

IMPLEMENTATION TOOL

Legal Admissibility of Records

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, and like digitised records, their authenticity may be challenged.

TELL ME ABOUT THE RELEVANT LAWS.

The admissibility of evidence is affected by the:

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. The Act means that 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 as long as the electronic signature meets certain conditions, and no exceptions apply.

Tasmanian law 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 (s7).

Electronic Transactions Act 2000 (Tas) continued from previous page

Each State and Territory in Australia has laws that effectively 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, and 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’ which required the original document to be produced in court has been abolished (s51). The contents of a document can now be given in a number of 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 and to a ‘record of information’ contained on a computer.

HOW CAN I PROVE THE AUTHENTICITY OF DIGITISED RECORDS?

Good recordkeeping practices, policies and procedures in your organisation increase the likelihood of records being accepted as authentic. Documentation about how your digitisation was completed and how the digitised records were created, managed and stored may help you show the digitised record is an accurate, complete and credible representation of the original. For more information about good records management, see our *Information and Records Management Standard*.

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

- **Implemented an organisational digitisation framework.** This might include documentation about the program plan and risk assessments; integration with the organisational information and records management framework; as well as policies, procedures, training programs, monitoring and review processes.
- **Created full and accurate digital representations of original records.** Metadata and technical specifications; quality assurance measures, checks, results and problem resolution; routine checks of hardware and software performance may all be relevant.
- **Protected digitised records from unauthorised access, tampering or loss.** Relevant documentation might include 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; and management, migration plans and programs for digitised records.

FURTHER 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.

NEXT STEPS

We recommend that you seek legal advice about records and admissibility for high-risk areas in your business, and for *Electronic Transactions Act 2000* exemptions.

ACKNOWLEDGMENTS

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. [The link targets a landing page, not a PDF].
- New South Wales State Archives & Records (2019) [Legal admissibility of digital records](#), accessed 3 August 2020.
- Office of the Solicitor-General, Department of Justice for their feedback.

CONTACT US

Office of the State Archivist | www.informationstrategy.tas.gov.au | osa@education.tas.gov.au | 03 6165 5581

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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Document Development History

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