

## What temporary changes have the Commonwealth and the States made to signing, witnessing or attending to documents?

Updated: 6 June 2021

Type of document or activity	CTH	VIC	NSW	SA	QLD	WA
<b>Principal emergency or permanent legislation relating to execution</b>	<i>Coronavirus Economic Response Package Omnibus Act 2020</i> (Cth)	<i>COVID-19 Omnibus (Emergency Measures) Act 2020</i> (VIC) <sup>1</sup>  <i>Electronic Transactions (Victoria) Act 2000</i> ; <i>Powers of Attorney Act 2014</i> (VIC); <i>Oaths and Affirmations Act 2018</i> (VIC), and <i>Wills Act 1997</i> (VIC) <sup>2</sup>	<i>COVID-19 Legislation Amendment (Emergency Measures) Act 2020</i> (NSW) <sup>3</sup>  <i>Electronic Transactions Act 2000</i> (NSW) <sup>4</sup>	<i>COVID-19 Emergency Response Act 2020</i> (SA) <sup>5</sup>	<i>COVID-19 Emergency Response Act 2020</i> (QLD) <sup>6</sup>	<i>COVID-19 Response and Economic Recovery Omnibus Act 2020</i> (WA)
<b>Emergency Legislative Instruments</b>	<i>Corporations (Coronavirus Economic Response) Determination (No.3) 2020</i> (Cth) (now expired)	<i>COVID-19 Omnibus (Emergency Measures) (Electronic Signing and Witnessing) Regulations 2020</i> (VIC) (expired on 26 April 2021).	<i>Electronics Transactions Amendment (COVID-19 Witnessing of Documents) Regulation 2020</i> (NSW) (expired on 26 March 2021).	<i>COVID-19 Emergency Response (Section 16) Regulations 2020</i> (SA)  <i>COVID-19 Emergency Response (Section</i>	<i>Justice Legislation (COVID-19 Emergency Response — Documents and Oaths) Regulation 2020</i> (QLD)  <i>Justice Legislation (COVID-19 Emergency Response</i>	N/A

<sup>1</sup> As amended by *COVID-19 Omnibus (Emergency Measures) and Other Acts Amendment Act 2020* (VIC).

<sup>2</sup> As permanently amended by the *Justice Legislation Amendment (System Enhancements and Other Matters) Act 2021* (VIC).

<sup>3</sup> As amended by the *COVID-19 Legislation Amendment (Emergency Measures—Attorney General) Act 2020* (NSW).

<sup>4</sup> As amended by the *Stronger Communities Legislation Amendment (Courts and Civil) Act 2020* (NSW), effectively repealing the audio-visual changes authorised by the *Electronics Transactions Amendment (COVID-19 Witnessing of Documents) Regulation 2020* (NSW) and instead inserting them temporarily into the NSW *Electronic Transactions Act*.

<sup>5</sup> Amended by the *COVID-19 Emergency Response (Expiry) (No 2) Amendment Act 2021* (SA) which superseded the *COVID-19 Emergency Response (Expiry) Amendment Act 2021* (SA).

<sup>6</sup> As amended by the *COVID-19 Emergency Response and Other Legislation Amendment Act 2021* (QLD).

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				17) Regulations 2020 (SA)	– Documents and Oaths) Amendment Regulation 2021 (QLD)	

**When do these new changes cease?** They expired on **21 March 2021**. The changes to the VIC Electronic Transactions Act are **permanent**. Amendments to the NSW Electronic Transactions Act to expire on **1 January 2022**.<sup>7</sup> The earlier of **17 September 2021** or 28 days after the day on which all relevant declarations relating to COVID-19 within South Australia have ceased.<sup>8</sup> **30 September 2021** or another day prescribed by the regulations.<sup>9</sup> **31 December 2021**.<sup>10</sup>

**Is there any new relief for remote signing?**

*Documents or activities that require a witness or attestations*

<b>Witnessing documents</b>	-	<b>Yes</b> – Signatures can now be witnessed by audio visual link. The witness must sign the document or a copy of it and state it was witnessed in accordance with section 12 of the <i>Electronic Transactions</i>	<b>Yes</b> – Signatures can now be witnessed by audio visual link. The witness must sign the document or a copy of it and endorse the document with a statement of the method which was used to witness the signature, and that the document was	<b>No</b> – Signatures must be witnessed in person. <sup>13</sup>	<b>Yes</b> – Signatures can now be witnessed by a ‘special witness’ (which includes an Australian lawyer or a Justice commissioner or declarations). <sup>14</sup> The special witness must sign a statement to the effect that the document was signed	<b>Yes</b> – Documents required or permitted under prescribed legislation to be witnessed can be witnessed by audio visual link. The witness is required to sign the document, counterpart or copy of the document and endorse the signed
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<sup>7</sup> Section 14K of *Electronic Transactions Act 2000* (NSW).

