

E-Signing (Digital Signing) of Financial Documents

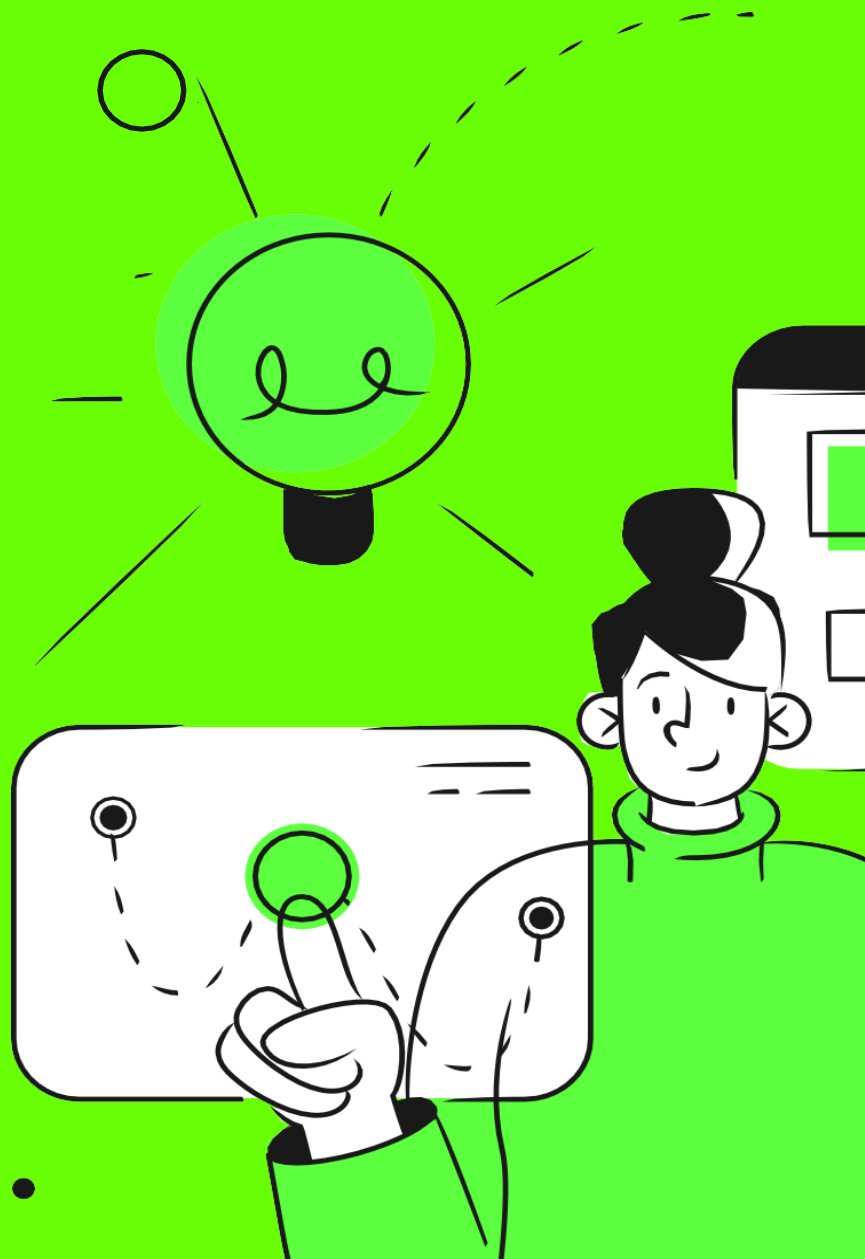
Across the Country

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FuseSign





E-Signing (Digital Signing)



Issue

What are the laws surrounding the digital signing (e-signing) of financial documents around the country?

