



New South Wales

Oaths Regulation 2017

under the

Oaths Act 1900

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Oaths Act 1900*.

MARK SPEAKMAN, MP
Attorney General

Explanatory note

The object of this Regulation is to repeal and replace, without any changes in substance, the provisions of the *Oaths Regulation 2011*, which would otherwise be repealed on 1 September 2017 by section 10 (2) of the *Subordinate Legislation Act 1989*.

This Regulation makes provision with respect to the procedure for identifying persons making statutory declarations or affidavits.

This Regulation is made under the *Oaths Act 1900*, including sections 34 and 35 (the general regulation-making power).

This Regulation comprises or relates to matters set out in Schedule 3 to the *Subordinate Legislation Act 1989*, namely, matters of a machinery nature.

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Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Oaths Regulation 2017*.

2 Commencement

This Regulation commences on the day on which it is published on the NSW legislation website.

Note. This Regulation repeals and replaces the *Oaths Regulation 2011*, which would otherwise be repealed on 1 September 2017 by section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definitions

(1) In this Regulation:

identification document means any of the following:

- (a) a birth certificate or birth extract issued by a State or Territory,
- (b) a citizenship certificate issued by the Commonwealth,
- (c) a citizenship certificate issued by a foreign government and, if the certificate is in a language other than English, a document purporting to contain an English translation of the certificate,
- (d) a birth certificate issued by a foreign government, the United Nations or an agency of the United Nations and, if the certificate is in a language other than English, a document purporting to contain an English translation of the certificate,
- (e) a licence or permit issued under a law of a State or Territory or equivalent authority of a foreign country for the purpose of driving a vehicle that contains a photograph of the person in whose name the licence or permit is issued,
- (f) a passport issued by the Commonwealth,
- (g) a passport or similar document issued for the purpose of international travel that:
 - (i) contains a photograph and the signature of the person in whose name the document is issued, and
 - (ii) is issued by a foreign government, the United Nations or an agency of the United Nations, and
 - (iii) if it is in a language other than English, is accompanied by a document purporting to contain an English translation of the document,
- (h) a Photo Card issued under the *Photo Card Act 2005*,

- (i) a card issued under a law of the Commonwealth or another State or Territory for the purpose of proving the person's age which contains a photograph of the person in whose name the card is issued,
- (j) a national identity card issued for the purposes of identification that:
 - (i) contains a photograph and the signature of the person in whose name the document is issued, and
 - (ii) is issued by a foreign government, the United Nations or an agency of the United Nations, and
 - (iii) if it is in a language other than English, is accompanied by a document purporting to contain an English translation of the document,
- (k) a Medicare card, pensioner concession card, Department of Veterans' Affairs entitlement card or other entitlement card issued by the Commonwealth or a State Government,
- (l) a credit card or account (or a passbook or statement of account) from a bank, building society or credit union,
- (m) an electoral enrolment card or other evidence of enrolment as an elector,
- (n) a student identity card, or a certificate or statement of enrolment, from an educational institution,
- (o) in the case of an inmate (within the meaning of the *Crimes (Administration of Sentences) Act 1999*)—an inmate identification card, or other document containing information identifying the inmate, prepared or used by the correctional centre in which the inmate is held,
- (p) in the case of a forensic patient (within the meaning of the *Mental Health (Forensic Provisions) Act 1990*)—a residential identity card, or other document containing information identifying the patient, prepared or used by the mental health facility, correctional centre or other place in which the patient is detained,
- (q) in the case of a patient (within the meaning of the *Mental Health Act 2007*) other than a forensic patient (within the meaning of the *Mental Health (Forensic Provisions) Act 1990*)—a residential identity card, or other document containing information identifying the patient, prepared or used by the mental health facility to which the patient is admitted,
- (r) a police identification card issued to a police officer by the Commissioner of Police.

special justification has the same meaning as in section 19B of the *Law Enforcement (Powers and Responsibilities) Act 2002*.

the Act means the *Oaths Act 1900*.

Note. The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.

- (2) Notes included in this Regulation do not form part of this Regulation.

Part 2 Identification of persons making statutory declarations and affidavits

4 Exemption from requirement to see a person's face

An authorised witness is exempted from the requirement under section 34 (1) (a) of the Act to see the face of a person making a statutory declaration or affidavit if:

- (a) the person is wearing a face covering, and
- (b) the authorised witness is satisfied that the person has a special justification for not removing the face covering.

Note. A special justification includes having a legitimate medical reason for not removing the face covering.

5 Period of time that authorised witness must know person

A person is not known to an authorised witness for the purposes of section 34 (1) (b) of the Act unless the authorised witness has known the person for a period of at least 12 months.

6 Confirmation of identity of person not known to authorised witness

- (1) An authorised witness satisfies the requirement under section 34 (1) (b) of the Act to confirm the identity of a person making a statutory declaration or affidavit only if, before the declaration or affidavit is made, the authorised witness sights an original or certified copy of an identification document in respect of the person.
- (2) For the purposes of this clause, an authorised witness cannot rely on an identification document if it is:
 - (a) a document with an expiry date that has expired (other than in the case of an Australian passport that has been expired for less than 2 years), or
 - (b) a document that has been cancelled, or
 - (c) a document referred to in paragraph (e) of the definition of *identification document* in clause 3 (other than a credit card or passbook) that is more than one year old, or
 - (d) a document referred to in paragraph (m) or (n) of the definition of *identification document* in clause 3 that is more than 2 years old.
- (3) For the purposes of this clause, a copy of a document may be certified as a true copy of the original only by a person (other than the authorised witness) authorised to take and receive statutory declarations under section 21 of the Act.

7 Matters to be certified on statutory declaration or affidavit

- (1) For the purposes of section 34 (1) (c) of the Act, an authorised witness certifies that section 34 of the Act has been complied with by certifying the following matters in a certificate on the declaration or affidavit:
 - (a) that the authorised witness either:
 - (i) saw the face of the person making the declaration or affidavit, or
 - (ii) did not see the face of the person because of a face covering, but is satisfied that the person had a special justification for not removing the covering,
 - (b) that the authorised witness either:
 - (i) knows the person, or
 - (ii) has confirmed the person's identity based on an identification document presented to the authorised witness,

- (c) if the authorised witness has relied on an identification document to confirm the identity of the person—that the document that the authorised witness relied on is the document that is specified by the authorised witness in the certificate.
- (2) A certificate may (but need not) be in the Form set out in Schedule 1.

8 Repeal and savings

- (1) The *Oaths Regulation 2011* is repealed.
- (2) Any act, matter or thing that, immediately before the repeal of the *Oaths Regulation 2011*, had effect under that Regulation continues to have effect under this Regulation.

Schedule 1 Form for certificate under section 34 (1) (c) of the Act

(Clause 7 (2))

Certificate under section 34 (1) (c) of Oaths Act 1900

**Please cross out any text that does not apply*

I [*insert name of authorised witness*], a [*insert qualification to be authorised witness*], certify the following matters concerning the making of this *statutory declaration/affidavit by the person who made it:

- 1 *I saw the face of the person *or* *I did not see the face of the person because the person was wearing a face covering, but I am satisfied that the person had a special justification for not removing the covering.
- 2 *I have known the person for at least 12 months *or* *I have confirmed the person's identity using an identification document and the document I relied on was [*describe identification document relied on*].

[*insert signature of authorised witness*]

Date: