



Witnessing statutory declarations – advice for council members and council employees

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Witnessing statutory declarations – advice for council members and council employees



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Changes to the Oaths Act commenced on 1 December extending provisions enabling elected members and some council staff to witness statutory declarations.

In response to the COVID-19 emergency, a temporary expansion of categories of persons who could witness a South Australian statutory declaration was made, which included elected members and some council employees.

Following the expiry of section 16 of the [COVID-19 Emergency Response Act 2020 \(COVID-19 ER Act\)](#), the [COVID-19 Emergency Response \(Section 16\) Regulations 2020 \(Section 16 Regulations\)](#) that enabled this expansion also ceased.

On 1 December 2021 changes to the [Oaths Act 1936 \(Oaths Act\)](#) commenced. These changes result in the permanent extension of the temporary measures provided by virtue of the Section 16 Regulations (made under section 16 of the COVID-19 ER Act).

In particular, the changes brought about by the [Oaths \(Miscellaneous\) Amendment Act 2021](#) resulted in changes to the Oaths Act to:

- Provide for permanent expansion of the classes of person permitted to take statutory declarations;
- Remove the requirement for police to be proclaimed under the Oaths Act before being authorised to witness affidavits or statutory declarations;

- Consolidate the provisions relating to the taking of affidavits currently in the *Evidence (Affidavits) Act 1928* into the Oaths Act;
- Provide, by regulation, for requirements for statutory declarations and affidavits; and
- Provide, in Codes of Practice, for procedures to be followed by declarants/deponents and witnesses in the making of statutory declarations and affidavits.

The [Oaths Regulations 2021](#) (**Oaths Regulations**) and Codes of Practice maintain the status quo in terms of the requirements and procedures for statutory declaration and affidavits, including:

- Permanently expanding the class of persons permitted to take statutory declaration in line with the provision in the Schedule 16 Regulations; and
- Continuing the provision for affidavits to be taken remotely via audio visual link.

Of specific relevance to councils are the following two categories of persons who remain qualified to witness South Australian statutory declarations by virtue of the Oaths Regulations:

- Members of a local government authority of a State or Territory (i.e. Mayors and Councillors) and
- Permanent employees of a local government authority with five (5) or more years of continuous service.

To assist council members and employees to witness South Australian statutory declarations, the LGA has updated the Statutory Declarations Practice Guidance Notes previously issued in response to the temporary expansion of categories of persons who could witness statutory declarations via the Section 16 Regulations. The revised guidance notes are available to members on the [Governance policies, codes and guidelines page on the LGA website](#).

The Minister has advised that consultation will occur later on draft Regulations and Codes of Practice for the intended long-term changes to the requirements for statutory declarations and affidavits, including to modernise them and increase consistency with other Australian jurisdictions.



for more information...

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