

Legal admissibility of records

IMPLEMENTATION TOOL

Introduction

This fact sheet outlines issues about digitised records and legal admissibility.

Are digitised records admissible as evidence?

Yes, digitised records are admissible as evidence. Evidence may include a copy of the document in electronic format, or a version of a document produced on a device such as a computer. However, the authenticity of a digitised record can be challenged or questioned.

What about scanned signatures? Are they legally admissible?

Yes, scanned signatures are legally admissible. Like digitised records, their authenticity may be challenged.

Tell me about the relevant laws

Electronic Transactions Act 2000 (Tas)

This Act promotes business and community confidence in the use of electronic transactions. It recognises the legality of transactions carried out electronically. This means if you are legally required to give information in writing, provide a handwritten signature, produce a document in a material form or record or retain information, you can do this electronically.

In Australia, an electronically signed transaction is legally valid if the electronic signature meets certain conditions, and no exceptions apply.

Tasmanian law (s7) states that:

- signatures must identify a person and indicate their consent for the transaction
- the method used to sign must be reliable and appropriate, and
- the recipient of the signature must be satisfied with this form of signature.

Each State and Territory in Australia has laws that mirror the *Electronic Transactions Act 1999* (Cwlth). However, each State and Territory has different exceptions to the use and legality of electronic signatures. For example:

- in Tasmania powers of attorney and wills still need a 'wet ink' signature
- in all State and Territories, documents that need to be personally served cannot be executed by electronic signature.

Evidence Act 2001 (Tas)

This Act describes the ways documents may be admitted as evidence into court. The Act describes the more acceptable formats and the features that give more value or 'weight' to records. Tasmania's Act mirrors the *Evidence Act 1995* (Cwlth).

The 'original document rule' has been abolished (s51). This rule required the original document to be produced in court. The contents of a document can now be given in alternative ways (s48).

The Interpretation section of the Act defines 'document' to mean:

- ‘...any record of information and includes—
 - (a) anything on which there is writing; or
 - (b) anything on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them; or
 - (c) anything from which sounds, images or writings can be reproduced with or without the aid of anything else; or
 - (d) any map, plan, drawing or photograph;...’

In practice, this includes:

- an ordinary document in writing
- documents written in braille or shorthand
- a 'record of information' contained on a computer.

How can I prove the authenticity of digitised records?

Good recordkeeping practices, policies and procedures increase the likelihood of records being accepted as authentic. Documentation can help show your digitised records are accurate, complete and credible representations of the original.

Our *Information and records management standard* has more information about good records management.

For digitised records to be legally acceptable, you may need to show you have:

- implemented an organisational digitisation framework
- created full and accurate digital representations of original records
- protected digitised records from authorised access, tampering or loss.

Each of these are described in more detail below.

Digitisation framework

Showing you have implemented an organisational digitisation framework might include:

- documentation about the program plan and risk assessments
- integration with the organisational information and records management framework
- policies and procedures
- training programs
- monitoring and review processes

Full and accurate digital representations

Prove you have created full and accurate digital representations of original records with:

- metadata and technical specifications
- quality assurance measures, checks, results and problem resolution
- routine checks of hardware and software performance

Protecting digitised records

Documentation showing protection of digitised records from authorised access, tampering or loss includes:

- decisions or risk assessments about storage of digitised records (ideally in recordkeeping systems)
- security and access controls
- systems audit trails
- backups
- routine tests of system performance and operational system records
- disposal requirements and decisions for the digitised and original record
- management, migration plans and programs for digitised records.

Next steps

We recommend that you seek legal advice about:

- records and admissibility for high-risk areas in your business
- *Electronic Transactions Act 2000* exemptions.

ACKNOWLEDGEMENTS

This fact sheet is based on the following, now withdrawn Tasmanian Archive and Heritage Office Publication:

- *Advice 16: legal acceptance of records*.

We also thank:

- National Archives of Australia (NAA) (2012 revision) [*Commonwealth Records in Evidence*](#), NAA, accessed 3 August 2020.
- Office of the Solicitor-General, Department of Justice (Tasmania) for their feedback.
- State Archives & Records Authority of New South Wales (2019) [*Legal admissibility of digital records*](#), SARANSW website, accessed 3 August 2020.

MORE INFORMATION

The National Archives of Australia's *Commonwealth records in evidence* has a good summary of evidence issues from a recordkeeping perspective. Because Tasmania's *Evidence Act 2001* generally mirrors the Commonwealth *Evidence Act 1995*, this publication is relevant to Tasmanian organisations.

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Legal admissibility of records is part of the *Tasmanian Government Information Management Framework*. It supports the *Information and records management standard*. This is a living document and we will make minor changes as needed. If you notice anything that needs updating, please let us know.



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