

South Australia

Oaths (Prescribed Requirements) Amendment Regulations 2024

under the *Oaths Act 1936*

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Part 1—Preliminary

1—Short title

These regulations may be cited as the *Oaths (Prescribed Requirements) Amendment Regulations 2024*.

2—Commencement

- (1) Subject to subregulation (2), these regulations come into operation on the day on which they are made.
- (2) Regulations 3 to 5 (inclusive) come into operation on 1 January 2025.

Part 2—Amendment of *Oaths Regulations 2021*

3—Amendment of regulation 4—Requirements for the taking of statutory declarations (section 25)

- (1) Regulation 4(1)—after paragraph (b) insert:
 - (c) the requirement that the statutory declaration be signed by the declarant under the observation of the authorised witness whether in person or remotely through an audio visual link;
 - (d) the requirement that the authorised witness sign the statutory declaration after the declarant has signed it in accordance with paragraph (c);
 - (e) the requirement that the authorised witness establish the identity of the declarant by sighting identification whether in person or remotely through an audio visual link.

(2) Regulation 4—after subregulation (1) insert:

- (1a) For the purposes of subregulation (1)(c), if a declaration is taken in circumstances where the authorised witness and the declarant meet remotely through an audio visual link, the declaration must include the statement:

This declaration was taken remotely under the observation of the authorised witness through an audio visual link and the requirements under the *Oaths Act 1936* for taking declarations by audio visual link were complied with.

(3) Regulation 4—after subregulation (2) insert:

- (3) The authorised witness may make or permit reasonable modifications to the process of making a statutory declaration if—
- (a) the declarant has a disability that prevents the person from making the declaration in accordance with the Act and these regulations; or
- (b) the declarant is a child under the age of 18.

Example—

A hearing impaired person may read and sign the oral declaration instead of saying it aloud. A person who is unable to speak may be able to listen to a statutory declaration being read and nod assent.

- (4) Without limiting subregulation (3), if it appears to an authorised witness that the declarant is illiterate or blind, the authorised witness must certify on the face of the statutory declaration that the statutory declaration was read to the declarant by the authorised witness.
- (5) If a declarant requires assistance to make a statutory declaration, the authorised witness must write on the face of the statutory declaration, the name and address of the person who provided the assistance and explain the nature of the assistance provided to the declarant.
- (6) The requirement referred to in subregulation (5) to write on the face of the statutory declaration the name and address of the person who provided assistance to a declarant does not apply in relation to a person who prepares or writes statutory declarations in a professional capacity, including—
- (a) a legal practitioner; or
- (b) a registered conveyancer.
- (7) A requirement for a declarant or an authorised witness to sign or initial a statutory declaration, annexure or other document attached to a statutory declaration is satisfied if the declarant or the authorised witness signs or initials the statutory declaration, annexure or other document by electronic means.

- (8) An initial or a signature is executed by electronic means for the purposes of subregulation (7) if—
 - (a) a method is used to identify the person and to indicate the person's intention in respect of the statutory declaration; and
 - (b) the method used was either—
 - (i) as reliable as appropriate for the purpose for which the statutory declaration was made in all the circumstances; or
 - (ii) proven in fact to have fulfilled the functions described in paragraph (a), by itself or together with further evidence.
- (9) A statutory declaration that is signed or initialled by electronic means in accordance with subregulation (7), must include a statement that the declaration was signed or initialled by electronic means.
- (10) A statutory declaration taken in circumstances where the authorised witness and the declarant meet remotely through an audio visual link in accordance with this regulation may be signed by the declarant and the authorised witness even if the declarant or witness (or both) are located outside the State.

4—Amendment of regulation 5—Classes of persons before whom statutory declarations may be made

Regulation 5(t)—delete "(Certified Public Accountants)"

5—Amendment of regulation 6—Requirements for the taking of affidavits (section 27A)

- (1) Regulation 6—after paragraph (c) insert:
 - (ca) that the affidavit be signed by the deponent under the observation of the authorised person whether in person or remotely through an audio visual link;
 - (cb) that the authorised person sign the affidavit after the deponent has signed it in accordance with paragraph (ca);
 - (cc) that the authorised person establish the identity of the deponent by sighting identification whether in person or remotely through an audio visual link;
- (2) Regulation 6—after its present contents as amended by this regulation (now to be designated as subregulation (1)) insert:
 - (2) For the purposes of subregulation (1)(ca), if an affidavit is taken in circumstances where the authorised person and the deponent meet remotely through an audio visual link, the affidavit must include the statement:

This affidavit was witnessed remotely under the observation of the authorised person through an audio visual link and the requirements under the *Oaths Act 1936* for taking affidavits by audio visual link were complied with.

- (3) The authorised person may make or permit reasonable modifications to the process of taking an affidavit if—
 - (a) the deponent has a disability that prevents the person from making the affidavit in accordance with the Act and these regulations; or
 - (b) the deponent is a child under the age of 18.
- (4) Without limiting subregulation (3), if it appears to an authorised person that the deponent is illiterate or blind, the authorised person must certify on the face of the affidavit that the affidavit was read to the deponent by the authorised person.
- (5) If a deponent requires assistance to take an affidavit, the authorised person must write on the face of the affidavit the name and address of the person who provided the assistance and explain the nature of the assistance provided to the deponent.
- (6) The requirement referred to in subregulation (5) to write on the face of the affidavit the name and address of the person who provided assistance to a deponent does not apply in relation to a person who prepares or writes affidavits in a professional capacity, including—
 - (a) a legal practitioner; or
 - (b) a registered conveyancer.
- (7) A requirement for a deponent or an authorised person to sign or initial an affidavit, annexure or other document attached to an affidavit is satisfied if the deponent or the authorised person signs or initials the affidavit, annexure or other document by electronic means.
- (8) An initial or a signature is executed by electronic means for the purposes of subregulation (7) if—
 - (a) a method is used to identify the person and to indicate the person's intention in respect of the affidavit; and
 - (b) the method used was either—
 - (i) as reliable as appropriate for the purpose for which the affidavit was made, in all the circumstances; or
 - (ii) proven in fact to have fulfilled the functions described in paragraph (a), by itself or together with further evidence.
- (9) An affidavit that is signed or initialled by electronic means in accordance with subregulation (7) must include a statement that the affidavit was signed or initialled by electronic means.
- (10) An affidavit taken in circumstances where the authorised person and the deponent meet remotely through an audio visual link in accordance with this regulation may be signed by the deponent and the authorised person even if the deponent or the authorised person (or both) are located outside the State.

6—Amendment of regulation 7—Classes of person authorised to take affidavits

Regulation 7—delete "Pursuant to Schedule 1 clause 2(e) of the Act, any person empowered, authorised or permitted by or under any Act or rules of a court or tribunal to take affidavits is prescribed as a class of persons authorised to take an affidavit for the purposes of section 27A(3) of the Act." and substitute:

For the purposes of Schedule 1 clause 2(e) of the Act, the following are prescribed as classes of persons authorised to take an affidavit for the purposes of section 27A(3) of the Act:

- (a) any person empowered, authorised or permitted by or under any Act or rules of a court or tribunal to take affidavits;
- (b) a member or special member of the Australian Federal Police;
- (c) a person engaged under the *Public Service Act 1999* of the Commonwealth at classification APS Level 6 or higher to whom investigative or enforcement functions or powers of the Inspector-General of Bankruptcy have been delegated under the *Bankruptcy Act 1966* of the Commonwealth or to whom investigative or enforcement functions or powers of the Registrar have been delegated under the *Personal Property Securities Act 2009* of the Commonwealth;
- (d) an authorised officer appointed under the *Dangerous Substances Act 1979*;
- (e) an authorised officer appointed under the *Petroleum Products Regulation Act 1995*;
- (f) an inspector appointed under the *Employment Agents Registration Act 1993*;
- (g) an inspector appointed under the *Explosives Act 1936*;
- (h) an inspector appointed under the *Fair Work Act 1994*;
- (i) an inspector appointed under the *Long Service Leave Act 1987*;
- (j) an inspector appointed under the *Mines and Works Inspection Act 1920*;
- (k) an inspector appointed under the *Shop Trading Hours Act 1977*.

Editorial note—

As required by section 10AA(2) of the *Legislative Instruments Act 1978*, the Minister has certified that, in the Minister's opinion, it is necessary or appropriate that these regulations come into operation as set out in these regulations.

Made by the Governor

with the advice and consent of the Executive Council
on 22 August 2024

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