



Monthly Information Newsletter – Tax & Super

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Electronic execution of documents during COVID-19

The COVID-19 pandemic has prompted state and territory governments to temporarily ease the manner in which documents are executed.

It is now possible under multiple jurisdictions to sign and witness certain documents electronically or via audio visual links. The changes address difficulties in executing documents amid social distancing and stay-at-home restrictions.

However, the requirements for signing and witnessing documents are highly prescriptive and specific to each state and territory, and you may need to seek legal advice as required depending on your individual situation.

Contracts

Federal legislation and similar legislation in each state and territory provides that electronic signatures are able to be used to validly sign most contracts. While specific requirements in each state and territory vary, a valid electronic signature must usually satisfy three broad requirements:

- Identification: a recipient must be able to identify the person signing the contract and confirm their intention to be bound by it.
- Reliability: the method used to sign the document must be reliable. This is determined by considering all relevant circumstances and the purpose for which the electronic signature is required.
- Consent: the recipient must consent to the document being signed electronically.

Note that there are state and territory-specific exemptions (such as in relation to certain property transactions) and you may need to seek legal advice depending on your particular situation.

Deeds, statutory declarations and affidavits

Victoria

The Victorian Government introduced special regulations specific to the COVID-19 pandemic. The Victorian regulations are highly prescriptive in relation to witnessing, signing and the use of video links for certain documents.

These regulations are due to expire on 24 October 2020, and at the time of writing the state government was yet to announce whether they will be extended.

Key changes regarding the remote execution of deeds, powers of attorney, wills, affidavits and statutory declarations include:

- deeds can now be signed electronically in accordance with the requirements of the *Electronic Transactions (Victoria) Act 2000*, subject to other legislative requirements
- in relation to transactions that are governed by the *Electronic Transactions (Victoria) Act 2000*:
 - witnessing signatures by audio visual link is now permitted, subject to the witness writing a statement that they observed the signing by audio visual link
 - signatures are now valid across separate copies of documents
- declaring a statutory declaration is now permitted by audio visual link for the purposes of the *Oaths and Affirmations Act 2018*.

New South Wales and the ACT

The NSW Government introduced regulations this year that permit the witnessing and signing of documents via audio visual links. Relevant documents include deeds, statutory declarations, wills, powers of attorney and affidavits.

Similarly, in the ACT, amended regulations also allows the witnessing of documents by audio visual link – namely affidavits, wills and general or enduring powers of attorney.

These laws state that the relevant documents can be witnessed via audio visual link if the witness, in summary:

- observes the person signing in real time
- confirms the signature was witnessed by signing the document or a copy of the document
- is reasonably satisfied the document that the witness signs is the same document (or a copy of the document), signed by the signatory, and
- endorses the document (or a copy of that document) by writing a statement specifying the method used to witness the signing in accordance with the particular legislation.

Queensland

The Queensland Government introduced new legislation and amended existing regulations to broadly allow deeds to be converted into electronic documents and electronically signed. Subject to complying with the requirements of the Queensland regulations, certain deeds no longer need to be witnessed.

Further, the new rules provide for the ability for affidavits, declarations and powers of attorney to be witnessed by audio visual link.

Tasmania

Limited witnessing of documents (including statutory declarations) is now permitted via audio visual link pursuant to new legislation introduced this year. The witness must, in summary:

- observe the person signing in real time
- confirm the signature was witnessed by signing the document (or a copy)
- be reasonably satisfied the document the witness signs is the same document (or a copy of that document), signed by the signatory, and
- endorse the document (or a copy) by stating the signing was in accordance with the legislation.

Western Australia, South Australia and the Northern Territory

The Western and South Australian governments (save as noted below) and the Northern Territory have enacted little or no legislation prescribing remote witnessing and electronic signing of documents in response to COVID-19. This may change in the future as the pandemic situation evolves.

The South Australian Government has however extended the classes of persons who may witness statutory declarations.

Further information

The Australian Government Solicitor's fact sheet provides a comprehensive summary of the requirements that corporations and company officers must satisfy when executing documents remotely. This can be downloaded from [https://www.ags.gov.au/sites/default/files/2020-08/Fact sheet No 38.pdf](https://www.ags.gov.au/sites/default/files/2020-08/Fact%20sheet%20No%2038.pdf)

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