



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**

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### **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.