



RVAHJ Information Aide

Remote Witnessing Overview

Remote Witnessing Overview

The following is provided as a summary of the understanding and steps required to provide remote witnessing services as an Authorised Witness. The information is based on the guidelines provided by the Department of Justice and Community Safety and Honorary Justice Service Support with reference to the Omnibus Regulations 2020.

Remote Witnessing

Temporary changes have been made to allow for some documents to be witnessed remotely to maintain physical distancing to help slow the spread of coronavirus (COVID-19), i.e:

Common Documents for Honorary Justices (HJ)

- statutory declarations
- affidavits
- powers of attorney documents
- *You cannot remotely certify copies of original documents*
- *Regulations do not include Advance Care Directives or appointments of Medical Treatment Decision Makers.*

Limited Documents for Honorary Justices

- deeds and mortgages
- wills, codicils and other testamentary instruments.

The Regulations allow you to conduct remote transactions but do not require you to do so; you will need to carefully consider if undertaking electronic signing and remote witnessing is a workable option for you.

General Principles for Remote Witnessing & Electronic Signatures

In practice, conducting remote transactions involves having access to appropriate technology and comfort using that technology (both hardware and software) to conduct remote transactions in a safe and appropriate way.

It is recommended that you should ensure you create records and document your remote signing and witnessing processes. This could include when and where it occurred, the technology used and any significant aspects of the process, and not copies of the document. Legislation provides a new method of viewing a document, but does not change the purpose of viewing a document. However, to undertake remote transactions you will need appropriate electronic equipment with an internet connection.

Type of equipment needed to run a remote witnessing session could be:

- *A personal computer, a tablet device* such as iPad or tablet
- *a mobile device* such as a smart phone

Any of these devices should have at least a microphone (for audio-only communication), or with a microphone and camera (for audio-visual communication).

Guidance for Electronic Signatures and Witnessing

Remember that both you and the client will need similar equipment in order to communicate with each other and to complete the remote witnessing procedure.

Process for 'signing and transmitting'

- **OPTION 1:** Print out the document from email, sign with pen and scan and then email to the relevant person. Scanning might be done via an app.
- **OPTION 2:** Use an electronic document signing platform.
- **OPTION 3:** Email a word or an annotate-able PDF that the person can type a name into and email back with a statement in the email that they intend their typed name to be their signature.

Recommendation:

From tests done **Option 1** is the *simplest and easiest method* to use when remote witnessing documents.

Note:

Options 2 & 3 may require a second screen/device if using an audio-visual platform which does not provide for 'screen sharing'. It is difficult to see a person sign a signature on a phone when doing electronic signature.

Please note an audio-visual communication link should be maintained throughout the process and it must all be completed on the same day.

Signing on paper and converting to an electronic document

- If a paper version of the document is available, it can be signed in the usual manner and converted to an electronic document for sending (note: this is not Electronic Signing – this is normal signing and you are simply transmitting the document electronically)
- Most printers available are also able to scan documents. Alternatively, the document can be captured by a camera, e.g. mobile phones and or tablet
- In addition, check out an app available for document scanning on phones and tablets

Electronic signing on a device

A document can be signed electronically using one of three methods:

- Using a stylus.
- Using a finger or a mouse.
- Typing. This can be performed by typing the signature using a word processing program.

Where an electronic signature is used the person signing must write or stamp under their signature a statement indicating that the document was electronically signed in accordance with the Regulations, *this is not necessary where document is signed by pen and then scanned*. An example of a valid statement is:

Electronically signed per COVID-19 Omnibus Regs 2020.



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Requirements of a witness

The requirements differ depending on the type of document. Broadly, the Regulations require:

Observe	The witness must watch the person signing the document in real time. If two witnesses are required, both witnesses and the signatory must be present in the same audio-visual link.
Confirm	The witness must confirm that he/she has witnessed the signature. This is done by signing an identical counterpart of the document or a hard copy bearing the signatory's signature that is scanned and emailed. The witness must sign on the same day as the signatory.
Assess	Under various Regulations the witness must be reasonably satisfied of certain matters, i.e. undue influence, and duress, must sign freely and voluntarily.. before signing
Endorse	The witness must endorse the document or a copy of the document with a statement. This statement must specify the method used to witness the document, and that it was witnessed in accordance with the Regulations. For more information about this statement, visit https://www.justice.vic.gov.au/electronicwitnessing <i>Note: RVAHJ recommends that a more simplified version of the endorsement can be used.</i>

Recording that a document was witnessed remotely

A signatory must write or stamp under their signature a statement indicating that the document was witnessed using an audio-visual link in accordance with the Regulations.

An example of a valid statement is:

Witnesses by AV per COVID-19Omnibus Regs 2020.

Completing the remote witnessing of the document

The witness will return the signed document, e.g. statutory declaration to the declarant electronically. At the end of returned copy, the declarant must type or write:

True copy of statutory declaration made by me [your full name]. Witnessed by AV per COVID-19 Omnibus Regs 2020.

The declarant must sign underneath the statement and write in the date.



