

# Witnessing legal documents remotely: new COVID-19 regulations

## Justices of the Peace factsheet

To reduce face-to-face contact during the COVID-19 pandemic, the NSW Government has introduced new regulations to temporarily enable legal documents to be witnessed remotely by authorised witnesses, including NSW Justices of the Peace (JPs).

The changes have been introduced under Section 17 of the Electronic Transactions Act and will be in effect for no more than six months.

This temporary regulation will expire on 26 September 2020, unless this date is changed by further regulation or resolution of Parliament.

### What do the changes mean?

- NSW JPs are now authorised to witness statutory declarations and affidavits in real time via audio visual link (AVL).
- All tasks associated with witnessing can be satisfied via AVL. For example, confirming the identity of the declarant may be done remotely via AVL.

### How will witnessing via AVL work?

The JP must see the declarant signing the document in real time.

The declarant can sign a hard copy of the document (generally using a black or blue ink pen), then scan and email the document to the JP. The JP should sign the document as soon as practicable after witnessing the signing of the document. To do this, JPs can print a hard copy of the document, then sign and return the document to the declarant.

Alternatively, JPs may sign a counterpart of the document signed by the declarant (which must be an exact copy of the document signed by the declarant). The JP should then return the counterpart they have signed to the declarant.

The JP must be reasonably satisfied that the document they sign is an exact copy of the document signed by the declarant. The JP must also endorse the document with a statement that specifies the method used to witness the signature and that it was witnessed in accordance with the new regulation. For example, *'This 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.'*

### Can a JP certify a copy of an original document via AVL?

No, the new regulation does not permit remote certification of original documents.

### What AVL tools can a JP use?

NSW JPs can use any tool that enables audio and visual communication. For help selecting a system and tips on how to use it securely, follow the guidance from the [Australian Cyber Security Centre](#) and the [Stay Smart Online website](#).

### **What should JPs do if they cannot view a document clearly or confirm the declarant's identity?**

If JPs cannot view a document clearly or are unable to confirm the declarant's identity, they should decline to witness the document.

### **What is an approved form of identification?**

For a list of approved forms of identification, see Appendix G (on page 80) of the [JP Handbook](#).

### **Can JP services still be provided in person?**

Yes, JPs can continue to provide services in person, provided they comply with [NSW public health orders and social distancing guidelines](#). Advice about steps JPs can take to protect their health when providing JP services is available on the [Department of Communities and Justice COVID-19 website](#).

#### For more information

- Visit the JP page on the Department's COVID-19 website at <https://coronavirus.dcj.nsw.gov.au/services/justices-of-the-peace>
- Visit the NSW JP website at [www.jp.nsw.gov.au](http://www.jp.nsw.gov.au)
- Email the JP Appointments team at [jp@justice.nsw.gov.au](mailto:jp@justice.nsw.gov.au)
- Call the JP Appointments team on **02 8688 7336**. Please only call between 10am-12 noon and 2pm-4pm, Monday to Friday.