

## Temporary changes to electronic witnessing of documents

Many legal documents need signatures to be witnessed. Depending on the type of document, the witness may need to belong to a particular profession or have other obligations attached to their role as “witness”. Witnessing documents is something that has usually been done in person.

As well as witnessing signatures, some documents also need the identity of the person to be confirmed, or the contents of the document need to be sworn, or a person needs to be present. Special rules apply for certain things such as:

- Wills;
- Enduring Powers of Attorney;
- Deeds of Agreement;
- Enduring Guardianship appointments;
- Affidavits, annexures and exhibits; and
- Statutory Declarations.

The law has recognised that the traditional way of witnessing documents has been difficult and in some cases impossible during the COVID-19 pandemic. This is because of the physical distancing measures the Australian and State governments have taken to stop the spread of the virus. But life goes on and during this time there is still a need for documents to be finalised which have significant consequences.

In response, temporary changes (until 31 December 2021) have been put in place to allow a person to be a witness by audio visual link, which is technology that gives continuous and real time audio and visual communication such as Zoom, Skype or FaceTime.

The rules about whether a signature needs to be witnessed by a person of a particular profession have not changed.

### Requirements to witness a signature by audio visual link

When witnessing a signature by audio visual link, the witness must:

- observe the person signing the document actually signing it in real time; and
- sign the document (if it is scanned and emailed to them) or a copy of the document to confirm they witnessed the signing of the document as soon as practicable after witnessing; and
- be reasonably satisfied the document the witness signs is the same document; and
- write on the document (or the copy) stating the method used to witness the signature, and that the document was witnessed in accordance with the relevant regulation of law.

You should not witness a signature by audio visual link unless there is no alternative. This is because there are difficulties with complying to the regulations, for example, it may be difficult to be reasonably satisfied that the documents are the same. Therefore, if you do need a document signed or have been asked to be a witness, and you are unable to be physically present, you should get advice as to whether this is appropriate and necessary and how best to do it correctly.