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Steps for Setting up and running remote appointments

When speaking to a member of the public about a remote signing, in addition to the normal questions that you ask about the type of documents requiring signing, you should also discuss the necessary technology requirements. Both parties to the process *must* have compatible IT capabilities for the remote signing to be able to proceed.

Requirements for specific documents

This information is also available on the Department of Justice and Community Safety website at www.justice.vic.gov.au/electronicwitnessing.

Statutory declarations

Both the declarant and the witness are still required to fulfil all existing obligations per *Oaths and Affirmations Act 2018* while each appearing on audio-visual link.

The Regulations also allow a declarant to be assisted by audio-visual link (e.g. through interpretation services).

The following steps must occur on the same day:

1. Declarant prepares the statutory declaration prior to meeting the witness
2. Sign the statutory declaration, this must happen once the AV link is connected.
 - sign or initial page(s)
 - say the declaration as per normal
 - sign and date the final page
 - sign and date each certificate (if any)
3. Send electronically the signed declaration and certificates and documents (if any) to the witness.
4. Witness then:
 - signs the statutory declaration and certificates (if any);
 - writes a statement that the document was witnessed via audio-visual link for both the statutory declaration and for each certificate (if any)

An example of a valid statement is:

Witnessed by AV per COVID-19 Omnibus Regs 2020.

Certificate witnessed by AV per COVID-19 Regs 2020

- Send electronically the signed declaration and certificates and documents (if any) to the declarant



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5. Declarant then adds:

- at the end of the statutory declaration and bottom of every certificate (if any) that gets back from the witness the statement(s):

True copy of statutory declaration made by me [your full name]. Witnessed by AV per COVID-19 Omnibus Regs 2020.

The declarant must sign underneath the statement and provide the date.

The statutory declaration is now complete.

For further information refer to addendum to JP Handbook at:

<https://www.honoraryjustices.vic.gov.au/jp-handbook-addendum-covid-19-regulations>

Department of Justice and Community Safety website, which provides a more complete step by step guide for making a statutory declaration remotely: www.justice.vic.gov.au/statdecs.

Affidavits

The Act allows:

- deponents and affidavit takers to sign or initial a document electronically
- witnessing of affidavits to be completed over the phone or by using video conferencing technology (note: for an affidavit, it is not necessary to see the deponent sign the document. You only need to hear them speak the declaration); and
- scanned hard copies or electronic copies to be used instead of the original copy.

A statement must be added to the jurat by the affidavit taker that:

- the affidavit, as signed and notated by the affidavit taker, was signed or initialed by the deponent by electronic means;
- the specified things in respect of the affidavit were done via audio or audio-visual link; and,
- the affidavit, jurat or other document is a scanned hard copy or electronic copy, not an original.

An example of a valid statement is:

Affidavit is a scanned copy, Electronically signed and Witnessed by AV per COVID-19 Omnibus Regs 2020.

The affidavit is now complete.



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Powers of attorney documents

The Regulations allow powers of attorney (including those signed under direction) to be electronically signed and witnessed with all persons in separate spaces connected by audio-visual link.

Each witness is still required to fulfil all existing obligations under the *Powers of Attorney Act 2014*.

The following steps must occur on the same day:

1. The witnesses observe, by audio-visual link, the principal (or directed signer) sign the document, either electronically or on hard copy (and the signature of any witnesses physically present).
2. A copy of the document is transmitted electronically to the first remote witness who:
 - a. signs and certifies either electronically or on a printed hard copy;
 - b. writes a statement that the document was witnessed via audio-visual link; and

An example of a valid statement is below and sample for JP is:

Witnessed by AV per COVID-19 Omnibus Regs 2020.

Fred Alan BROWN
JP Reg No. 1126
3 Smith Street, Blackstump, Vic. 3999
*Electronically signed and witnessed per
COVID-19 Omnibus Regs 2020*



- c. transmits a copy (electronically) to the next remote witness (if any) who repeats these steps.
3. A copy of the document signed by all witnesses is returned to the principal (or directed signer). The principal (or directed signer) writes on the copy of the statement that:
 - a. the copy is a true copy of the Power of Attorney signed by the person
 - b. the conditions in the *COVID-19 Omnibus (Emergency Measures) (Electronic Signing and Witnessing) Regulations 2020* have been met.
 4. The principal (or directed signer) must then sign and date the statement.

An example of a valid statement is:

True copy of power of attorney signed by me [your full name]. Conditions per COVID-19 Omnibus Regs 2020 have been met.

The principal (or directed signer) must sign underneath the statement and provide the date.

Sample of the wording for to be used by the principal to finish the process...

True copy of Power of Attorney signed by me,

.....
[Conditions per COVID-19 Omnibus Regs 2020 have been met.]

...../...../2020

The power of attorney is now complete.



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Quick Reference - Remote Witnessing

Electronic signing on a device

Where an electronic signature is used the person signing must write or stamp under their signature a statement indicating that the document was electronically signed in accordance with the Regulations, this is not necessary where document is signed by pen and then scanned. An example of a valid statement is:

Electronically signed per COVID-19 Omnibus Regs 2020.

