

House of Assembly—No 129

As laid on the table and read a first time, 5 May 2021

South Australia

Oaths (Miscellaneous) Amendment Bill 2021

A BILL FOR

An Act to amend the *Oaths Act 1936* and to repeal the *Evidence (Affidavits) Act 1928*.

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- 1 Repeal of *Evidence (Affidavits) Act 1928*
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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Oaths (Miscellaneous) Amendment Act 2021*.

5 2—Commencement

This Act comes into operation on a day to be fixed by proclamation.

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Oaths Act 1936*

4—Amendment of long title

Long title—after "declarations," insert:

affidavits

5—Substitution of section 25

Section 25—delete the section and substitute:

25—Taking statutory declarations

(1) Subject to this Part, a declaration may be made under this Part instead of an oath or affirmation if the declaration—

- 10
- (a) complies with any requirements prescribed by the regulations; and
 - (b) is made in accordance with the requirements set out in the code of practice in relation to statutory declarations published by the Minister under section 33.

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(2) The persons specified in Schedule 1 clause 1 are persons before whom a statutory declaration may be made.

6—Amendment of section 27—False declaration

Section 27(2)—delete "was not in the form prescribed by section 25" and substitute:

did not comply with the requirements of section 25

7—Substitution of heading to Part 4

Heading to Part 4—delete the heading and substitute:

Part 4—Affidavits

8—Insertion of section 27A

Before section 28 insert:

27A—Taking affidavits

- 25
- 30
- (1) An affidavit must—
- (a) comply with—
 - (i) any requirements prescribed by the regulations; and
 - (ii) any requirements set out in the rules of the relevant court; and
 - (b) be taken in accordance with the requirements set out in the code of practice in relation to affidavits published by the Minister under section 33.

(2) For the purposes of subsection (1)(a), if an inconsistency exists between the requirements prescribed by the regulations and the requirements set out in the rules of the relevant court, the rules prevail and the requirements prescribed by the regulations do not apply to the extent of the inconsistency.

(3) The persons specified in Schedule 1 clause 2 are persons authorised to take affidavits.

9—Amendment of section 28—Commissioners for taking affidavits etc

Section 28(2)—delete "a Commissioner shall be" and substitute:

a person specified in Schedule 1 clause 2 will be

10—Substitution of section 30

Section 30—delete the section and substitute:

30—False statement by affidavit

A person who intentionally makes a false statement, whether orally or in writing, in an affidavit is guilty of an offence.

Maximum penalty: 7 years imprisonment.

11—Substitution of Part 5

Part 5—delete Part 5 and substitute:

Part 5—Miscellaneous

32—Minor non-compliance does not affect validity

An oath, affirmation, statutory declaration or affidavit is not invalid merely because of an inadvertent and minor non-compliance with a requirement imposed under this Act that does not materially affect the nature of the oath, affirmation, statutory declaration or affidavit (as the case requires).

33—Codes of practice

(1) For the purposes of this Act, the Minister may, by notice in the Gazette, publish—

- (a) a code of practice in relation to statutory declarations;
- (b) a code of practice in relation to affidavits.

(2) A code of practice may—

- (a) be of general or limited application; and
- (b) vary in operation according to factors stated in the code; and
- (c) provide for the granting by the Minister of exemptions (conditional or unconditional) from specified provisions of the code; and

(d) in the case of a code of practice made in relation to statutory declarations—impose requirements relating to the making of statutory declarations; and

(e) in the case of a code of practice made in relation to affidavits—impose requirements relating to the taking of affidavits.

(3) The Minister may, by subsequent notice in the Gazette, vary or revoke a code of practice.

(4) A notice published in the Gazette under this section may come into operation on the day on which it is published or on a later day or days specified in the notice.

(5) A declaration or affidavit is not invalid merely because of a failure to comply with a requirement in a code of practice, if the non-compliance does not materially affect the nature of the declaration or affidavit (as the case requires).

34—Requirements of other Acts taken to be complied with

If another Act requires that—

(a) a declaration must be made before a specified class of person or authority; or

(b) an instrument must be signed or executed in the presence of, or attested by, a specified class of person or authority,

the requirement will be taken to have been complied with if the declaration is made before, or the instrument is signed or executed in the presence of or attested by (as the case requires), a person specified in Schedule 1 clause 1.

35—Offence of taking affidavit, affirmation or declaration without authority

(1) A person who knowingly takes an affidavit, affirmation or declaration without being authorised to do so is guilty of an offence.

Maximum penalty: \$10 000 or 6 months imprisonment.

(2) A person who is not authorised to take an affidavit, affirmation or declaration must not represent that the person is authorised to do so.

Maximum penalty: \$1 500.

36—Immunity

A person authorised under Schedule 1 incurs no civil or criminal liability for an honest act or omission in carrying out or purportedly carrying out functions under this Act.

37—Regulations

(1) The Governor may make such regulations as are contemplated by this Act or as are necessary or expedient for the purposes of this Act.

- (2) The regulations may—
- (a) make different provision according to the persons, things or circumstances to which they are expressed to apply; and
 - (b) be of general or limited application; and
 - (c) provide that a matter or thing is to be determined, dispensed with, regulated or prohibited according to the discretion of the Minister or another prescribed authority; and
 - (d) make provisions of a saving or transitional nature consequent on the enactment of any amendments to this Act, on the commencement of specified provisions of this Act, on the repeal of the *Evidence (Affidavits) Act 1928* or on the making of regulations under this Act.

Schedule 1—Authorisation of persons

1—Persons before whom a statutory declaration may be made

The following are persons before whom a statutory declaration may be made for the purposes of section 25(2):

- (a) a Commissioner for taking affidavits in the Supreme Court;
- (b) a person who is registered as a conveyancer under the *Conveyancers Act 1994*;
- (c) a justice of the peace;
- (d) a police officer, other than a police officer who is a probationary constable;
- (e) persons admitted and enrolled as a notary public of the Supreme Court;
- (f) any other person of a class prescribed by regulation.

2—Persons authorised to take an affidavit

The following are persons authorised to take an affidavit for the purposes of section 27A(3):

- (a) a Commissioner for taking affidavits in the Supreme Court;
- (b) a justice of the peace;
- (c) a police officer, other than a police officer who is a probationary constable;
- (d) persons admitted and enrolled as a notary public of the Supreme Court;
- (e) any other person of a class prescribed by regulation.

Schedule 1—Repeal of *Evidence (Affidavits) Act 1928*

1—Repeal of *Evidence (Affidavits) Act 1928*

The *Evidence (Affidavits) Act 1928* is repealed.