Rule of Law:

The laws pertaining to digital signing vary on a federal and state level. Many states and territories adopted emergency pandemic e-signing waivers, yet many have since ceased. At a federal level, documents allowed to be signed electronically (generally) include HR contracts, software licensing, insurance agreements, education documents, healthcare documents, non-disclosure agreements, some real estate documents, and others among documents to be recorded. While courts generally accept digital signatures for most documents, there are no key common law cases where digital signatures have been rebutted by a court. There has, however, been recent case law demonstrating the debate on evidentiary weight of the validity of a digital signature (much the same as the validity scrutiny of a wet signature) which is demonstrated by *Williams Group Australia Pty Ltd v. Crocker* [2016] NSWCA 265.¹

Analysis:

With industry dependence on technology on the rise, and state/territory governments still dealing pandemic-related activity fallout, it is no wonder that e-signing laws are hot topic around the country. While state and territory enacted emergency e-signing laws during the pandemic to mitigate the sharp decline in business activity, many of those have now lapsed and many whom benefited from the temporary additional documents that could be signed digitally are calling for more permanent digital signing laws to be put in place for a progressive business environment.

As a result of the push for more permanent digital signing laws, the Minister for Industrial Relations Michaelia Cash and the Hon Ben Horton (MP) presented the consultation for 'Modernising document execution across the Federation'², arguing to parliament; *"the disruptions from COVID showed that we can use technology to create secure, accessible and consistent pathways for executing these important documents"*.²

1. Dale Rayner and Helena Busljeta, "SIGNING CONTRACTS ELECTRONICALLY JUST GOT EASIER FOR COMPANIES (AGAIN)", *King & Wood Mallesons* (Webpage, 2021) <<https://www.kwm.com/au/en/insights/latest-thinking/signing-contracts-just-got-easier-for-companies-again.html>>.
2. Department of Prime Minister and Cabinet, *Modernising Document Execution* (Federal Government, 2021).



The federal government is expected to take on the recommendations set out by the consultation and release more permanent federal laws that make business easier, more adaptable, and robust by the end of 2022 in form of the *Treasury Laws Amendment (Modernising Business Communications) Bill 2022* and *The Corporations Amendment (Meetings and Documents) Bill 2021*.³

Until there is more federal coordination and coherence, accountants and financial planners must pay attention to the state/territory specific laws applicable to their clients on whether digital signing can be utilised with document execution. Here at LightYear Docs, we get asked all the time what documents can or can't be signed digitally, especially with our new

integration partnership with FuseSign live this week, we have decided to give some basic guidance on the current situation regarding e-signing around the country.

Below is a small table summary of the current (as of April 2022) legislation in each state and territory. Kindly note, these laws change extremely frequently and are therefore not to be taken as legal advice. Some financial documents may also have specific requirements that suit the documents' purpose, such as mortgage deeds, with different financial entities and banks requiring different, and often preferred, methods of execution and evidence of such. It is up to user discretion whether a document can be signed and witnessed digitally or not.



3. Dale Rayner and Helena Busljeta, "SIGNING CONTRACTS ELECTRONICALLY JUST GOT EASIER FOR COMPANIES (AGAIN)", *King & Wood Mallesons* (Webpage, 2021) <<https://www.kwm.com/au/en/insights/latest-thinking/signing-contracts-just-got-easier-for-companies-again.html>>.



