

Electronic Transactions Regulation 2017

[2017-439]



New South Wales

Status Information

Currency of version

Historical version for 22 April 2020 to 17 September 2020 (accessed 19 November 2024 at 19:46)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Does not include amendments by**
[Personal Injury Commission Act 2020 No 18](#) (not commenced)
- **See also**
[Stronger Communities Legislation Amendment \(Courts and Civil\) Bill 2020](#)

Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 16 September 2020

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Electronic Transactions Regulation 2017



New South Wales

1 Name of Regulation

This Regulation is the *Electronic Transactions Regulation 2017*.

2 Commencement

This Regulation commences on the day on which it is published on the NSW legislation website.

Note—

This Regulation repeals and replaces the *Electronic Transactions Regulation 2012*, which would otherwise be repealed on 1 September 2017 by section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definitions

(1) In this Regulation—

judicial body means a court or tribunal, and includes any other body or person exercising judicial or quasi-judicial functions.

the Act means the *Electronic Transactions Act 2000*.

Note—

The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.

(2) Notes included in this Regulation do not form part of this Regulation.

4 Certain laws excluded from section 7 (1) of the Act

Section 7 (1) of the Act does not apply to the following laws of this jurisdiction—

- (a) the *Election Funding, Expenditure and Disclosures Act 1981*, and any regulations under that Act,
- (b) the *Government Information (Public Access) Act 2009*, and any regulations under that Act,
- (c) Chapter 10 of the *Local Government Act 1993*, and any regulations under that Act

with respect to the matters dealt with in that Chapter,

- (d) the *Parliamentary Electorates and Elections Act 1912*, and any regulations under that Act,
- (e) the *Poisons and Therapeutic Goods Act 1966*, and any regulations under that Act,
- (f) any other Act or regulation that makes provision for the conduct of polls or elections by the Electoral Commissioner, to the extent only to which it makes such provision.

5 Certain requirements excluded from Division 2 of Part 2 of the Act

Division 2 of Part 2 of the Act does not apply to the following requirements and classes of requirements—

- (a) any requirement under a law of this jurisdiction for a person to lodge or file a document with a judicial body in connection with legal proceedings,
- (b) any requirement under a law of this jurisdiction for a person to sign a document to be lodged or filed with a judicial body in connection with legal proceedings,
- (c) any requirement under a law of this jurisdiction for a person to produce a document—
 - (i) to a judicial body in connection with legal proceedings, or
 - (ii) to a party to legal proceedings in connection with those proceedings,
- (d) any requirement under a law of this jurisdiction for a person to retain a document—
 - (i) that has been lodged or filed with, or produced to, a judicial body in connection with legal proceedings, or
 - (ii) that has been admitted in evidence in any legal proceedings held before a judicial body, or
 - (iii) that has been issued by a judicial body in connection with any legal proceedings,
- (e) any requirement under a law of this jurisdiction for a document to be served personally or by post,
- (f) any requirement under a law of this jurisdiction for a document to be verified, authenticated, attested or witnessed under the signature of a person other than the author of the document.

6 Certain permissions excluded from Division 2 of Part 2 of the Act

Division 2 of Part 2 of the Act does not apply to the following permissions and classes of permissions—

- (a) any permission under a law of this jurisdiction for a person to lodge or file a document

with a judicial body in connection with legal proceedings,

- (b) any permission under a law of this jurisdiction for a person to sign a document to be lodged or filed with a judicial body in connection with legal proceedings,
- (c) any permission under a law of this jurisdiction for a person to produce a document—
 - (i) to a judicial body in connection with legal proceedings, or
 - (ii) to a party to legal proceedings in connection with those proceedings,
- (d) any permission under a law of this jurisdiction for a person to retain a document—
 - (i) that has been lodged or filed with, or produced to, a judicial body in connection with legal proceedings, or
 - (ii) that has been admitted in evidence in any legal proceedings held before a judicial body, or
 - (iii) that has been issued by a judicial body in connection with any legal proceedings,
- (e) any permission under a law of this jurisdiction for a document to be served personally or by post,
- (f) any permission under a law of this jurisdiction for a document to be verified, authenticated, attested or witnessed under the signature of a person other than the author of the document.

