

[CONSULTATION DRAFT] Code of Practice in relation to Statutory Declarations - Oaths Act 1936 section 33(1)(a)

Introduction - about statutory declarations

A **statutory declaration** is a legally binding written statement of fact made for official or legal purposes.

The person who makes a statutory declaration (the **declarant**) must sign the document before an authorised **witness** in accordance with the requirements of the particular Act that governs the making of the statutory declaration. Except where a more specific legislative provision applies to govern the making of a statutory declaration for a particular purpose, statutory declarations for use in a South Australian jurisdiction are to be made in accordance with section 25 of the *Oaths Act 1936 (SA)* (Oaths Act).

If a statutory declaration is being made pursuant to the Commonwealth *Statutory Declarations Act 1959* (Cth) or another legislative provision, the declarant should make the declaration in the form required under the relevant legislation.

A South Australian statutory declaration form can be downloaded from the website www.agd.sa.gov.au in the '[Justice of the Peace Services and authorised witnesses](#)' section.

The classes of persons authorised to witness statutory declarations in South Australia for use in a South Australian jurisdiction are set out in Clause 1 of Schedule 1 of the Oaths Act and the *Oaths Regulations 2021* [list attached].

A witness does not need to be concerned with the accuracy or truthfulness of the statutory declaration as they are simply witnessing the declaration of the declarant.

A statutory declaration may be hand written or typed, including in electronic form.

Section 32 of the Oaths Act provides that a statutory declaration is not invalid merely because of an inadvertent and minor non-compliance with a requirement imposed under the Act (including the *Oaths Regulations 2021* and this Code of Practice) that does not materially affect the nature of the statutory declaration.

Code of practice in relation to statutory declarations for use in a South Australian jurisdiction

A statutory declaration under the *Oaths Act 1936 (SA)* is required to be made in accordance with the following procedures and requirements:

1. The declarant named on the statutory declaration must sign the declaration.

2. At the time of the witness signing the statutory declaration, the statutory declaration must be fully completed. All blank spaces in the statutory declaration must be crossed out with a 'Z' to prevent any information being added to the statutory declaration after it has been witnessed. Both the witness and the declarant must initial and date the start and the end of the 'Z'.
3. Any alterations to the statutory declaration must be initialled and dated by both the declarant and the witness.
4. If it is a multi-page declaration, each page of the declaration must be numbered and signed by the declarant.
5. Any annexures to be attached to the statutory declaration must be referred to in the statutory declaration and clearly marked in a manner that corresponds with the references to that document in the statutory declaration.

Example: annexures are often marked 'Annexure A', 'Annexure B' etc and must be referred to accordingly in the statutory declaration.

If the annexure is not referred to in the statutory declaration, the declarant must make an alteration to the wording in the statutory declaration to refer to the annexure.

6. If a statutory declaration refers to annexures, the annexures must be attached to the statutory declaration document. If they are not attached, the witness must not witness the statutory declaration.
7. The witness must observe the declarant signing the statutory declaration.
8. After the above steps, the witness must ask the declarant the following:
 - *"Did you prepare and write the declaration yourself?"*. [If the answer is "no" ask the declarant *"have you read the declaration and do you understand the contents?"*]
 - *"Do you understand that making a false statutory declaration is an offence that carries serious penalties including possible imprisonment?"* The witness must hear the deponent say: *"I understand"*, or *"I do"*.
 - *"Is that your name at the start of the statutory declaration?"*
 - *Is that your normal signature?"*
 - *"Do you make this solemn declaration by virtue of the Oaths Act 1936 and do you solemnly and sincerely declare that the contents of this declaration are true to the best of your knowledge, information and belief? If so, please say 'I solemnly and sincerely declare'"*.

If there are any attachments to the declaration, the witness must ask the declarant: *"do you solemnly and sincerely declare that this/these attachment/s is/are the attachment/s referred to in the statutory declaration? If so please say "I solemnly and sincerely declare"*.

9. The witness must complete the witnessing/ attestation clause by writing the place and date, witness's signature and writing, typing and/or stamping the witness's name and the capacity in which the witness has authority to witness the statutory declaration.

A Justice of the Peace is required to evidence their capacity/authority by writing their JP ID number and “A justice of the peace for South Australia”.

A police officer is required to evidence their capacity/authority by writing their rank and identification number and “South Australia Police”.

10. The witness must also then sign and date all annexures and write or stamp the following wording on the first page of the annexures (if they have not already been marked by the declarant):

This is the annexure marked [eg Annexure “A”] referred to in the statutory declaration of [name of declarant].

Declared before me at [suburb] in the State of South Australia.