<sup>8</sup> Section 6(2) of *COVID-19 Emergency Response Act 2020* (SA) as amended by section 3 of the *COVID-19 Emergency Response (Expiry) (No 2) Amendments Act 2021* (SA).

<sup>9</sup> Section 4A of *COVID-19 Emergency Response Act 2020* (QLD) as amended by the *COVID-19 Emergency Response and Other Legislation Amendment Act 2021* (QLD).

<sup>10</sup> Section 28 of *COVID-19 Response and Economic Recovery Omnibus Act 2020* (WA).

<sup>13</sup> Regulation 4 of *COVID-19 Emergency Response (Section 17) Regulations 2020* (SA).

<sup>14</sup> Regulation 16 of *Justice Legislation (COVID-19 Emergency Response—Documents and Oaths) Regulation 2020* (QLD).

Type of document or activity	CTH	VIC	NSW	SA	QLD	WA
		(Victoria) Act 2000. <sup>11</sup> The witnessing requirements must occur on the same day.	witnessed over audio visual link in accordance with the ETA. <sup>12</sup>		and witnessed in accordance with the regulation. This certificate must accompany the true document. <sup>15</sup>	document with a statement that it was dealt with in accordance with the Act. <sup>16</sup>
<b>Contracts or Agreements or Deeds</b>	<b>No longer</b> – A document (including a deed) signed under s 127 of the Corporations Act should be signed by wet-ink.	<b>Yes</b> – Deeds can now be in electronic form, executed electronically and witnessed remotely. <sup>17</sup>	<b>Yes</b> – Deeds can be executed electronically and witnessed remotely. <sup>18</sup>	<b>No</b> – Signatures must be witnessed in person. <sup>19</sup>	<b>Yes</b> – Deeds can now be executed electronically and witnessed remotely by a special witness. However, there is no need for deeds to be witnessed or to be on paper or parchment. Deeds can be signed in counterpart. <sup>20</sup>	<b>No</b> – With respect to deeds, signatures must be witnessed in the physical presence of another person; <sup>21</sup> however, companies may rely upon s 127 of the Corporations Act
<b>Powers of Attorney</b>	-	<b>Yes</b> – A power of attorney can be executed electronically and witnessed remotely by	<b>Yes</b> – A power of attorney or enduring power of attorney may be witnessed remotely by audio visual link. <sup>23</sup>	<b>No</b> – Signatures must be witnessed in person. <sup>24</sup>	<b>Yes</b> – An enduring power of attorney can be witnessed remotely by a special witness. <sup>25</sup>	<b>No</b> – The <i>Guardianship and Administration Act 1990</i> is not a prescribed Act

<sup>11</sup> Section 12(2), *Electronic Transactions (Victoria) Act 2000*.

<sup>12</sup> Appropriate language to satisfy this requirement could include that the document was 'signed in counterpart and witnessed over audio visual link in accordance with section 14G of the *Electronic Transactions Act 2000*'.

<sup>15</sup> Regulation 21 of *Justice Legislation (COVID-19 Emergency Response—Documents and Oaths) Regulation 2020* (QLD).

<sup>16</sup> Sections 22, 23 and 24 of *COVID-19 Response and Economic Recovery Omnibus Act 2020* (WA).

<sup>17</sup> Section 12A, *Electronic Transactions (Victoria) Act 2000*.

<sup>18</sup> Section 14F(c) of *Electronic Transactions Act 2000* (NSW); see also s 38A, *Conveyancing Act 1919* (NSW).

<sup>19</sup> Regulation 4 of *COVID-19 Emergency Response (Section 17) Regulations 2020* (SA).

<sup>20</sup> Part 3D of *Justice Legislation (COVID-19 Emergency Response—Documents and Oaths) Regulation 2020* (QLD).

<sup>21</sup> See Section 8 of *Electronic Transactions Act 2011* (WA); see also Section 9 of the *Property Law Act 1969* (WA).

<sup>23</sup> Section 14F(b) of *Electronic Transactions Act 2000* (NSW).

<sup>24</sup> Regulation 4 of *COVID-19 Emergency Response (Section 17) Regulations 2020* (SA).

<sup>25</sup> Part 3 of *Justice Legislation (COVID-19 Emergency Response—Documents and Oaths) Regulation 2020* (QLD).

