

Commercial

April 2020

COVID-19 Emergency Response Act 2020 – Signing and Witnessing of Documents

In a Nutshell

The COVID-19 pandemic as seen the introduction of social distancing restrictions, with many employees now working from home. While these social distancing restrictions have aided in slowing the spread of COVID-19 in South Australia, it has created implications for the signing and witnessing of legal documents.

On Monday, 20 April 2020, the South Australian Government released regulations under the COVID-19 Emergency Response Act 2020, in the wake of the COVID-19 pandemic. Among other things, the Regulations relate to the signing and witnessing of legal documents and the persons who may take a statutory declaration.

The Regulations bring about fundamental changes in the categories of persons who can take statutory declarations, in legal requirements for physical attendance and for the witnessing of documents.

Introduction

On Wednesday 8 April 2020, the South Australian Government passed the *COVID-19 Emergency Response Bill 2020*, allowing the enactment of the *COVID-19 Emergency Response Act 2020 (SA)* (**the Act**).

The Act permits the South Australian government to make temporary changes to State law to cater for and address issues that arise due to the rapidly changing COVID-19 environment.

Relevantly, on Monday, 20 April 2020:

1. the *COVID-19 Emergency Response (Section 16) Regulations 2020* commenced, extending the classes of persons who may take statutory declarations; and
2. the *COVID-19 Emergency Response (Section 17) Regulations 2020* commenced, clarifying whether or not oaths may be taken, and affidavits witnessed, remotely or not.

Statutory Declarations

Section 16 of the Act provides express permission for the Governor to suspend or modify any requirements relating to the:

- preparation;
- signing;
- witnessing;
- attestation;
- certification;
- stamping; or
- other treatment,

of any document.

On Monday, 20 April 2020, the *COVID-19 Emergency Response (Section 16) Regulations 2020* were published in the Government Gazette, extending the classes of persons who may take statutory declarations.

Previously, statutory declarations in South Australia created under the *Oaths Act 1936 (SA)* may have only been witnessed by a Justice of the Peace, a Commissioner for Taking Affidavits (any lawyer admitted to the Supreme Court) or a Notary Public.

Now, following the commencement of the *COVID-19 Emergency Response (Section 16) Regulations 2020*, the class of persons in South Australia who may witness a statutory declaration has been extended to include the much broader list of persons as defined by the [Commonwealth's Statutory Declarations Regulations 2018](#), which operates under the *Statutory Declarations Act 1959 (Cth)*. Such persons include police officers, full time teachers, engineers and accountants with appropriate professional memberships and health practitioners.

Physical Attendances

In addition to the variations made to the *Oaths Act 1936 (SA)*, section 17 of the Act also introduces provisions to overcome the need for physical attendance in certain circumstances.

Section 17 of the Act temporarily overrides other laws requiring two or more persons to be physically present at a meeting or transaction.

Section 17 now deems the physical attendance requirement to have been satisfied if the persons meet, or the transaction takes place, remotely using either:

- audio visual;
- audio; or
- any other means of communication prescribed by the regulations.

Witnessing Documents

However, on Monday 20 April 2020, the *COVID-19 Emergency Response (Section 17) Regulations 2020* were published in the Government Gazette. These regulations maintain the requirement that for the purposes of:

- witnessing the signing, execution, certification or stamping of a document; or
- taking any oath, affirmation or declaration in relation to document,

the witness must be physically present.

This means that:

- it is not appropriate for an oath to be taken remotely by audio visual or audio link; and
- affidavits must continue to be witnessed in person.

In addition, [Courts SA](#) has published a Practice Note made by the Chief Justice of the Supreme Court, Chief Judge of the District Court and Justice Blue of the Supreme Court that individuals who are attending to take an oath or witness an affidavit should ensure that appropriate 'safety precautions' are in place to prevent the potential transmission of the virus.

If, however, there are health or logistical reasons as to why an affidavit cannot be witnessed, then recommendations have also been made regarding the solicitor involved in the matter putting on his or her own affidavit exhibiting the unsworn affidavit, as discussed [here](#).

Further Information

Businesses should stay informed and up to date with any further guidance released by the Government. If you are concerned about your obligations during COVID-19, please contact us.

Please note: this information is current as of 22 April 2020. The speed with which COVID-19 is spreading and the varied responses both internally within Australia and externally change on a daily basis. It is important that you regularly keep up to date with all relevant information and be prepared to respond as the landscape in which the virus is moving changes. For updated COVID-19 legal issues and considerations please access our website [here](#).

Contact details

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