



Statutory Declarations Amendment Act 2023

No. 92, 2023

**An Act to amend the law relating to statutory
declarations, and for related purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation
(<https://www.legislation.gov.au/>)

Contents

1	Short title.....	1
2	Commencement.....	2
3	Schedules.....	2
Schedule 1—Amendments		3
Part 1—Main amendments		3
<i>Statutory Declarations Act 1959</i>		3
Part 2—Minor and technical amendments		9
<i>Statutory Declarations Act 1959</i>		9
Part 3—Application and saving provisions		11



Statutory Declarations Amendment Act 2023

No. 92, 2023

An Act to amend the law relating to statutory declarations, and for related purposes

[Assented to 17 November 2023]

The Parliament of Australia enacts:

1 Short title

This Act is the *Statutory Declarations Amendment Act 2023*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	The later of: (a) 1 January 2024; and (b) the day after this Act receives the Royal Assent.	1 January 2024 (paragraph (a) applies)

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Part 1—Main amendments

Statutory Declarations Act 1959

1 Section 4

Insert:

approved form means a form approved under section 15.

approved identity service has the meaning given by subsection 9A(3).

approved online platform has the meaning given by subsection 9A(2).

declarant, in relation to a statutory declaration, means the person who is making the declaration.

prescribed person means a person prescribed by the regulations to be a prescribed person.

video link means facilities that enable audio and visual communication between persons in different places.

2 After section 7

Insert:

7A Technology neutral signing

- (1) For the purposes of this Act, a person may sign a statutory declaration by signing:
 - (a) a physical form of the declaration by hand; or
 - (b) an electronic form of the declaration using electronic means; if the method of signing satisfies subsection (2).
- (2) A method of signing satisfies this subsection if:

- (a) the method identifies the person and indicates the person's intention in respect of the information recorded in the declaration; and
- (b) the method was either:
 - (i) as reliable as appropriate for the purpose for which the information was recorded, in light of all the circumstances, including any relevant agreement; or
 - (ii) proven in fact to have fulfilled the functions described in paragraph (a), by itself or together with further evidence.

3 Section 8

Repeal the section, substitute:

8 How statutory declarations are made

A statutory declaration made under this Act must satisfy the requirements of either:

- (a) section 9 (observation by prescribed person); or
- (b) section 9A (digital verification).

9 Statutory declarations—observation by prescribed person

A statutory declaration satisfies the requirements of this section if:

- (a) the declaration is in the approved form; and
- (b) the declaration is signed by the declarant under the observation of a prescribed person in either of the following cases:
 - (i) in person;
 - (ii) by video link; and
- (c) either:
 - (i) in any case—the declaration is signed by the prescribed person; or
 - (ii) in the case where the prescribed person observes the declarant sign the declaration by video link and is satisfied that a copy of the declaration is a true copy of the declaration signed by the declarant (whether or not the copy includes the declarant's signature)—that copy is signed by the prescribed person.

Note: See section 7A for how a person may sign a statutory declaration.

9A Statutory declarations—digital verification

- (1) A statutory declaration satisfies the requirements of this section if:
- (a) the declaration:
 - (i) is in the approved form; and
 - (ii) is completed and signed by the declarant using an approved online platform; and
 - (b) the identity of the declarant is verified:
 - (i) using an approved identity service; and
 - (ii) in accordance with the conditions prescribed by the regulations; and
 - (c) the declaration includes information that:
 - (i) is provided by the approved online platform; and
 - (ii) is of a kind prescribed by the regulations.

Note 1: See section 7A for how a person may sign a statutory declaration.

Note 2: Special requirements apply when making regulations for the purposes of subparagraph (b)(ii) or (c)(ii) of this subsection: see subsection 14(2).

- (2) An **approved online platform** is a digital service that is prescribed by the regulations to be an approved online platform.

Note 1: Special obligations apply to approved online platforms: see section 9B.

Note 2: Special requirements apply when making regulations for the purposes of this subsection: see subsection 14(3).

- (3) An **approved identity service** is a digital service that is prescribed by the regulations to be an approved identity service.

Note: Special requirements apply when making regulations for the purposes of this subsection: see subsection 14(3).

9B Special obligations applying to approved online platforms

Prohibition on retaining copies of statutory declarations

- (1) The provider of an approved online platform must not retain any copy of a statutory declaration that is made using the online platform.

Requirement for annual reporting

- (2) After the end of each financial year, the provider of an approved online platform must prepare and give a report to the Minister, for presentation to the Parliament, relating to the use of the platform to make statutory declarations during the financial year.

Note: Section 34C of the *Acts Interpretation Act 1901* contains provisions relating to reports under this section.

- (3) The report must include:
- (a) the number of statutory declarations made using the platform during the financial year; and
 - (b) information about the provider's compliance with subsection (1) during the financial year; and
 - (c) information about whether there has been any actual eligible data breach (within the meaning of the *Privacy Act 1988*) during the financial year; and
 - (d) information about any matter prescribed by the regulations (including a matter related to paragraph (a), (b) or (c)).
- (4) The annual report must be given to the Minister by:
- (a) 15 October after the end of the financial year; or
 - (b) the end of any further period granted under subsection 34C(5) of the *Acts Interpretation Act 1901*.
- (5) The report must comply with any requirements prescribed by the regulations.

