

South Australia

# **Oaths (Prescribed Requirements) Amendment Regulations 2023**

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 2023*.

### **2—Commencement**

These regulations come into operation on .

## **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).

(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 the declarant has a disability that prevents the person from making the declaration in accordance with the Act and these regulations.

**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, blind or has a cognitive impairment, 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) 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.
- (6) An initial or a signature is executed by electronic means for the purposes of subregulation (5) 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 the light of all the circumstances; or
    - (ii) proven in fact to have fulfilled the functions described in paragraph (a), by itself or together with further evidence.
- (7) A statutory declaration that is signed or initialed by electronic means in accordance with subregulation (5), must include a statement that the declaration was signed or initialed by electronic means.

- (8) A statutory declaration may be signed by the declarant and the authorised witness even if the declarant is located outside the State if the statutory declaration is made under an Act or law of this 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);
- (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 the deponent has a disability that prevents the person from making the affidavit in accordance with the Act and these regulations.
  - (4) Without limiting subregulation (3), if it appears to an authorised person that the deponent is illiterate, blind or has a cognitive impairment, the authorised person must certify on the face of the affidavit that the affidavit was read to the deponent by the authorised person.
  - (5) 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.
  - (6) An initial or a signature is executed by electronic means for the purposes of subregulation (5) 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 the light of all the circumstances; or
  - (ii) proven in fact to have fulfilled the functions described in paragraph (a), by itself or together with further evidence.
- (7) An affidavit that is signed or initialed by electronic means in accordance with subregulation (5) must include a statement that the affidavit was signed or initialed by electronic means.
- (8) An affidavit may be signed by the deponent and the authorised person even if the deponent is located outside the State if the affidavit is taken under an Act or law of this State.

**Made by the Governor**

with the advice and consent of the Executive Council

on

No            of 2023