

Signing court documents, including affidavits, during the COVID-19 pandemic

As outlined in our alert of 25 March 2020, the [Electronic Transactions Act 2000](#) ("ET Act") has been amended in response to the COVID-19 pandemic to permit regulations that alter arrangements for signing and witnessing documents. As we continue to monitor these developments closely, agencies filing court documents, including affidavits, should ensure compliance with existing signing and execution requirements until such regulations are made.

KEY POINTS

- ▶ Currently, the permission to use electronic signatures under s. 9 of the *ET Act* does not apply to documents a person is filing with a judicial body for legal proceedings, or to a document witnessing another person's signature: Sch. 1 [18] *ET Act*; cl. 5 and 6 [Electronic Transactions Regulation 2017](#).
- ▶ On 25 March 2020, the [COVID-19 Legislation Amendment \(Emergency Measures\) Act 2020](#) amended the *ET Act*, such that regulations under various Acts, including the [Oaths Act 1900](#) ("Oaths Act"), may be made to alter arrangements for the signing, witnessing and attesting of documents.
- ▶ Pending the foreshadowed regulatory changes, under the *Oaths Act*, the execution of an affidavit requires an authorised witness to administer a deponent's oath or affirmation, to see the deponent's face and complete a certificate on the affidavit.

Where a court document requires a signature, in general this means an ink signature on paper. Some courts by rules or practice notes accept electronic signatures on court documents, subject to conditions. In response to COVID-19, the power to change signing requirements via regulations has been inserted as s.17 of the *ET Act*.

It is important to monitor the developing requirements of each judicial body in the current environment, as a number of individual courts have recently varied their practices and procedures.

Pending changes via regulations, the signing requirements of each jurisdiction and document must be considered. By way of example:

- Part 5 of the [Oaths Act](#) and Sch. 1 [7] of the [Oaths Regulation 2017](#) set out general requirements for affidavits. Note that in some circumstances a failure to comply with some witnessing requirements does not affect the validity of an affidavit: s. 34(4).
- Where the [Uniform Civil Procedure Rules 2005](#) ("UCPR") apply, Pt 35 sets out the requirements for affidavits, including signing and witnessing, though leave can be sought where there is irregularity in form: r.35.1. Documents are to be on paper and, where required, signed: rr.4.3-4.4. Where the online registry is used for court documents, original

documents are to be prepared, scanned and retained: rr. 3.5 and 3.11.

- In certain criminal proceedings in the Supreme Court, r.4.3 of the *UCPR* applies: Pt 75, Div.1, r. 3 [Supreme Court Rules 1970](#). Where r.2C of the *Criminal Appeal Rules* applies to a matter and documents are filed by the electronic case management system, a printed name may substitute for a signature: Pt 75, Div.1, r. 1A *Supreme Court Rules 1970*.
- In the Land and Environment Court, all process must be signed or authenticated in accordance with the rules: s. 65 [Land and Environment Court Act 1979](#). Under s. 75 the court has discretion to dispense with any requirements of the rules.
- The Federal Court has released the "[Special Measures Information Note](#)". The Court permits temporary measures for signing documents electronically and filing unsworn affidavits: [4].

Each jurisdiction differs, and it is important to bear in mind that a failure to comply with requirements associated with the preparation of court documents can have serious consequences, including inadmissibility in certain circumstances. If the requirements in this interim period for signing or witnessing court documents in a particular judicial body are not clear, consider seeking advice.

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