

# Witnessing legal documents remotely

## Factsheet

### NSW law allows legal documents to be witnessed remotely via audio-visual link

- NSW law allows legal documents to be witnessed in real time via audio-visual link (AVL).
- Arrangements allowing witnessing to occur remotely, which were originally introduced as emergency provisions in response to COVID-19, were made permanent in November 2021.
- Witnesses can continue to provide services in person, provided they follow [NSW public health orders and social distancing guidelines](#).

### How does witnessing via AVL work?

- The witness must see the signatory signing the document in real time over AVL.
- The witness will sign the document, or an exact copy of the document, as evidence that they witnessed the signature. The witness may sign a hard copy of the document that has been signed by the signatory and then scanned and emailed to the witness, or they may sign a counterpart of the document signed by the signatory.
- The witness must be reasonably satisfied that the document they sign is the same document, or a copy of the document signed by the signatory.
- The witness must endorse the document with a statement that specifies the method used to witness the signature and that it was witnessed in accordance with section 14G of the *Electronic Transactions Act 2000* (NSW).

- All tasks that may be associated with witnessing certain documents, for example where a witness is required to confirm the identity of the signatory or to certify that the signatory appeared to understand the effect of the document, can also be satisfied via AVL.

### Signatories and witnesses using the remote witnessing provisions may be outside NSW

- Signatories and witnesses using the remote witnessing provisions need not be physically present in NSW at the time of witnessing, as long as the relevant document is required to be signed under or is governed by NSW law.
- This would allow, for example, a person based overseas to have a document governed by NSW law witnessed by an authorised witness based in NSW.
- It would also allow a person based in NSW to have a document witnessed by an authorised witness, whether the witness is physically based in NSW or not.
- When the remote witnessing process is used, the location of execution is the place where the document was signed by the signatory.

### The 'original' of a remotely witnessed document must contain every page or part of the document, and every signature, mark, or endorsement

- In some circumstances, a person may need to produce or retain the 'original' of a signed and witnessed document.

- The *Electronic Transactions Act 2000* provides that the 'original' of a remotely witnessed document must be made up of:
  - each page or part of the document;
  - each signature or mark of the signatory and witnesses wherever required; and
  - the endorsement required by section 14G(2)(d) of the *Electronic Transactions Act*.
- A page or part of a document is only required to be included in the 'original' once, except where different copies of the same page or part contain a signature or mark or a signatory or witness, or the endorsement required by section 14G(2)(d) of the *Electronic Transactions Act*. Where this is the case, duplicates of that page or part must be included in the 'original', so that every signature, mark and endorsement is included in the original.
- Where a signature, mark or endorsement has been written physically on a page or part of a remotely witnessed document, the page or part bearing that physically written signature, mark or endorsement must be included in the 'original' document.
- This means that if a signatory signs a document by hand in one location, and the witness signs a copy or counterpart of that document by hand in another location, the 'original' document would be made up of one full copy of the document, with any pages that have been marked, signed or endorsed by either the signatory or the witness included.

### Remote witnessing provisions do not permit certification of documents over AVL

- The remote witnessing provisions do not permit copies of documents to be certified remotely over AVL. Certifying a document as a true copy of the original must be done in person by an authorised witness.

### The remote witnessing scheme does not enable electronic signature

- The remote witnessing provisions do not enable documents to be electronically signed. Remotely witnessed documents may only be signed electronically by a

signatory or witness where this is otherwise permitted by a NSW Act or law.

### Categories of witnesses for certain documents have been expanded

- Following legislative amendments in November 2021, Australian legal practitioners are permanently included in the categories of people authorised to witness written oaths, declarations or affidavits under section 26 of the *Oaths Act*.
- The categories of people authorised to witness NSW statutory declarations continue to include those who may witness Commonwealth statutory declarations until 1 January 2023. For example, certain health professionals may witness statutory declarations in NSW, making it easier for individuals to execute legal documents. For more information on who may witness Commonwealth statutory declarations, see the [Federal Government Guidelines](#).

For advice on the operation of the remote witnessing provisions, you may wish to contact LawAccess NSW. This is a free government telephone service that provides legal information, referrals and in some cases, advice for people who have a legal problem in NSW. LawAccess NSW can be contacted on 1300 888 529 (for the cost of a local telephone call), Monday to Friday during business hours.

For more information on these changes, contact the Department of Communities and Justice at [policy@justice.nsw.gov.au](mailto:policy@justice.nsw.gov.au)

