



LAW IN THE TIME OF COVID-19

Emergency provisions have been passed in the ACT and NSW to permit documents to be witnessed when the parties are not in each other's physical presence.

This requires both parties to be connected using a two-way communication that allows the parties to both see and hear each other in real time, before signing occurs.

For now, these provisions are only active during the time of any Emergency Declaration in the relevant jurisdiction.

While increasing convenience for contactless signing under crisis conditions, witnesses must be more cautious than usual to ensure their obligations as a witness are discharged.

In order to be valid and binding, certain documents must be executed under the hand of a person, in ink and on paper, and witnessed by another person signing in the same way at the same time.

During the COVID-19 emergency, social distancing measures have made it difficult and, in some cases, unsafe to have legal documents duly executed and witnessed. ACT and NSW now have emergency provisions permitting limited remote witnessing of certain documents.

The Obligations of a Witness

When witnessing remotely, a witness must still:

- be 18 years of age or over
- not be a party to or a beneficiary of the document they are witnessing
- be of sound mind
- be an authorised witness, such as a solicitor, where required
- be reasonably satisfied of the identity the person they are witnessing
- be reasonably satisfied that the person is executing the document of their own free will and without duress

The emergency regulations do not permit witnessing of electronic signatures. Witnessing of electronic signatures remains invalid and may result in the document not being binding.

ACT e-Witnessing Provisions

Persons executing certain documents are now able to have their signature witnessed remotely. In the ACT, the following documents may be remotely witnessed:

- affidavits
- wills
- health directions
- general powers of attorney
- enduring powers of attorney

The person signing and their witness must be connected by an audiovisual link which allows the parties to both see and hear each other in real time. The witness must:

- a) observe the person signing the document in real time;
- b) confirm the signature was witnessed by signing a copy of the document (which can be scanned to the witness, or the witness can sign a counterpart);
- c) be reasonably satisfied the witness has signed the same document signed by the person executing; and
- d) endorse the document or copy with a statement of the method used to witness the signature and that the document was witnessed in accordance with the relevant legislation.

These provisions remain in force for the period of the COVID-19 State of Emergency, and for 3 months after the State of Emergency ends.

Continued ►

Continued ▶

LAW IN THE TIME OF COVID-19

Emergency provisions have been passed in the ACT and NSW to permit documents to be witnessed when the parties are not in each other's physical presence.

This requires both parties to be connected using a two-way communication that allows the parties to both see and hear each other in real time, before signing occurs.

For now, these provisions are only active during the time of any Emergency Declaration in the relevant jurisdiction.

While increasing convenience for contactless signing under crisis conditions, witnesses must be more cautious than usual to ensure their obligations as a witness are discharged.

NSW e-Witnessing Provisions

Persons executing certain documents are now able to have their signature witnessed remotely. In NSW, the following documents may be remotely witnessed:

- affidavits
- wills
- general powers of attorney
- enduring powers of attorney
- deed or agreements;
- enduring guardianship appointments
- statutory declarations

The person signing and their witness must be connected by an audiovisual link which allows the parties to both see and hear each other in real time. The witness must:

- a) observe the person signing the document in real time;
- b) attest or confirm the signature was witnessed by signing a copy of the document;
- c) be reasonably satisfied the witness has signed the same document signed by the signatory, or a copy of the document signed by the signatory (which can be scanned to the witness, or the witness can sign a counterpart); and
- d) endorse the document or copy with a statement specifying the method used to witness the signature and that the document was witnessed in accordance with the relevant legislation

These provisions remain in force until 26 September 2020, unless another date is resolved by the NSW Parliament.

▶ IF YOU LIKE THIS,
WE LIKE YOU.

We believe in sharing knowledge, experience and ambitions so that together we can build something bigger than ourselves and better than what came before.

Sound good? Let's chat.

MORRISLEGALGROUP.COM.AU
HELLO@MORRISLEGALGROUP.COM.AU
1300 047 227