

Oaths (Document Reforms) Amendment Regulation 2022

Explanatory notes for SL 2022 No. 131

Made under the

Oaths Act 1867

General Outline

Oaths (Document Reforms) Amendment Regulation 2022

Authorising law

Section 44(2) of the *Oaths Act 1867*

Policy objectives and the reasons for them

Background

Section 44(2) of the *Oaths Act 1867* (Oaths Act) allows a regulation to be made about the making, signing and witnessing of affidavits and declarations.

Document Modernisation Reforms

On 24 November 2021, the *Justice and Other Legislation Amendment Act 2021* (JOLA Act) received assent. Part 6 of the JOLA Act amends the Oaths Act to introduce significant reforms which modernise the way that affidavits and statutory declarations are made, signed and witnessed in Queensland (the reforms). The reforms commenced by proclamation on 30 April 2022.

Key features of the reforms relevantly include:

- allowing affidavits and statutory declarations to be made in electronic form, signed electronically, and witnessed over audio visual (AV) link if witnessed by a special witness or other prescribed person; and
- allowing the person making the affidavit or statutory declaration (the signatory) to direct another person (called a substitute signatory) to sign the document for them in certain circumstances.

Substitute Signatories

The JOLA Act inserted new provisions into the Oaths Act which clearly provided for a substitute signatory to be directed by a signatory to sign an affidavit or statutory declaration when:

- (a) the document is electronically signed in the physical presence of a witness (see section 16C of the Oaths Act); or
- (b) the document is made over AV link, with prescriptive requirements that apply in such circumstances (such as limitations on who can act as a substitute signatory and obligations on the witness - see sections 31P, 31Q, 31R and 31T of the Oaths Act).

It was intended that a substitute signatory could sign an affidavit or statutory declaration that is witnessed in person, or over AV link. While this can be inferred, the lack of prescriptive requirements in Part 4 of the Oaths Act raises doubt about whether a substitute signatory can sign an affidavit or statutory declaration when the document is signed on paper and witnessed in-person (although the power to direct a substitute signatory in this context can be inferred as a matter of statutory interpretation).

The *Oaths (Document Reforms) Amendment Regulation 2022* (Amendment Regulation) complements and supports the Oaths Act to provide the prescriptive requirements that apply when a substitute signatory is directed to sign an affidavit or statutory declaration by a signatory when the affidavit or statutory declaration is witnessed in person (regardless of whether it is signed on paper or electronically).

The prescriptive requirements reflect the limitations on who can act as a substitute signatory and requirements for the witness to observe and verify particular matters, to ensure there is a consistent approach regardless of whether the document is witnessed over AV link or in-person.

Achievement of policy objectives

The Amendment Regulation will achieve the policy objectives by amending the *Oaths Regulation 2022* to:

- clarify that a substitute signatory may be directed to sign an affidavit or statutory terminology by a signatory when the document is witnessed in person (regardless of whether it is signed on paper or electronically signed);
- provide that the substitute signatory must not also be the witness to the document or, for a document used in a proceeding for a party, another party to the proceeding or a relation of another party to the proceeding (consistent with section 31P of the Oaths Act) or a person who would otherwise be excluded under the law;
- require the witness to observe the direction given by the signatory, be satisfied that the substitute signatory is permitted to be a substitute signatory for the document; and be satisfied that the signatory is freely and voluntarily directing the substitute signatory to sign the document (consistent with section 31R of the Oaths Act).

The Amendment Regulation will commence on notification.

Consistency with policy objectives of authorising law

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

Inconsistency with policy objectives of other legislation

The Amendment Regulation 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 clarify the original intention of the JOLA Act reforms. There will be no immediate implementation costs arising from the Amendment Regulation.

Consistency with fundamental legislative principles

The Amendment Regulation is consistent with fundamental legislative principles.

Consultation

Stakeholders were not consulted given that the regulation is clarifying in nature.

A self-assessment by the Department of Justice and Attorney-General has determined that the Amendment Regulation is excluded from regulatory impact analysis under exclusion category (g) of the *Queensland Government Guide to Better Regulation* as it is a regulatory proposal of a machinery nature and no substantive policy change has been made.