Recording that a document was witnessed remotely

A signatory must write or stamp under their signature a statement indicating that the document was witnessed using an audio-visual link in accordance with the Regulations.

Witnessed by AV per COVID-19 Omnibus Regs 2020.

Completing the remote witnessing of the document

The witness will return the signed document, e.g. statutory declaration to the declarant electronically. At the end of returned copy, the declarant must type or write, then sign underneath the statement and **write in the date**.

True copy of statutory declaration made by me [declarant's full name].

Witnessed by AV per COVID-19 Omnibus Regs 2020.

Statutory declarations

Both the declarant and the witness are still required to fulfil all existing obligations per *Oaths and Affirmations Act 2018* while each appearing on audio-visual link **on the same day!** An example of a valid statement is:

Witnessed by AV per COVID-19 Omnibus Regs 2020. [Certificate witnessed by AV per COVID-19 Regs 2020]

Declarant then adds at the end of the statutory declaration and bottom of every certificate (if any) that gets back from the witness the statement(s):

True copy of statutory declaration made by me [declarant's full name]. Witnessed by AV per COVID-19 Omnibus Regs 2020.

Affidavits

An example of a valid statement is:

Affidavit is a scanned copy, electronically signed and witnessed by AV per COVID-19 Omnibus Regs 2020.

Powers of attorney documents

An example of a valid statement is:

Witnessed by AV per COVID-19 Omnibus Regs 2020.

An example of a valid statement is:

True copy of power of attorney signed by me [Principal full name]. Conditions per COVID-19 Omnibus Regs 2020 have been met.

The **declarant** must sign underneath the statement and provide the **date**.



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Additional Document Types

For further information in relation to other document types, i.e:

- Deeds and mortgages
- Wills
- Codicils
- Other testamentary instruments

refer to addendum to JP Handbook at:

<https://www.honoraryjustices.vic.gov.au/jp-handbook-addendum-covid-19-regulations>

Department of Justice and Community Safety website, which provides a more complete step by step guide for electronic signing and remote witnessing during COVID-19 restrictions:

<https://www.justice.vic.gov.au/electronicwitnessing>

Audio Visual Reference Sites & Software

Zoom

Zoom has become very popular during the COVID-19 period for both businesses and the public.

Zoom is available for PC, Mac or Linux computer operating systems, and is also available for iOS (iPhone and iPad) and Android devices.

Zoom is free to use for small meetings up to 40 minutes duration . zoom.us/

Cisco WebEx

WebEx is often used by the Courts in Victoria. It is the system being used by Bail Justices for remote Bail Hearings. It is recognised as the industry leader because of its functionality and security.

WebEx has a free version for meetings up to 50 minutes duration. www.webex.com

Microsoft Teams

Microsoft Teams is part of the popular Microsoft Office suite of business applications and is often used in the office environment. There is also a free version available.

Teams is available for PC, iOS and Android.

www.microsoft.com/en-au/microsoft-365/microsoft-teams/free

Apple FaceTime

Apple FaceTime is a simple audio-visual calling software that is available on Apple iPhone, iPad and iPod Touch devices.

support.apple.com/en-au/HT204380)

Google Duo

Google Duo is similar to FaceTime and is available on Android phones and tablets and on the web in a browser.



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duo.google.com/about/

Skype

Skype is a popular Microsoft product for video-conferencing and may be familiar to some members of the public. Skype is available for Windows, Mac and Linux computers as well as mobile devices.

www.skype.com/en/

Reference: Honorary Justice Services Support / Department of Justice and Community Safety.

Audio Visual Reference Hardware

Computers

There are a range of computers that can be used for remote witnessing, any standard tower (desktop) or all-in-one(AIO) machines. Most of the tower versions generally need a separate webcam to provide audio and video signals. The AIO usually have integrated webcam's built into them.

Laptops / Tablets

There is a wide range of laptops and tablets available which as a rule have integrated webcam's built into them. Most of them also have touch sensitive screens and are easier to draw or write on the screen with them using a stylus. These are very versatile and allow for easily signing electronically of documents. It is important to remember that you will need to also put in your role and registration number, as well as the additional wording on documents. This does add a layer of extra difficulty in process documents.

Smart Phones

This is the most widely used and available device, whether it is an iPhone or Android device. These devices generally have an integrated audio and video capability. The issue with using a smart phone is the ability to be able to see the person signing documents, and usually will require a second phone so that the authorized person can witness the document being signed.

There are a number of apps available that allow for electronic signing, creating pdf's and sending documents. One recent one released for both phone types is Microsoft Office App, which is free and has many options, you can access this at:

<https://www.microsoft.com/en-au/microsoft-365/mobile>

How to Create and Use Digital Signatures

To assist on deciding the approach that may be best for you based on the type of equipment that you have available the following 'how to' videos are worth watching to see how best to go about setting up your equipment and system to remotely sign documents.

How to sign a pdf using MS Office app on a smart phone video:

<https://www.youtube.com/watch?v=6aZ55-UI89o&t=1s>

How to create digital signatures and sign PDF and Word documents online with a computer:

https://www.youtube.com/watch?v=6m_S5dFjDGg