

COVID-19: signing statutory declarations and land registry instruments in South Australia

Source: [South Australian Legislation](#)

Date: 19 August 2020

Abstract:

In South Australia, temporary measures have been introduced extending the list of persons who can witness statutory declarations and suspending the requirement for land registry instruments to be witnessed.

Background

Under the *COVID-19 Emergency Response Act 2020 (SA)* (**Act**):

- section 16 authorises the Governor of South Australia to suspend or modify, by regulation, any requirements relating to the preparation, signing, witnessing, attestation, certification, stamping or other treatment of any document; and
- section 17 provides that a requirement that a meeting occur or that some other transaction take place that requires 2 or more persons to be physically present will be taken to be satisfied if the persons meet, or the transaction takes place, remotely using audiovisual or other means of communication.

Statutory declarations

From 20 April 2020, pursuant to *the COVID-19 Emergency Response (Section 16) Regulations 2020 (SA)* (**Regulations**), the list of persons who can witness statutory declarations in South Australia under the *Oaths Act 1936 (SA)* has been extended to include all of the persons listed in Schedule 1 of the Regulations. See [Gazette, No. 33 p.804](#) – 20 April 2020.

Before 20 April 2020, statutory declarations could only be witnessed by a Justice of the Peace, a Commissioner for Taking Affidavits or a Notary Public.

Audio visual witnessing of documents not permitted

The *COVID-19 Emergency Response (Section 17) Regulations 2020 (SA)*, which also commenced on 20 April 2020, provides that section 17 of the Act does **not** apply when a person is required to be physically present to witness the signing, execution, certification or stamping of a document or to take any oath, affirmation or declaration in relation to a document. See [Gazette, No. 33 p.807](#) – 20 April 2020.

Land registry instruments

From 25 June 2020, pursuant to the Regulations, the following requirements regarding land registry instruments under the *Real Property Act 1886 (SA)* are suspended:

- If a mortgage is lodged for registration that is executed solely by a mortgagee – that a corresponding mortgage must be signed by the mortgagee (under section 128(1)) and that the Registrar-General must be satisfied that the corresponding mortgage has been executed by

the mortgagee (under section 128(5)(a)).

- If the *Real Property Act 1886* (SA) requires a document to be signed by or on behalf of a party to the document – that the signing of the document must be witnessed (under section 267).

See [Gazette, No.53 p.3559](#) – 25 June 2020.

When do the Regulations expire?

Pursuant to section 6 of the Act, the Regulations will expire on the **earliest** of:

- the day on which all relevant declarations relating to the COVID-19 outbreak within South Australia have ceased; or
- 9 October 2020.

Key takeaway

Until 9 October 2020 (or earlier, if applicable) in South Australia:

- an extended list of persons can witness statutory declarations;
- a corresponding mortgage does not need to be signed by the mortgagee; and
- land registry instruments do not need to be witnessed.

Documents cannot be witnessed by audiovisual link under the Act.