Type of document or activity	CTH	VIC	NSW	SA	QLD	WA
		audio visual link, by a 'special witness'. <sup>22</sup> The witnessing requirements must occur on the same day in Victoria and include certain statements.			A general power of attorney can now be executed electronically and witnessed remotely by a special witness. <sup>26</sup>	covered by these temporary changes. <sup>27</sup>
<b>Mortgages</b>	-	<b>Yes</b> – Mortgages can now be in electronic form (subject to any other Victorian law), executed electronically and witnessed remotely. <sup>28</sup>	-	<b>Yes</b> – A mortgagee no longer needs to sign the mortgage.  The requirement for any document to be witnessed under the <i>Real Property Act 1886</i> is suspended. <sup>29</sup>	<b>Yes</b> – Mortgages can now be executed electronically and do not need to be witnessed if they are lodged with PEXA and the mortgagee holds a mortgage in writing on the same terms and conditions as the one lodged. <sup>30</sup>	<b>No</b> – The <i>Transfer of Land Act 1893</i> is not a prescribed Act covered by these temporary changes. <sup>31</sup>
<b>Verification of Identity</b>	-	<b>Yes</b> – Identities can now be verified remotely by audio visual link. <sup>32</sup>	<b>Yes</b> – This can occur remotely by audio visual link. <sup>33</sup>	<b>Yes</b> – A meeting for this can occur remotely by audio visual or other means. <sup>34</sup>	<b>Yes</b> – Department of Natural Resources, Mines and Energy now allows remote witnessing of	<b>Yes</b> – Verification of identity required or permitted under prescribed legislation

<sup>22</sup> Sections 5A, 11(3) and 33(2) of *Powers of Attorney Act 2014* (VIC).

<sup>26</sup> Part 3E of *Justice Legislation (COVID-19 Emergency Response—Documents and Oaths) Regulation 2020* (QLD).

<sup>27</sup> Part 5, *COVID-19 Response and Economic Recovery Omnibus Act 2020* (WA); s 24, *COVID-19 Response and Economic Recovery Omnibus Act 2020* (WA).

<sup>28</sup> Section 12B, *Electronic Transactions (Victoria) Act 2000*.

<sup>29</sup> Regulation 5 of *COVID-19 Emergency Response (Section 16) Regulations 2020* (SA).

<sup>30</sup> Part 3F of *Justice Legislation (COVID-19 Emergency Response—Documents and Oaths) Regulation 2020* (QLD).

<sup>31</sup> Part 5, *COVID-19 Response and Economic Recovery Omnibus Act 2020* (WA); s 24, *COVID-19 Response and Economic Recovery Omnibus Act 2020* (WA).

<sup>32</sup> See the example in section 12(1) of *Electronic Transactions (Victoria) Act 2000* (VIC).

<sup>33</sup> Section 14G(1)(b) of *Electronic Transactions Act 2000* (NSW); see also Section 14G(4)(a)(ii).

<sup>34</sup> Section 17 of *COVID-19 Emergency Response Act 2020* (SA).

Type of document or activity	CTH	VIC	NSW	SA	QLD	WA
					documents. Further regulations may be issued regarding this.	may occur by audio visual link. <sup>35</sup>
<b>Wills</b>	-	<b>Yes</b> – A will can now be executed electronically and witnessed remotely by audio visual link. One of the witnesses must be a ‘special witness’, and the requirements of the remote execution procedure must occur on the same day and in Victoria. <sup>36</sup>	<b>Yes</b> – These can be witnessed remotely by audio visual link. <sup>37</sup>	<b>No</b> – Signatures must be witnessed in person. <sup>38</sup>	<b>Yes</b> – A will can be witnessed remotely by a special witness. <sup>39</sup>	<b>Potentially</b> – While the <i>Wills Act 1970</i> is not a prescribed Act covered by these temporary changes, <sup>40</sup> the <i>COVID-19 Response and Economic Recovery Omnibus Act</i> removes the carve out of enduring powers of attorneys or attorneys from the Electronic Transaction Regulations suggesting it may be covered. <sup>41</sup>
<b>Certification of documents</b>	-	-	-	-	-	<b>Yes</b> – Certification of documents required or permitted under prescribed legislation

<sup>35</sup> Section 23, *COVID-19 Response and Economic Recovery Omnibus Act 2020* (WA).

<sup>36</sup> Sections 7(5), (6) and 8A of *Wills Act 1997* (VIC).

<sup>37</sup> Section 14F(a) of *Electronic Transactions Act 2000* (NSW)

<sup>38</sup> Regulation 5 of *COVID-19 Emergency Response (Section 16) Regulations 2020* (SA).

<sup>39</sup> Part 2 of *Justice Legislation (COVID-19 Emergency Response—Documents and Oaths) Regulation 2020* (QLD).

<sup>40</sup> Section 24 of *COVID-19 Response and Economic Recovery Omnibus Act 2020* (WA).

<sup>41</sup> See s 25(2) of the *COVID-19 Response and Economic Recovery Omnibus Act 2020* (WA), removing Reg 3(1)(a).

