



## ELECTRONIC EXECUTION OF DOCUMENTS

Whether or not legal documents can be executed electronically is complicated and the effectiveness and legality of electronic execution differs around the country, both from state to state and between the states (and territories) and the Commonwealth. In particular, documents that need to be *witnessed* personally (such as deeds) almost certainly cannot be witnessed electronically without extraordinary legislative intervention.

However, in response to the coronavirus pandemic, various states have recently enacted legislative measures in relation to the electronic execution of documents.

More particularly, NSW, Victoria and Queensland have passed legislation and introduced regulations authorising **deeds** to be made by electronic means, and also authorising signatures on deeds and certain other documents to be witnessed via audio-visual link **up to 22 October 2020, 24 October 2020 and 31 December 2020 respectively**.

The ACT has also passed legislation relating to the audio visual witnessing of documents, but this does not include deeds.

As at the date of writing (20 August 2020), none of the other states or territories have passed any other legislation in this regard, although it is possible that one or more of the other states or territories will soon do so.

In NSW, Victoria and Queensland, a person executing a deed or witnessing execution by electronic means must also endorse the document with a written statement which confirms that the document was executed or witnessed in accordance with the applicable regulations.

The exact procedure to be followed for the electronic signing or witnessing of documents varies slightly between NSW, Victoria and Queensland and we recommend that the applicable criteria in each state be strictly observed to ensure (as far as possible) that a **valid and legally effective** document is made. The following documents provide further information in this regard in relation to each of the above states:

- [Electronic Execution in NSW](#)
- [Electronic Execution in Victoria](#)
- [Electronic Execution in Queensland](#)

Also, the *Corporations Act 2001* (Cth) has been temporarily modified\* so as to allow companies to execute documents (and also hold meetings and provide notices) via technology for the period commencing on 6 May 2020 and **ending on 5 November 2020**.

More particularly, during the above period, companies can validly execute a document where the persons able to sign documents on behalf of a company:

- (a) sign a copy or counterpart of the document that is in a physical form and includes the **entire** contents of that document, not just the execution page; or
- (b) sign a document using an electronic communication method, where that method reliably identifies the person and indicates their intention in respect of the contents of the document.

The [explanatory statement](#) for the amending determination provides that company officers may sign a document electronically by pasting a copy of a signature into a document, signing a PDF on a tablet, smartphone or laptop using a stylus or finger, or cloud-based signature platforms like Secured Signing.

There is some uncertainty as to the practical effectiveness of the above legislation (both state and federal), and we cannot guarantee that a deed or other document that has been executed or witnessed by electronic means will be legally valid and upheld by a court, even if all the applicable criteria are complied with. We therefore recommend that, wherever possible, electronic execution be avoided, and that deeds instead be executed, and especially *witnessed*, “normally”.

If (notwithstanding the above), a deed or other document is to be executed or witnessed by electronic means, then the applicable criteria (and the above legislative deadlines) should be strictly observed, and independent legal advice should be sought as required.

It must also be remembered that the above measures are (at least for now) temporary, and unless further legislative measures are taken, the situation regarding electronic execution and witnessing will likely revert back to the pre-coronavirus position.

\* [Corporations \(Coronavirus Economic Response\) Determination \(No. 1\) 2020](#)