

COVID-19: New regulations in NSW facilitate the execution and witnessing of documents electronically



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In light of the COVID-19 pandemic, NSW has recently passed legislation to allow the witnessing of signatures via audio-visual link. *The Electronic Transactions Amendment (COVID-19 Witnessing of Documents) Regulation 2020 (NSW) (The Regulations)* came into effect on 22 April 2020, and will allow both businesses and individuals to sign and exchange contracts without breaching the NSW Government's social distancing and isolation requirements. NSW is the first Australian jurisdiction to take this step.

Background

Under normal circumstances, there are certain documents such as wills, deeds, affidavits and statutory declarations which must be witnessed. Prior to the legislative reform, there had been serious doubts as to whether signatures witnessed by video met the requirements.

What is audio-visual link?

Audio-visual link refers to technology that facilitates continuous and contemporaneous audio and visual communications between two individuals who are not in the same place. It includes FaceTime, Skype and Zoom.

What arrangements may be witnessed via audio-visual link?

The Regulations have a very broad application to witnessing requirements imposed by NSW law, and include but are not limited to:

- a. Wills;
- b. Powers of attorney or enduring powers of attorney;
- c. Deeds;
- d. Affidavits, including annexures or exhibits to the affidavit;
- e. Statutory declarations;
- f. Certification of matters required by law;
- g. Confirming or verifying the identity of a signatory; and
- h. Seeing the face of the signatory.

How do I witness a document via audio-visual link?

Any person who is witnessing the signing of a document by audio-visual link must adhere to the following:

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1. Observe the person signing the document sign the document in real time. This may include having the signatory angle the camera down so you can see the document physically being signed by the signatory. It is insufficient to watch a recording of the signing after it has happened.
2. Confirm the signature was witnessed by signing the document or a copy of the document. Alternatively, the signatory can scan and send a copy of the signed document electronically and the witness countersigns the scanned document.
3. Be reasonably satisfied that the document the witness signs in the same document, or a copy of the same document signed by the signatory; and
4. Endorse the document or copy the document with a statement specifying the method used to witness the signature of the signatory and that the document was witnessed in accordance with The Regulation.

How long will The Regulations be in place for?

The Regulations will last for 6 months after 22 April 2020. However, the NSW Parliament can extend the Regulations to a maximum of 12 months.

Traditional methods of signing and witnessing documents remain valid while The Regulations are in force.

What's next?

It is expected that similar legislative reform is expected to be passed in other jurisdictions in Australia to also allow for the remote execution and witnessing of documents during COVID-19.

Contact us at CLS Legal at info@clslegal.com.au for further information, to discuss the execution or witnessing of documents via audio-visual link or if you have any questions about the contents of this document.

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