Type of document or activity	CTH	VIC	NSW	SA	QLD	WA
						may occur by audio visual link. <sup>42</sup>
<i>Documents that require oaths, affirmations or declarations</i>						
<b>Affidavits</b>	-	<p><b>Yes</b> – An affidavit may now be made or taken electronically by signing a scanned or electronic copy of the affidavit, including by electronic means.<sup>43</sup> Presence for an affidavit can be satisfied by audio or audio-visual link. The jurat must include certain requirements.</p>	<p><b>Yes</b> – Affidavits, annexures and exhibits to an affidavit can be witnessed remotely by audio visual link. An Australian legal practitioner also can now take affidavits as if they were a justice of the peace.<sup>44</sup></p> <p>An affidavit may be taken remotely by audio visual link.<sup>45</sup></p>	<p><b>Yes</b> – Courts will allow unsworn affidavits if they cannot be sworn in person due to health or logistical reasons.<sup>46</sup></p> <p>Otherwise, an affidavit must be made in person (not remotely).<sup>47</sup></p>	<p><b>Yes</b> – An affidavit may now be made electronically and witnessed remotely by a special witness. Courts can admit affidavits if they do not comply with procedural requirements in certain circumstances.<sup>48</sup></p>	<p><b>Yes</b> – An affidavit may now be witnessed via audio visual communication where the witness is able to observe the person signing the affidavit.<sup>49</sup></p> <p>The class of persons permitted to witness an affidavit remains the same, however the Act provides scope for additional prescribed persons that may be included by subsequent regulations for affidavits made during a COVID</p>

<sup>42</sup> See also s 25(2) of the *COVID-19 Response and Economic Recovery Omnibus Act 2020* (WA) which removes the carve out of the *Electronic Transactions Regulations* for authentication or verification of documents under Reg 3(1)(b).

<sup>43</sup> Sections 9(2), 18A and 26(5) of *Oaths and Affirmations Act 2018* (VIC).

<sup>44</sup> Sections 14F and 14H of *Electronics Transactions Act 2000* (NSW).

<sup>45</sup> Sections 14F and 14G of *Electronics Transactions Act 2000* (NSW).

<sup>46</sup> See Supreme Court, District Court and Magistrates Court 'Practice Note – Witnessing Affidavits during COVID-19', 16 April 2020.

<sup>47</sup> Regulation 4 of *COVID-19 Emergency Response (Section 17) Regulations 2020* (SA).

<sup>48</sup> Part 3A of *Justice Legislation (COVID-19 Emergency Response—Documents and Oaths) Regulation 2020* (QLD).

<sup>49</sup> Section 23 of *COVID-19 Response and Economic Recovery Omnibus Act 2020* (WA).

Type of document or activity	CTH	VIC	NSW	SA	QLD	WA
						emergency declaration. <sup>50</sup>
<b>Statutory Declarations</b> -		<b>Yes</b> – A statutory declaration may now be made and witnessed remotely by audio visual link. The maker or witness can sign by electronic means. <sup>51</sup>	<b>Yes</b> – More professionals are now authorised to witness a statutory declaration (e.g. chiropractors, architects and dentists). <sup>52</sup>  A statutory declaration may also be witnessed remotely by audio visual link. <sup>53</sup>	<b>Yes</b> – While statutory declarations must occur in person, <sup>54</sup> there are more professionals who are now authorised to witness a statutory declaration (e.g. health practitioners, engineers, teachers and veterinary surgeons). <sup>55</sup>	<b>Yes</b> – A statutory declaration may now be made electronically and witnessed remotely by a special witness. More professionals are now authorised to witness the declaration (expanded to include those professions authorised to take declarations under Commonwealth law). <sup>56</sup>	<b>Yes</b> – A statutory declaration may now be witnessed remotely by audio visual link provided procedural steps are observed. <sup>57</sup>

<sup>50</sup> Section 45 of *COVID-19 Response and Economic Recovery Omnibus Act 2020* (WA); Section 9 of *Oaths, Affidavits and Statutory Declarations Act 2005* (WA).

<sup>51</sup> Sections 29A and 30(2) *Oaths and Affirmations Act 2018* (VIC).

<sup>52</sup> Section 14I of *Electronic Transactions Act 2000* (NSW).

<sup>53</sup> Section 14F(f) of the *Electronic Transactions Act 2000* (NSW).

<sup>54</sup> Regulation 4 of *COVID-19 Emergency Response (Section 17) Regulations 2020* (SA).

<sup>55</sup> Schedule 1, *COVID-19 Emergency Response (Section 16) Regulations 2020* (SA).

<sup>56</sup> Part 3B of *Justice Legislation (COVID-19 Emergency Response—Documents and Oaths) Regulation 2020* (QLD).

<sup>57</sup> Section 23 and Section 44 of *COVID-19 Response and Economic Recovery Omnibus Act 2020* (WA).