

# Oaths (Document Reforms) Amendment Regulation 2022

## Human Rights Certificate

### Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 41 of the *Human Rights Act 2019*, I, Shannon Fentiman MP, Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence provide this human rights certificate with respect to the *Oaths (Document Reforms) Amendment Regulation 2022* (Amendment Regulation) made under section 44(2) of the *Oaths Act 1867* (Oaths Act).

In my opinion, the Amendment Regulation, as tabled in the Legislative Assembly, is compatible with the human rights protected by the *Human Rights Act 2019*. I base my opinion on the reasons outlined in this statement.

## Overview of the Subordinate Legislation

The purpose of the Amendment Regulation is to amend the *Oaths Regulation 2022* to clarify that a person can direct another person to sign an affidavit or statutory declaration for them when the document is witnessed in-person (regardless of whether it is signed on paper or electronically).

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 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.

The reforms clearly made provision for a signatory to direct a substitute 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 signature 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 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.

## **Human Rights Issues**

The Amendment Regulation does not affect or engage a human right.

## **Conclusion**

I consider that the *Oaths (Document Reforms) Amendment Regulation 2022* is compatible with the *Human Rights Act 2019* because it does not limit human rights.

**SHANNON FENTIMAN MP**  
ATTORNEY-GENERAL AND MINISTER FOR  
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MINISTER FOR THE PREVENTION OF  
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