7 Certain laws excluded from Division 2 of Part 2 of the Act

Division 2 of Part 2 of the Act does not apply to the following laws of this jurisdiction—

- (a) the *Election Funding, Expenditure and Disclosures Act 1981*, and any regulations under that Act,
- (b) the *Government Information (Public Access) Act 2009*, and any regulations under that Act,
- (c) Chapter 10 of the *Local Government Act 1993*, and any regulations under that Act with respect to the matters dealt with in that Chapter,
- (d) the *Parliamentary Electorates and Elections Act 1912*, and any regulations under that Act,
- (e) the *Poisons and Therapeutic Goods Act 1966*, and any regulations under that Act,
- (f) any other Act or regulation that makes provision for the conduct of polls or elections by the Electoral Commissioner, to the extent only to which it makes such provision.

8 Definition of “court” for purposes of Schedule 1 to the Act

- (1) The Workers Compensation Commission is declared to be a court for the purposes of Schedule 1 to the Act.
- (2) The Registrar of the Workers Compensation Commission is declared to be a court for the purposes of Schedule 1 to the Act.
- (3) The Civil and Administrative Tribunal is declared to be a court for the purposes of Schedule 1 to the Act.

8A COVID-19 response

Schedule 1 sets out provisions dealing with the response to the COVID-19 pandemic.

9 Repeal and savings

- (1) The *Electronic Transactions Regulation 2012* is repealed.
- (2) Any act, matter or thing that, immediately before the repeal of the *Electronic Transactions Regulation 2012*, had effect under that Regulation continues to have effect under this Regulation.

Schedule 1 Response to COVID-19 pandemic

Clause 8A

Note—

See sections 17 and 18 of the Act for the period to which the provisions of this Schedule have effect.

Part 1 Witnessing and attestation

1 Definitions

In this Part—

audio visual link means technology that enables continuous and contemporaneous audio and visual communication between persons at different places, including video conferencing.

document includes the following—

- (a) a will,
- (b) a power of attorney or an enduring power of attorney,
- (c) a deed or agreement,
- (d) an enduring guardianship appointment,
- (e) an affidavit, including an annexure or exhibit to the affidavit,

(f) a statutory declaration.

2 Witnessing and attestation of documents by audio visual link

- (1) For the purposes of section 17(1)(b) and (c) of the Act, despite any other Act or law—
- (a) if the signature of a document is required under an Act or another law to be witnessed, the signature may be witnessed by audio visual link, and
 - (b) arrangements in relation to witnessing signatures and the attestation of documents may be performed by audio visual link.
- (2) A person witnessing the signing of a document by audio visual link (the **witness**) must—
- (a) observe the person signing the document (the **signatory**) sign the document in real time, and
 - (b) attest or otherwise confirm the signature was witnessed by signing the document or a copy of the document, and
 - (c) be reasonably satisfied the document the witness signs is the same document, or a copy of the document signed by the signatory, and
 - (d) endorse the document, or the copy of the document, with a statement—
 - (i) specifying the method used to witness the signature of the signatory, and
 - (ii) that the document was witnessed in accordance with this Regulation.

Note—

A document may be endorsed under paragraph (d) with a statement, for example, that the 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](#).

- (3) Without limiting the ways a witness may confirm the signature was witnessed, the witness may—
- (a) sign a counterpart of the document as soon as practicable after witnessing the signing of the document, or
 - (b) if the signatory scans and sends a copy of the signed document electronically—countersign the document as soon as practicable after witnessing the signing of the document.
- (4) Without limiting subclause (1)(b)—
- (a) arrangements in relation to witnessing signatures by audio visual link include the following—

- (i) certification of matters required by an Act or another law,
 - (ii) confirming or verifying the identity of the signatory to a document,
 - (iii) attestation of a signature,
 - (iv) swearing or affirming the contents of an affidavit,
 - (v) seeing the face of the signatory, and
- (b) a requirement in an Act or another law for the presence of a witness, signatory or other person is taken to be satisfied if the witness, signatory or other person is present by audio visual link.

Part 2 Oaths and declarations

3 Affidavits and declarations made under [Oaths Act 1900](#)

For the purposes of section 17(1) of the Act, a document that is an oath, declaration or affidavit required for a purpose specified in section 26 of the [Oaths Act 1900](#) may be taken or made before an Australian legal practitioner as if the practitioner were a justice of the peace.

4 Certain persons before whom statutory declarations may be made

For the purposes of section 17(1)(a) of the Act, a statutory declaration may be made before a person before whom a statutory declaration under the [Statutory Declarations Act 1959](#) of the Commonwealth may be made.