



New South Wales

# Electronic Transactions Amendment (Remote Witnessing) Bill 2021

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The objects of this Bill are—

- (a) to make permanent certain provisions that were introduced as a pilot scheme to enable—
  - (i) the remote witnessing of documents, and
  - (ii) oaths, declarations and affidavits to be taken or made before an Australian legal practitioner, and
- (b) to identify—
  - (i) the document that is the original document when a document is witnessed remotely, and
  - (ii) the place of execution of the document, and
- (c) to make clear it is not necessary for the signatory or witness to physically be in New South Wales to witness a document remotely, and
- (d) to enable regulations to exclude documents that may not be witnessed remotely and to set out methods, technologies and processes for witnessing documents remotely, and
- (e) to re-enact a temporary provision that expands the classes of persons before whom a statutory declaration can be made.

## Outline of provisions

**Clause 1** sets out the name, also called the short title, of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act.

## **Schedule 1      Amendment of Electronic Transactions Act 2000 No 8**

**Schedule 1[6]** omits a number of provisions, some of which are redundant and others that are to be re-enacted in the *Oaths Act 1900* by Schedule 2 of the proposed Act, and inserts provisions that—

- (a) identify the document that is the original document when a document is witnessed remotely, and
- (b) make clear that it is not necessary for the signatory or witness to physically be in New South Wales to witness a document remotely, and
- (c) specify the place at which a document is executed if it is witnessed remotely, and
- (d) enable the regulations to set out methods, technologies or processes for witnessing documents remotely, and
- (e) include a savings provision for endorsements that would have satisfied a former provision.

**Schedule 1[4]** allows the regulations to exclude documents that may not be witnessed remotely.

**Schedule 1[1]–[3] and [5]** make minor amendments in the nature of statute law revision.

## **Schedule 2      Amendment of Oaths Act 1900 No 20**

**Schedule 2[1]** re-enacts a temporary provision that expands the classes of persons before whom a statutory declaration can be made. The provision is currently in the *Electronic Transactions Act 2000*, section 14I which is to be repealed by Schedule 1 of the proposed Act. The provision was due to be repealed on 1 January 2022 and the re-enacted provision will now be repealed on 1 January 2023.

**Schedule 2[2]** makes permanent a temporary provision that allows oaths, declarations and affidavits to be taken or made before an Australian legal practitioner. The provision is currently in the *Electronic Transactions Act 2000*, section 14H which is to be repealed by Schedule 1 of the proposed Act.



New South Wales

# Electronic Transactions Amendment (Remote Witnessing) Bill 2021

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New South Wales

# Electronic Transactions Amendment (Remote Witnessing) Bill 2021

No. , 2021

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## A Bill for

An Act to amend the *Electronic Transactions Act 2000* to make permanent certain provisions about the remote witnessing of documents; to amend the *Oaths Act 1900* to expand the classes of persons before whom oaths and statutory declarations may be made; and for other purposes.

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**The Legislature of New South Wales enacts—**

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**1 Name of Act**

2

This Act is the *Electronic Transactions Amendment (Remote Witnessing) Act 2021*.

3

**2 Commencement**

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This Act commences on the date of assent to this Act.

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<b>Schedule 1</b>	<b>Amendment of Electronic Transactions Act 2000</b>	1
	<b>No 8</b>	2
<b>[1] Part 2B, heading</b>		3
	Omit “pilot scheme”.	4
<b>[2] Part 2B, Division 1, heading</b>		5
	Omit the heading.	6
<b>[3] Section 14F Definitions</b>		7
	Omit “In this Division”. Insert instead “In this Part”.	8
<b>[4] Section 14F, definition of “document”</b>		9
	Insert “documents, but does not include a document excluded from this definition by the regulations” after “following”.	10
<b>[5] Section 14F</b>		12
	Insert in alphabetical order—	13
	<i>signatory</i> —see section 14G(2)(a).	14
	<i>witness</i> —see section 14G(2).	15
<b>[6] Sections 14H–14L</b>		16
	Omit Part 2B, Divisions 2 and 3. Insert instead—	17
<b>14H Original document</b>		18
(1)	For the purposes of another Act or law, the original document for a document witnessed under this Part is a document that—	19
	(a) contains every page or part of the document, and	20
	(b) contains each signature or mark of the signatory and witnesses wherever required in the document, and	21
	(c) contains the endorsement required by section 14G(2)(d), and	22
	(d) if a signature, mark or endorsement was applied to the same page or part by persons in different locations—contains duplicates of the page or part so that every signature, mark or endorsement is included, and	23
	(e) for a signature, mark or endorsement written physically on a page or part—contains the actual signature, mark or endorsement.	24
	<b>Example</b> — A signature written by hand.	25
(2)	Except as provided by subsection (1)(d), a page or part is required to be included in the original document only once.	26
<b>14I Signatory and witness may be outside jurisdiction</b>		27
	A document may be witnessed under this Part even if the signatory or witness, or both, are outside this jurisdiction if—	28
	(a) the document is made, or required to be signed, under an Act or law of this jurisdiction, or	29
	(b) the governing laws for the document are the laws of this jurisdiction.	30

<b>14J</b>	<b>Place of execution</b>	1
(1)	For the purposes of another Act or law, the place at which a document witnessed under this Part is executed is the place at which the signatory was when the signatory signed the document.	2 3 4
(2)	If, because of section 14I, the place of execution is outside this jurisdiction, the laws of this jurisdiction are taken to apply in relation to the witnessing and execution of the document as if the place were in this jurisdiction.	5 6 7
<b>14K</b>	<b>Regulations</b>	8
	The regulations may set out methods, technologies or processes that, if used, will be taken to satisfy some or all of the requirements of this Part.	9 10
<b>14L</b>	<b>Savings</b>	11
	An endorsement that would have been satisfactory for the purposes of the <i>Electronic Transactions Regulation 2017</i> , Schedule 1, clause 2(2)(d)(ii) had that paragraph not been repealed, is taken to be satisfactory for the purposes of section 14G(2)(d)(ii).	12 13 14 15

## **Schedule 2      Amendment of Oaths Act 1900 No 20**

### **[1]    Section 18 Declaration, how administered**

Insert at the end of the section—

(2) A declaration may also be made before a person before whom a statutory declaration under the *Statutory Declarations Act 1959* of the Commonwealth may be made.

(3) This subsection and subsection (2) are repealed on 1 January 2023.

### **[2]    Section 26 Before whom oaths and affidavits may be taken**

Insert “or an Australian legal practitioner” after “for this State” in section 26(1)(a).

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