Table 1.1

Current Guidance for State/Territory Laws Regarding E-Signing



STATE / TERRITORY	Overview of Digital Signing Stance
<p>New South Wales (more info here)</p>	<ul style="list-style-type: none"> - COVID-19 emergency waivers on digital witnessing have been made permanent in November 2021. - NSW law allows legal documents to be witnessed in real time via audio-visual link (AVL).⁴ - The remote witnessing provisions do not enable documents to be electronically signed. Remotely witnessed documents may only be signed electronically by a signatory or witness where this is otherwise permitted by a NSW Act or law.⁴ - The <i>Customer Service Legislation Amendment Act 2021</i> provides clarification that a deed executed by a corporation in NSW may be created in electronic form and electronically signed and witnessed.⁴
<p>Victoria (more info here)</p>	<ul style="list-style-type: none"> - The <i>Justice Legislation Amendment (System Enhancements and Other Matters) Act 2021</i> made changes to several pieces of legislation that cover how legal documents must be signed and witnessed in Victoria.⁵ - Changes to the <i>Electronic Transactions (Victoria) Act 2000</i> mean that deeds can now be considered as transactions. They can be in electronic form and 'signed, sealed and delivered' by electronic communication, under Victorian law.⁵ - Witnesses must ensure their existing obligations are compatible with witnessing by audio visual link.⁵ - Transactions, requirements, or permissions in relation to the creation, execution or revocation of a will, codicil or other



	<p>testamentary instrument cannot be signed or executed electronically.⁵</p>
<p>Queensland (more info here)</p>	<ul style="list-style-type: none">- The <i>Electronic Transactions (Queensland) Act 2001</i> provides for the use of digital signatures, if they meet 3 criteria:<ol style="list-style-type: none">1. the signature identifies a person and indicates their intention2. the signature is appropriate (reliable) for its purpose3. the person receiving the document consents to receiving a signature in electronic form.⁶- Documents that must be or are permitted to be attested, authenticated, verified, or witnessed by a person who is not the author of the document cannot be signed or executed electronically.⁶
<p>Western Australia (more info here)</p>	<ul style="list-style-type: none">- Transactions or requirements that a document must be verified, authenticated, attested, or witnessed under a person's signature who is not the author of the document cannot be signed or executed electronically.⁷- Transactions, requirements, or permissions in relation to creating an instrument appointing an enduring power of attorney or an attorney to manage a person's affairs cannot be signed or executed electronically.⁷- Requirements or permissions in relation to the creation, execution or revocation of a will, codicil or other testamentary instrument cannot be signed or executed electronically.⁷
<p>South Australia (more info here)</p>	<ul style="list-style-type: none">- Documents that must or are permitted to be verified, authenticated, attested, or witnessed by or under a person's signature who is not the author of the document cannot be signed or executed electronically. This exception does not apply to transactions in relation to the disposition of land, an interest in land or prescribed legal proceedings.⁷

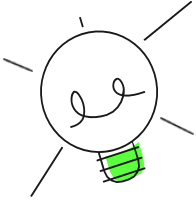


<p>Northern Territory (more info here)</p>	<ul style="list-style-type: none"> - Transactions in relation to a disposition of property by, or revocation of, a will cannot be signed or executed electronically. Further, laws that require or permit a person to give, record or retain information in writing in relation to a will or revocation of a will, produce a will or revocation of a will, or signing a will or revocation of a will cannot be signed or executed electronically.⁷ - Deeds executed by an individual are required to be witnessed, deeds should not be signed electronically.⁷
<p>Tasmania (more info here)</p>	<ul style="list-style-type: none"> - Transactions, requirements, or permissions in relation to the execution or revocation of a will, codicil or other testamentary instrument cannot be signed or executed electronically.⁷ - Deeds executed by an individual are required to be witnessed, deeds should not be signed electronically.⁷
<p>Australian Capital Territory</p>	<ul style="list-style-type: none"> - Same as NSW



