

Electronic signatures on affidavits

The COVID-19 Omnibus (Emergency Measures) Act 2020 (Vic) (**COVID-19 Act**), which commenced on 25 April 2020, has introduced temporary amendments into the Oaths and Affirmations Act 2018 (Vic) allowing for legal documents, such as affidavits, to be signed by electronic signature.



Amending the requirements

Requirements	Pre-COVID-19	Temporary Amendments
Sign and initial	Wet ink	By electronic signature
In the presence of a person (witnessing)	By physically being present	By means of audio link or audio visual link
Original document	Original hard copy	Scanned hard copy or an electronic copy

Additional requirements to the jurat

In addition to stating the matters referred to in section 27(1)(a) of the Oaths and Affirmations Act, the affidavit taker must also state the following in the jurat:

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



Creating an electronic signature

Different methods to create an electronic signature if you do not have an IT team to assist

Internet program or app

There are a number of internet programs for computers as well as apps for phones or tablets which can be used to either create an electronic signature or actually electronically sign a document

Scanning*

If you have a scanner you can scan a copy of your signature to your computer

If you have either scanned or taken a photo of your signature you can crop your signature and save it as an image in a secured place on your computer

**Note if you have document such as a letter or affidavit already saved on your computer which contains your signature, you can crop that signature and save as a separate image*

Photograph

If you do not have access to a scanner you can take a photograph of your signature and email it to yourself

Inability to comply with requirements

Section 49F of the COVID-19 Act provides the Court with a discretionary power to admit a purported affidavit into evidence where it is not reasonably practicable to comply with the requirements

Position in other jurisdictions as at the date of this update:

- **NSW** adopted similar legislation
- **QLD and TAS** adopted legislation to give the government power to allow electronic signatures on affidavits
- **SA** adopted legislation which prohibits electronic signatures on affidavits
- **WA, NT and ACT** have not to date adopted legislation to allow for electronic signatures on affidavits

AFCA Complaints

When a complaint is submitted to AFCA, a Financial Firm is first, subject to certain exceptions*, given the opportunity to resolve the complaint directly with the complainant before AFCA considers the complaint. This period is known as the 'refer-back period' and is a time frame of 21 days.

On 21 February 2020, AFCA updated its Rules to extend the refer-back period time frame.

1. For complaints that have already been through an internal dispute resolution process, AFCA have extended the refer-back period to 30 days.
2. For financial hardship complaints lodged with AFCA, the refer-back period has been extended to 30 days.

This extension allows Financial Firms more time to resolve disputes with their customers, without the need for an external dispute resolution service like AFCA.

The above changes are temporary and apply to complaints received by AFCA from 16 April 2020 and will remain in place for up to six months.

**Exceptions in which AFCA would not allow a Financial Firm a refer-back period include, where AFCA considers the complaint to be urgent or, at the written request of the Financial Firm that the complaint be excluded.*



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