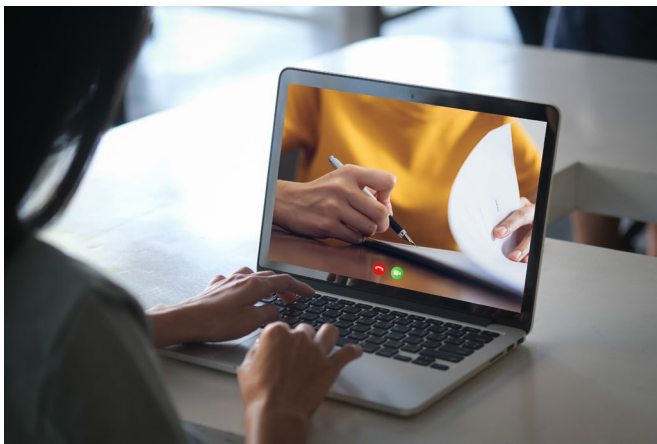


# Witnessing legal documents remotely

## Factsheet



Remote witnessing of legal documents will continue to be permitted until the end of 2021, under arrangements by the NSW Government.

### What does this mean?

- Arrangements allowing legal documents to be witnessed in real time via audio-visual link (AVL) have been continued until the end of 2021.
- The categories of people authorised to witness NSW statutory declarations continue to include those who may witness Commonwealth statutory declarations until the end of 2021. For example, 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](#).
- Australian legal practitioners continue to be included in the categories of people authorised to witness written oaths,

declarations or affidavits under section 26 of the *Oaths Act 1900 (NSW)*, until the end of 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 now also be satisfied via AVL.

## Remote witnessing provisions do not enable the witnessing of documents where either the witness or signatory is outside of NSW

- The remote witnessing provisions in the *Electronic Transactions Act 2000* do not enable the witnessing of documents where either the witness or the signatory is located outside of NSW.
- The remote witnessing provisions simply allow a document to be witnessed where the witness and signatory are not in each other's physical presence.
- However, where legislation governing witnessing requirements permits a signatory or witness to be outside of NSW at the time of witnessing, this might override the general position that the signatory and witness must both be in NSW. Location requirements depend on the relevant legislation. For example, the *Oaths Act 1900* authorises the making and taking of declarations and affidavits only by persons who are geographically located in NSW, other than in the specific circumstances set out in sections 26(1) (b) and (c).
- Therefore, a NSW Justice of the Peace is not authorised under the remote witnessing provisions to witness a statutory declaration or an affidavit remotely for a person based outside of NSW, or to be outside of NSW at the time of witnessing a statutory declaration or affidavit.

## 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.

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)

### Together against COVID-19



Stay home as much as possible



Don't go out if you are sick



Wash your hands regularly



Connect with loved ones online