This [full date eg dd/mm/yyyy]

[Witness signature]

[Witness full name and capacity in which the witness is authorised to witness statutory declarations]

Example: Jane Smith, Veterinary Surgeon

Witnessing of statutory declaration by audio visual link

If a statutory declaration is made in circumstances where the authorised witness and the declarant meet remotely by audio visual link (AVL), a requirement that the witness observe the declarant, or that something be done in the presence of or before an authorised witness, will be taken to be satisfied if the following requirements are complied with:

1. the requirement that the remote meeting between an authorised witness and a declarant by AVL be conducted so that the authorised witness and the declarant are visible to each other and can hear each other while the declarant signs the statutory declaration and while the witnessing process is undertaken;
2. the requirement that the authorised witness—
 - i. observe the declarant signing the statutory declaration in real time; and
 - ii. attest or otherwise confirm that—
 - A. the statutory declaration was signed by the declarant; and
 - B. the declarant's signature on the statutory declaration was witnessed, by signing the statutory declaration or a copy of the statutory declaration;
 - iii. be reasonably satisfied the statutory declaration the authorised witness signs is the same statutory declaration, or a copy of the statutory declaration, signed by the declarant;

- iv. endorse the statutory declaration, or the copy of the statutory declaration, with a statement—
 - A. specifying the method used to witness the signing of the statutory declaration by the declarant; and
 - B. that the requirements under the *Oaths Act 1937* for witnessing statutory declarations by AVL were complied with in relation to the making of the statutory declaration.

For the purposes of clause 2 of this Code, and without limiting the ways an authorised witness may confirm the witnessing of the signing of a statutory declaration, if the declarant sends a copy of the statutory declaration signed by the declarant electronically to the authorised witness, or the witness has an electronic copy of the statutory declaration signed by the declarant, the authorised witness may countersign the statutory declaration as soon as practicable after witnessing the signing of the statutory declaration.

Electronic execution of statutory declaration

Notes: (from the *Oaths Regulations 2021*)

1. The *Oaths Regulations 2021* provide that 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.
2. An initial or a signature is executed by electronic means if:
 - (a) a method is used to identify the person and indicate the person's intention in respect of the information recorded in the statutory declaration; and
 - (b) the method used was either—
 - i. as reliable as appropriate for the purpose for which the statutory declaration was recorded, in light of all the circumstances; or
 - ii. proven in fact to have fulfilled the functions described in (a), by itself or together with further evidence.
3. A statutory declaration that is signed or initialled by electronic means must include a statement on it that the declaration was signed or initialled by electronic means.

List of authorised statutory declaration witnesses under *Oaths Act 1936 (SA)*

- a Commissioner for taking affidavits in the Supreme Court
- a person who is registered as a conveyancer under the *Conveyancers Act 1994*
- a justice of the peace
- a police officer, other than a police officer who is a probationary constable
- persons admitted and enrolled as a notary public of the Supreme Court
- an agent of the Australian Postal Corporation in charge of an office supplying postal services to the public
- an Australian Consular Officer or an Australian Diplomatic Officer within the meaning of the *Consular Fees Act 1955* of the Commonwealth
- a bailiff
- a bank officer who has 5 or more continuous years of service
- a building society officer who has 5 or more years of continuous service
- a chief executive officer of a Commonwealth court
- a clerk of a court
- a credit union officer who has 5 or more years of continuous service
- an employee of the Australian Trade and Investment Commission who is—
 - (i) in a country or place outside Australia; and
 - (ii) authorised under paragraph 3(d) of the *Consular Fees Act 1955* of the Commonwealth; and
 - (iii) exercising their function in that place
- an employee of the Commonwealth who is—
 - (i) in a country or place outside Australia; and
 - (ii) authorised under paragraph 3(c) of the *Consular Fees Act 1955* of the Commonwealth; and
 - (iii) exercising their function in that place
- a fellow of the National Tax and Accountants' Association
- a registered health practitioner
- a finance company officer who has 5 or more years of continuous service
- a marriage celebrant registered under Part IV Division 1 Subdivision C of the *Marriage Act 1961* of the Commonwealth
- a member of the Governance Institute of Australia
- a member of Engineers Australia, other than at the student grade
- a member of the Association of Taxation and Management Accountants
- a member of the Australasian Institute of Mining and Metallurgy
- a member of the Australian Defence Force who is—
 - (i) an officer; or
 - (ii) a non-commissioned officer within the meaning of the *Defence Force Discipline Act 1982* of the Commonwealth who has 5 or more years of continuous service; or
 - (iii) a warrant officer within the meaning of the *Defence Force Discipline Act 1982* of the Commonwealth
- a member of the Institute of Chartered Accountants in Australia, CPA Australia or the Institute of Public Accountants

- a Member of—
 - (i) the Parliament of the Commonwealth; or
 - (ii) the Parliament of a State; or
 - (iii) a Territory legislature; or
 - (iv) a local government authority of a State or Territory
- a minister of religion registered under Part IV Division 1 Subdivision A of the *Marriage Act 1961* of the Commonwealth
- a patent attorney or a trade marks attorney
- a permanent employee of the Australian Postal Corporation who has 5 or more years of continuous service who are employed in an office supplying postal services to the public
- a permanent employee of—
 - (i) the Commonwealth or a Commonwealth authority; or
 - (ii) a State or Territory or a State or Territory authority; or
 - (iii) a local government authority,with 5 or more years of continuous service who are not specified in another item in this list
- a Senior Executive Service employee of—
 - (i) the Commonwealth or a Commonwealth authority; or
 - (ii) a State or Territory or a State or Territory authority
- a sheriff
- a sheriff's officer
- a teacher employed on a full-time basis at a school or tertiary education institution
- a veterinary surgeon