4. NSW Government, *Witnessing Legal Documents Remotely [Factsheet]* (NSW Government, 2021).
5. "Electronic Signing And Online Witnessing Of Legal Documents", *VIC Government* (Webpage, 2022)
<[https://www.justice.vic.gov.au/electronicwitnessing#:~:text=The%20Electronic%20Transactions%20\(Victoria\)%20Act%202000%20provides%20requirements%20for%20witnessing,through%20an%20audio%20visual%20link](https://www.justice.vic.gov.au/electronicwitnessing#:~:text=The%20Electronic%20Transactions%20(Victoria)%20Act%202000%20provides%20requirements%20for%20witnessing,through%20an%20audio%20visual%20link)>.
6. "Implement And Use Digital Signatures", *Queensland Government* (Webpage, 2022)
<<https://www.forgov.qld.gov.au/information-and-communication-technology/recordkeeping-and-information-management/recordkeeping/manage-specific-record-types-and-activities/implement-and-use-digital-signatures#:~:text=Legal%20requirements,providing%20approval%20via%20an%20email>>.
7. "Electronic Signature Laws & Regulations - Australia", *Adobe* (Webpage, 2021)
<<https://helpx.adobe.com/sign/using/legality-australia.html#:~:text=In%20Western%20Australia%2C%20transactions%20or,be%20signed%20or%20executed%20electronically.>>.





The table below is a summary of the above for easy reference, again please consider the information below as a guide only, legislation is constantly changing around the country.

	COMPANY DOCUMENTS	WILLS	EPOA	TRUSTS	SMSF	OTHER
NSW	<ul style="list-style-type: none"> - Digital witnessing allowed - Deeds executed by corporation can be electronically signed 	<ul style="list-style-type: none"> - Digital witnessing allowed 	<ul style="list-style-type: none"> - Digital witnessing allowed 	<ul style="list-style-type: none"> - Digital witnessing allowed - Deeds executed by corporation can be electronically signed 	<ul style="list-style-type: none"> - Digital witnessing allowed 	<ul style="list-style-type: none"> - Digital witnessing allowed
VIC	<ul style="list-style-type: none"> - Digital signing allowed 	<ul style="list-style-type: none"> - Digital signing and execution not allowed 	<ul style="list-style-type: none"> - Digital signing and execution not allowed 	<ul style="list-style-type: none"> - Digital signing allowed for deeds 	<ul style="list-style-type: none"> - Digital signing allowed 	<ul style="list-style-type: none"> - Digital signing allowed
QLD	<ul style="list-style-type: none"> - Digital signatures allowed if a document satisfies QLD criteria for digital signatures (see table above for more info) 	<ul style="list-style-type: none"> - Digital signatures allowed if a document satisfies QLD criteria for digital signatures (see table above for more info) 	<ul style="list-style-type: none"> - Digital signatures allowed if a document satisfies QLD criteria for digital signatures (see table above for more info) 	<ul style="list-style-type: none"> - Digital signatures allowed if a document satisfies QLD criteria for digital signatures (see table above for more info) 	<ul style="list-style-type: none"> - Digital signatures allowed if a document satisfies QLD criteria for digital signatures (see table above for more info) 	<ul style="list-style-type: none"> - Digital signatures allowed if a document satisfies QLD criteria for digital signatures (see table above for more info)
WA	<ul style="list-style-type: none"> - Digital signing/witnessing not allowed 	<ul style="list-style-type: none"> - Digital signing/witnessing not allowed 	<ul style="list-style-type: none"> - Digital signing/witnessing not allowed 	<ul style="list-style-type: none"> - Digital signing/witnessing not allowed 	<ul style="list-style-type: none"> - Digital signing/witnessing not allowed 	<ul style="list-style-type: none"> - Digital signatures allowed and considered for general documents i.e. rental documents.
SA	<ul style="list-style-type: none"> - Digital signing/witnessing not allowed 	<ul style="list-style-type: none"> - Digital signing/witnessing not allowed 	<ul style="list-style-type: none"> - Digital signing/witnessing not allowed 	<ul style="list-style-type: none"> - Digital signing/witnessing not allowed 	<ul style="list-style-type: none"> - Digital signing/witnessing not allowed 	<ul style="list-style-type: none"> - Digital signatures considered for land dealings and legal proceedings (see SA Revenue for more info)
NT	<ul style="list-style-type: none"> - Digital signing/witnessing not allowed 	<ul style="list-style-type: none"> - Digital signing/witnessing not allowed 	<ul style="list-style-type: none"> - Digital signing/witnessing not allowed 	<ul style="list-style-type: none"> - Digital signing/witnessing not allowed 	<ul style="list-style-type: none"> - Digital signing/witnessing not allowed 	<ul style="list-style-type: none"> - Digital signatures allowed and considered for general documents i.e. rental documents.
TAS	<ul style="list-style-type: none"> - Digital signing/witnessing not allowed 	<ul style="list-style-type: none"> - Digital signing/witnessing not allowed 	<ul style="list-style-type: none"> - Digital signing/witnessing not allowed 	<ul style="list-style-type: none"> - Digital signing/witnessing not allowed 	<ul style="list-style-type: none"> - Digital signing/witnessing not allowed 	<ul style="list-style-type: none"> - Digital signatures allowed and considered for general documents i.e. rental documents.
ACT	<ul style="list-style-type: none"> - See NSW 	<ul style="list-style-type: none"> - See NSW 	<ul style="list-style-type: none"> - See NSW 	<ul style="list-style-type: none"> - See NSW 	<ul style="list-style-type: none"> - See NSW 	<ul style="list-style-type: none"> - See NSW

