New South Wales

Electronic Transactions Amendment (COVID-19 Witnessing of Documents) Regulation 2020
under the
Electronic Transactions Act 2000

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the Electronic Transactions Act 2000.

MARK SPEAKMAN, MP
Attorney General, and Minister for the Prevention of Domestic Violence

Explanatory note
The objects of this Regulation are, during the COVID-19 pandemic—
(a) to provide that documents that require a witness may be witnessed by audio visual link, and
(b) to provide that tasks in relation to witnessing a document may be performed by audio visual link, and
(c) to allow an oath, declaration or affidavit required for a purpose specified in section 26 of the Oaths Act 1900 to be taken or made before an Australian legal practitioner, and
(d) to allow a statutory declaration to be made before a person before whom a statutory declaration under the Statutory Declarations Act 1959 of the Commonwealth may be made.

This Regulation is made under the Electronic Transactions Act 2000, including sections 15 (the general regulation-making power) and 17.
Electronic Transactions Amendment (COVID-19 Witnessing of Documents) Regulation 2020

under the
Electronic Transactions Act 2000

1 Name of Regulation

This Regulation is the Electronic Transactions Amendment (COVID-19 Witnessing of Documents) Regulation 2020.

2 Commencement

This Regulation commences on the day on which it is published on the NSW legislation website.
Schedule 1 Amendment of Electronic Transactions Regulation 2017

[1] Clause 8A
Insert after clause 8—

8A COVID-19 response

Schedule 1 sets out provisions dealing with the response to the COVID-19 pandemic.

[2] Schedule 1
Insert after clause 9—

Schedule 1 Response to COVID-19 pandemic

Clause 8A

Note. See sections 17 and 18 of the Act for the period to which the provisions of this Schedule have effect.

Part 1 Witnessing and attestation

1 Definitions

In this Part—

audio visual link means technology that enables continuous and contemporaneous audio and visual communication between persons at different places, including video conferencing.

document includes the following—

(a) a will,
(b) a power of attorney or an enduring power of attorney,
(c) a deed or agreement,
(d) an enduring guardianship appointment,
(e) an affidavit, including an annexure or exhibit to the affidavit,
(f) a statutory declaration.

2 Witnessing and attestation of documents by audio visual link

(1) For the purposes of section 17(1)(b) and (c) of the Act, despite any other Act or law—

(a) if the signature of a document is required under an Act or another law to be witnessed, the signature may be witnessed by audio visual link, and

(b) arrangements in relation to witnessing signatures and the attestation of documents may be performed by audio visual link.

(2) A person witnessing the signing of a document by audio visual link (the witness) must—

(a) observe the person signing the document (the signatory) sign the document in real time, and

(b) attest or otherwise confirm the signature was witnessed by signing the document or a copy of the document, and
(c) be reasonably satisfied the document the witness signs is the same
document, or a copy of the document signed by the signatory, and
(d) endorse the document, or the copy of the document, with a statement—
   (i) specifying the method used to witness the signature of the
       signatory, and
   (ii) that the document was witnessed in accordance with this
       Regulation.

Note. A document may be endorsed under paragraph (d) with a statement, for
example, that the document was signed in counterpart and witnessed over
audio visual link in accordance with clause 2 of Schedule 1 to the
Electronic
Transactions Regulation 2017.

(3) Without limiting the ways a witness may confirm the signature was witnessed,
the witness may—
   (a) sign a counterpart of the document as soon as practicable after
       witnessing the signing of the document, or
   (b) if the signatory scans and sends a copy of the signed document
electronically—countersign the document as soon as practicable after
       witnessing the signing of the document.

(4) Without limiting subclause (1)(b)—
   (a) arrangements in relation to witnessing signatures by audio visual link
       include the following—
       (i) certification of matters required by an Act or another law,
       (ii) confirming or verifying the identity of the signatory to a
document,
       (iii) attestation of a signature,
       (iv) swearing or affirming the contents of an affidavit,
       (v) seeing the face of the signatory, and
   (b) a requirement in an Act or another law for the presence of a witness,
       signatory or other person is taken to be satisfied if the witness, signatory
       or other person is present by audio visual link.

Part 2 Oaths and declarations

3 Affidavits and declarations made under Oaths Act 1900
For the purposes of section 17(1) of the Act, a document that is an oath,
declaration or affidavit required for a purpose specified in section 26 of the
Oaths Act 1900 may be taken or made before an Australian legal practitioner
as if the practitioner were a justice of the peace.

4 Certain persons before whom statutory declarations may be made
For the purposes of section 17(1)(a) of the Act, a statutory declaration may be
made before a person before whom a statutory declaration under the Statutory
Declarations Act 1959 of the Commonwealth may be made.