



# PSR guide to oaths and affirmations

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## What do we use oaths and affirmations for?

Oaths and affirmations are used in a Professional Services Review (PSR) Committee hearing to:

- emphasise to the witness the importance of telling the truth and being accurate in what they say to the Committee
- enable prosecution for perjury if the evidence given is wilfully false.

## What does the legislation say?

The *Health Insurance Act 1973* (Cth) (the Act) contains specific provisions enabling prosecutions for perjury in the context of PSR hearings:

- subsection 106A(1) states that evidence at a hearing may be taken on oath or affirmation
- subsection 106E(1) provides that it may be an offence to refuse or fail to be sworn or to make an affirmation
- subsection 106E(2) provides that it may be an offence to give a false or misleading answer to a question during a hearing.

The Act makes it clear that PSR Committees are not bound by the rules of evidence (see subsection 106(2)). However, PSR Committees aspire to best practice and can look to federal legislation for guidance on the appropriate form of an oath or affirmation to use.

Relevantly, Division 2 of the *Evidence Act 1995* (Cth) (Evidence Act) requires that a witness before giving evidence in a proceeding must take either an oath or an affirmation in the appropriate form set out in the Schedule to the Evidence Act (Appendix 1), or in a similar form. The Schedule to the Evidence Act provides an appropriate form of an oath or affirmation for witnesses at PSR Committee hearings and should be used unless it is inappropriate to do so.

If the witness requires an interpreter, an interpreter's oath or affirmation (as appropriate) will be administered, as set out in the Schedule to the Evidence Act.

There is no difference in probative quality between evidence given on affirmation or oath. It is important that a witness is comfortable about taking an affirmation or oath and will be offered options in a non-judgemental way.

## Practical steps

Before the hearing commences a PSR staff member will usually contact the witness or their legal representative to ask what the witness's preferred form of oath or affirmation will be. This is to allow time for PSR to prepare the appropriate wording and if necessary, obtain the appropriate holy text. PSR will seek to accommodate reasonable requests as to the form of oath a witness requests to take.

## Inclusivity for non-religious people and people of non-Christian faiths

The Committee will be respectful and inclusive of people of all faiths and non-religious people in the oaths and affirmations process. The primary way this is done is through offering the witness an oath or affirmation.

For people of non-Christian faiths, the person may replace the words 'almighty God' in the wording in Appendix 1 with the name of a God recognised by their religion.

In the *Inquiry into Oaths and Affirmations with Reference to the Multicultural Community* held by the Victorian Law Reform Commission in 2002, there were several alternate oaths suggested by members of various religious communities. These have been included below, and provide an alternative form of oath, in a similar form to that provided in the Schedule to the Evidence Act, and would be appropriate to use in a Committee hearing.

**Islam:** I swear in the name of God, Allah, that the evidence I shall give will be the truth, the whole truth and nothing but the truth and God, Allah, be my witness to what I am saying.

**Buddhist:** In accordance with Buddhist precept of truthful speech and mindful of the consequences of false speech, I, (name), do solemnly, sincerely and truly declare the evidence I shall give will be the truth, the whole truth and nothing but the truth.

PSR may confirm with the witness whether these forms of oaths would be acceptable to them prior to the hearing.

## Use of religious texts

Under section 24 of the Evidence Act if it not necessary that a religious text be used in taking an oath. However, many people still prefer to swear on a physical religious text.

When the PSR staff member clarifies the witness's choice of oath or affirmation and an oath is chosen, the case manager will usually clarify the appropriate religious text to be used, if any. The witness may provide their own text or it may be provided by PSR. PSR will seek to accommodate reasonable requests in this regard.

When the witness is Christian, the Bible may be used when taking an oath. Where the witness is Jewish, it is likely that the oath will be taken on an Old Testament or Torah.

Where the witness is Muslim, the oath may be taken on the Koran. Islam has specific rules about who can touch the Koran, so if it is being used and supplied by PSR, it will be carried in its cover at all times, and staff will follow this procedure for administering the oath:

- Provide the Koran to the witness in its cover
- Ask the witness to remove the cover
- Ask the witness if they recognise the book as a true copy of the Holy Koran.
- Administer the oath
- Ask the witness to return the Koran to its cover.

## What if the witness is remote or attending virtually?

If the witness is giving their evidence remotely they are still required to give an oath or affirmation. In this case, they are still able to follow the steps outlined above (where possible), with the choice between oath and affirmation available to them. If the witness chooses to take an oath, they can be invited to make use of a holy book, but this is not necessary.

## ***Evidence Act 1995 (Cth)***

### **Schedule—Oaths and Affirmations**

Subsections 21(4) and 22(2)

#### ***Oaths by witnesses***

I swear (*or the person taking the oath may promise*) by Almighty God (*or the person may name a god recognised by his or her religion*) that the evidence I shall give will be the truth, the whole truth and nothing but the truth.

#### ***Oaths by interpreters***

I swear (*or the person taking the oath may promise*) by Almighty God (*or the person may name a god recognised by his or her religion*) that I will well and truly interpret the evidence that will be given and do all other matters and things that are required of me in this case to the best of my ability.

#### ***Affirmations by witnesses***

I solemnly and sincerely declare and affirm that the evidence I shall give will be the truth, the whole truth and nothing but the truth.

#### ***Affirmations by interpreters***

I solemnly and sincerely declare and affirm that I will well and truly interpret the evidence that will be given and do all other matters and things that are required of me in this case to the best of my ability.



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