

Uniform Civil Procedure (Affidavits and Statutory Declarations) Amendment Rule 2022

Explanatory notes for SL 2022 No. 49

Made under the

Oaths Act 1867

Supreme Court of Queensland Act 1991

General Outline

Uniform Civil Procedure (Affidavits and Statutory Declarations) Amendment Rule 2022

Authorising law

Section 85 of the *Supreme Court of Queensland Act 1991* (the Act)

Section 31Y of the *Oaths Act 1867* (Oaths Act)

Policy objectives and the reasons for them

Background

Section 85(1)(a) of the Act empowers the Governor in Council to make rules including rules for the practices and procedures of the Supreme Court, the District Court or the Magistrates Courts or their registries.

Section 85(2) of the Act provides that a rule made by the Governor in Council under section 85 of the Act may only be made with the consent of the Rules Committee.

The Rules Committee has considered the *Uniform Civil Procedure Rules 1999* (UCPR) as they relate to amendments made to the Oaths Act by part 6 of the *Justice and Other Legislation Amendment Act 2021* (JOLA Act), which modernise the way that affidavits and statutory declarations are made, signed and witnessed (documents reforms). These documents reforms have been proclaimed to commence on 30 April 2022.

Affidavits and statutory declarations

The UCPR currently provide rules about the practice and procedure of courts in relation to affidavits and statutory declarations that are signed on a single paper document bearing the physical signatures of both the signatory and the witness.

The documents reforms in the JOLA Act modernise the way that affidavits and statutory declarations can be made, including by:

- allowing affidavits and statutory declarations to be witnessed over audio visual (AV) link by a narrow cohort of special witnesses or other prescribed persons;
- allowing affidavits and statutory declarations to be made in the form of an electronic document and electronically signed if witnessed by a special witness or other prescribed person (whether witnessed in person or over AV link);
- allowing affidavits and statutory declarations to be made using counterparts in certain circumstances;
- allowing a person (a substitute signatory) to sign an affidavit or statutory declaration for and at the direction of the signatory in certain circumstances;
- allowing rules of court or practice directions to be made about particular methods of electronic signature that must be used for affidavits or statutory declarations that are filed or admitted into evidence in a proceeding; and
- allowing rules of court or practice directions to state a minimum period for which an original physical version of a document that is filed or admitted into evidence in a proceeding is to be kept (under section 31Y(3) of the Oaths Act).

The *Uniform Civil Procedure (Affidavits and Statutory Declarations) Amendment Rule 2022* (Amendment Rule) is proposed to accommodate the new ways that affidavits and statutory declarations can be made, signed and witnessed.

Achievement of policy objectives

The Amendment Rule will achieve the policy objectives by amending the UCPR to:

- update terminology to align with new terminology used in the Oaths Act;
- provide for the filing of affidavits and statutory declarations, however made (including affidavits or statutory declarations that are made in the form of electronic documents, electronically signed or made using counterparts and those signed by a substitute signatory at the direction of the signatory);
- specify additional requirements for the completion of affidavits and statutory declarations to complement the requirements in the Oaths Act; and
- specify a retention period of seven years for original physical versions of affidavits and statutory declarations for the purposes of section 31Y(3) of the Oaths Act.

The Amendment Rule will commence on 30 April 2022 to align with the commencement of part 6 of the JOLA Act.

Consistency with policy objectives of authorising law

The Amendment Rule is consistent with the policy objectives of the authorising law.

Inconsistency with policy objectives of other legislation

The Amendment Rule is not inconsistent with the policy objectives of other legislation.

Alternative ways of achieving policy objectives

There are no alternative ways of achieving the policy objectives.

Benefits and costs of implementation

Implementation will ensure that the UCPR accommodate the document reforms in the JOLA Act that provide for new ways that affidavits and statutory declarations can be made, signed and witnessed. There will be no immediate implementation costs arising from the rule amendments.

Consistency with fundamental legislative principles

The Amendment Rule is consistent with fundamental legislative principles.

Consultation

The Amendment Rule was developed at the request of the Rules Committee who consented to the Amendment Rule being made.

A self-assessment by the Department of Justice and Attorney-General has determined that the Amendment Rule is excluded from regulatory impact analysis under exclusion category (j) of the *Queensland Government Guide to Better Regulation* as it is a regulatory proposal which relates to the administration of courts and tribunals.