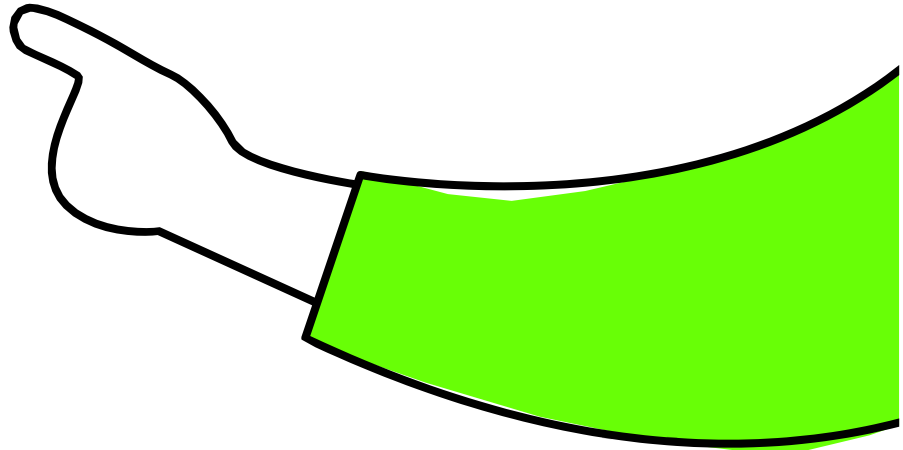




Conclusion

In conclusion, it is imperative that accountants and advisers seek external confirmation, do their own research in their relative state/territory to see which laws apply to them and their clients regarding signing laws for different document types. Here at LightYear Docs, we highly encourage the use of FuseSign to help execute your documents (where they can be executed digitally). Digital signing is an extremely exciting space for the tech and finance communities. I expect by the end of 2022 we will be seeing some very exciting and permanent developments.





References

Department of Prime Minister and Cabinet, *Modernising Document Execution* (Federal Government, 2021)

NSW Government, *Witnessing Legal Documents Remotely [Factsheet]* (NSW Government, 2021)

"Electronic Signature Laws & Regulations - Australia", *Adobe* (Webpage, 2021)

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<<https://www.forgov.qld.gov.au/information-and-communication-technology/recordkeeping-and-information-management/recordkeeping/manage-specific-record-types-and-activities/implement-and-use-digital-signatures#:~:text=Legal%20requirements,providing%20approval%20via%20an%20email>>

Rayner, Dale and Helena Busljeta, "SIGNING CONTRACTS ELECTRONICALLY JUST GOT EASIER FOR COMPANIES (AGAIN)", *King & Wood Mallesons* (Webpage, 2021)

<<https://www.kwm.com/au/en/insights/latest-thinking/signing-contracts-just-got-easier-for-companies-again.html>>