4 Section 10

Omit "before a person before whom a statutory declaration under this Act may be made", substitute "under the observation of a prescribed person in accordance with section 9".

5 Section 14

Before "The Governor-General", insert "(1)".

6 At the end of subsection 14(1)

Add:

Note: For variation and revocation of regulations, see subsections 33(3) and (3AA) of the *Acts Interpretation Act 1901*.

7 At the end of section 14

Add:

Special requirements relating to digital verification

- (2) Before the Governor-General makes regulations for the purposes of subparagraph 9A(1)(b)(ii) or (c)(ii), the Minister must take into account any matters that are prescribed by the regulations.
- (3) Before the Governor-General makes regulations for the purposes of subsection 9A(2) or (3) prescribing a digital service to be an approved online platform or an approved identity service, the Minister must:
 - (a) be satisfied that the digital service will operate in a way that complies with the *Privacy Act 1988*, and any corresponding law of a State or Territory that the Minister considers is relevant; and
 - (b) be satisfied of the effectiveness of the digital service's protective security (including security governance, information security, personnel security and physical security) and fraud control arrangements; and
 - (c) be satisfied of any matters that are prescribed by the regulations; and
 - (d) take into account any matters that are prescribed by the regulations.
- (4) The Governor-General may repeal regulations made for the purposes of subparagraph 9A(1)(b)(ii) or (c)(ii), or subsection 9A(2) or (3).
- (5) Without limiting subsection (4), the Governor-General may repeal a regulation prescribing a digital service to be an approved online platform if the provider of the service contravenes subsection 9B(1) (prohibition on retaining copies of statutory declarations).

8 At the end of the Act

Add:

15 Approved forms for statutory declarations

The Minister may, in writing, approve one or more forms for the purposes of paragraph 9(a) or subparagraph 9A(1)(a)(i).

16 Review of the operation of this Act

- (1) The Minister must cause a review of the operation of this Act to be conducted as soon as practicable after the end of 2 years after the commencement of the *Statutory Declarations Amendment Act 2023*.
- (2) Without limiting the matters that may be considered when conducting the review, the review must consider:
 - (a) whether the operation of this Act is effective; and
 - (b) whether amendments to this Act are necessary or desirable to improve the operation of this Act.
- (3) The persons who conduct the review must give the Minister a written report of the review within 6 months of the commencement of the review.
- (4) The Minister must cause a copy of the report of the review to be tabled in each House of the Parliament within 15 sitting days of that House after the Minister receives the report.

Part 2—Minor and technical amendments

Statutory Declarations Act 1959

9 Section 1

Omit “may be cited as”, substitute “is”.

10 Section 2

Repeal the section.

11 Section 3 (heading)

Repeal the heading, substitute:

3 Saving

12 Subsection 3(1)

Repeal the subsection.

13 Subsection 3(3)

Omit “(3)”.

14 Subsection 5(2)

Omit “subsection (8) of section twelve of this Act”, substitute “subsection 12(8)”.

15 Subsection 5(2)

Omit “section thirteen of this Act”, substitute “section 13”.

16 Subsection 6(1)

Omit “he or she”, substitute “the person”.

17 Subsection 6(2)

Omit “the next succeeding subsection”, substitute “subsection (3)”.

18 Paragraphs 6(2)(b) and (c)

Omit “connexion”, substitute “connection”.

19 Subsection 6(3)

Omit “The last preceding subsection does not authorize”, substitute “Subsection (2) does not authorise”.

20 Section 8 (heading)

Omit “**statutory declaration is**”, substitute “**statutory declarations are**”.

21 Subsection 12(1)

Omit “the succeeding provisions of this section”, substitute “this section”.

22 Subsection 12(2)

Omit “the last preceding subsection”, substitute “subsection (1)”.

23 Subsection 12(2)

Omit “subject-matter”, substitute “subject matter”.

24 Subsection 12(2)

Omit “paragraphs (a), (b) and (c) of subsection (2) of section thirty-nine of the *Judiciary Act 1903-1955*”, substitute “paragraphs 39(2)(a) and (c) of the *Judiciary Act 1903*”.

25 Subsection 12(6)

Omit “*1903-1955*”, substitute “*1903*”.

26 Section 13

Omit “subsection (8) of the last preceding section”, substitute “subsection 12(8)”.

Part 3—Application and saving provisions

27 Application provision

The amendments made by this Schedule apply in relation to a statutory declaration made on or after the commencement of this Schedule.

28 Saving provision—prescribed persons

A person who was, immediately before the commencement of this Schedule, prescribed for the purposes of paragraph 8(b) of the *Statutory Declarations Act 1959*, as in force immediately before that commencement, is taken, on and after that commencement, to be prescribed by the regulations to be a prescribed person for the purposes of the definition of ***prescribed person*** in section 4 of that Act, as amended by this Schedule.

[*Minister's second reading speech made in—
House of Representatives on 7 September 2023
Senate on 14 September 2023*]

(107/23)
