23 April 2020

The Hon Vickie Chapman MP
Attorney-General
GPO Box 464
ADELAIDE SA 5000

By email: agd@agd.sa.gov.au

Dear Ms Attorney

Requirements regarding the witnessing of documents during COVID-19


2. The Society was very pleased to note that the Act included a number of regulation making powers which enables the Government to alter the requirements around documents and service. In particular, section 16 of the Act, which provides:

   The Governor may, by regulation, suspend or modify any requirement under an Act or law, or an instrument, relating to the preparation, signing, witnessing, attestation, certification, stamping or other treatment of any document.

3. The Society notes a regulation has recently been made under section 16 of the Act, with respect to statutory declarations, which brings the South Australian requirements in line with the authorised witnesses allowed under the Commonwealth Statutory Declarations Act 1959.

4. The Society is currently consulting with Members as to any legislative requirements around documents they are finding difficult to fulfil as a result of the COVID-19 pandemic. Members are understandably concerned that face to face contact with clients in order to arrange for the signing and/or witnessing of documents, appears to be inconsistent with the current recommendations around social distancing, and may put both clients and practitioners at risk.

5. On Wednesday 22 April, the NSW Government passed the Electronic Transaction Amendment (COVID-19 Witnessing of Documents) Regulation 2020 (“the NSW Regulation”). A copy of the NSW Regulation is enclosed for your information.

6. The objects of the NSW Regulation are, during the COVID-19 pandemic:

   6.1 to provide that documents that require a witness may be witnessed by audio visual link, and

   6.2 to provide that tasks in relation to witnessing a document may be performed by audio visual link, and
6.3 to allow an oath, declaration or affidavit required for a purpose specified in section 26 of the 
*Oaths Act 1900* (NSW) to be taken or made before an Australian legal practitioner, and

6.4 to allow a statutory declaration to be made before a person before whom a statutory 
declaration under the *Statutory Declarations Act 1959* of the Commonwealth may be made.

7. Notwithstanding that you have already made a regulation with respect the matters described in 
paragraph 6.4, the Society asks that you consider making a further regulation under section 16 of 
the Act to address the matters described in paragraphs 6.1 to 6.3.

8. The NSW Regulation sets out a class of documents that are captured by the Regulation, including 
wills, powers of attorney/enduring powers of attorney, a deed or agreement, an enduring 
guardianship appointment, an affidavit (including an annexure or exhibit to the affidavit), and a 
statutory declaration.

9. The Society would be happy to assist you in setting out relevant documents for the purpose of a 
South Australian regulation. For example, the inclusion of Advance Care Directives in addition to 
the list documents identified in the NSW Regulation would be strongly suggested.

10. The current requirements around the witnessing of documents in South Australia gives rise to a 
number of public health concerns in the COVID-19 climate, and may impact upon the community’s 
access to legal services. The Society would be very grateful if you would consider the adoption of 
the NSW Regulation in South Australia.

The Society would be pleased to meet with you to discuss these matters further and will be in touch in the 
coming weeks with further suggestions regarding COVID-19 measures for your consideration.

Yours sincerely

Tim White

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