumber as rule 975C(2) to (4).

19 Amendment of r 975D (Particular sworn or affirmed documents taken to be filed)

(1) Rule 975D, heading, ‘sworn or affirmed documents’—

omit, insert—

affidavits and statutory declarations

(2) Rule 975D(1) and (2)(a), ‘sworn or affirmed document’—

omit, insert—

affidavit or exempt statutory declaration

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- (3) Rule 975D(1)(a) and (2)(b), ‘document’—

omit, insert—

affidavit or statutory declaration

- (4) Rule 975D(3) and (4)—

omit, insert—

- (3) For this rule, an affidavit is an ***exempt affidavit*** if the affidavit is approved, or is of a class of affidavits approved, by the principal registrar of the court for the proceeding to which the affidavit or class of affidavits relates.

- (4) For this rule, a statutory declaration is an ***exempt statutory declaration*** if the statutory declaration is approved, or is of a class of statutory declarations approved, by the principal registrar of the court for the proceeding to which the statutory declaration or class of statutory declarations relates.

- (5) In this rule—

prescribed information means—

- (a) for an affidavit or class of affidavits—information prescribed, for the purpose of this rule, under an approval mentioned in subrule (3), for the affidavit or class of affidavits; or
- (b) for a statutory declaration or class of statutory declarations—information prescribed, for the purpose of this rule, under an approval mentioned in subrule (4), for the statutory declaration or class of statutory declarations.

20 Amendment of r 975E (Approvals of principal registrar)

Rule 975E(1), ‘975C(1)(b) and 975D(3)’—

omit, insert—

975C(1) and (2)(b) and 975D(3) and (4)

21 Insertion of new ch 22, pt 1, div 5

Chapter 22, part 1—

insert—

Division 5 Retention of particular documents under Oaths Act 1867

975F Minimum period for retention of original physical version—Oaths Act 1867, s 31Y

- (1) This rule applies in relation to an affidavit or a statutory declaration that—
 - (a) is a document to which the *Oaths Act 1867*, section 31Y applies; and
 - (b) is made using an original physical version.
- (2) For the *Oaths Act 1867*, section 31Y(3), the minimum period for which the original physical version is to be kept is 7 years from the day the affidavit or statutory declaration is filed or admitted into evidence in a proceeding.
- (3) In this rule—

original physical version, of an affidavit or a statutory declaration, has the meaning given by the *Oaths Act 1867*, section 31B.

22 Amendment of sch 3 (Dictionary)

- (1) Schedule 3—

insert—

electronic document, for chapter 22, part 1, see rule 959A.

physical document, for chapter 22, part 1, see rule

[s 22]

959A.

sign, a document, for chapter 11, part 7, see rule 429W.

witness, an affidavit, for chapter 11, part 7, see rule 429W.

(2) Schedule 3, definition *jurat*, after ‘rule 432(3)’—

insert—

and (5)

ENDNOTES

- 1 Made by the Governor in Council on 28 April 2022.
- 2 Notified on the Queensland legislation website on 29 April 2022.
- 3 The administering agency is the Department of Justice and Attorney-General.

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