

## Legislative reforms in relation to execution of deeds and agreements CURRENT AS AT 22 MAY 2024

### Guidance notes:

1. This table contains information applicable for general commercial deeds and agreements governed by an Australian law.
2. The table does not apply to registrable instruments or other documents to be registered or lodged with government entities or authorities. It also does not apply to statutory declarations, affidavits, court forms and registrable forms of powers of attorney. Other considerations and requirements may apply to those documents.
3. As a general legal principle, formalities of execution of a deed (or other document) need to satisfy the requirements of either the governing law of the document or the law of the place of execution. However, it is usually good practice to rely on the governing law as this can be controlled and specified in the document.
4. For Australian companies incorporated under the *Corporations Act 2001* (Cth) (ie, companies with an 'ACN'), see the Federal law section of the table. It is Allens' view that the execution provisions in the *Corporations Act* prevail over any inconsistencies in state-based legislation.
5. For statutory corporations, consideration also needs to be given to any relevant legislation applying to the statutory body. For foreign corporations, consideration also needs to be given to the home law of the corporation and its constituent documents.
6. Generally, witnessing is required for deeds in all Australian jurisdictions, except those signed under Victorian or Queensland law or where an Australian company signs under s126 or s127 of the *Corporations Act*.
7. The procedural requirements for remote witnessing in state law are complicated. Failure to satisfy them may mean the execution is not validly witnessed and attested, and may not be apparent on the face of the document. So, where witnessing and attestation are required for the validity of the document (eg, execution of a deed by an individual in NSW), it is risky to rely on remote witnessing.

	INDIVIDUALS		AUSTRALIAN COMPANIES			STATUTORY CORPORATIONS AND FOREIGN CORPORATIONS	
	Deeds (form and execution)	Remote witnessing	Electronic execution under s127 (or s126)	Deeds (form and execution)	Remote witnessing	Deeds (form and execution)	Remote witnessing
Federal <sup>1</sup>	N/A Covered by state and territory	N/A Covered by state and territory	Electronic execution and 'split execution'	Deeds may be in electronic form and signed	Witnessing of the affixation of a common seal can	No changes to existing requirements.	No changes to existing requirements.

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**AUSTRALIAN COMPANIES**

**STATUTORY CORPORATIONS AND FOREIGN CORPORATIONS**

	<b>Deeds (form and execution)</b>	<b>Remote witnessing</b>	<b>Electronic execution under s127 (or s126)</b>	<b>Deeds (form and execution)</b>	<b>Remote witnessing</b>	<b>Deeds (form and execution)</b>	<b>Remote witnessing</b>
	legislation and common law.	legislation and common law.	permitted. <sup>2</sup> (Electronic execution is expressly allowed where individual signs as agent for company under s126 or where signing is under s127). <sup>3</sup>	electronically, under s127 or through authorised agent under s126. <sup>4</sup> No witnessing required (except for common seal under s127(2)). <sup>5</sup>  Appointment of individual agent to sign a deed does not need to be by a deed. <sup>6</sup>  Deeds do not need to be delivered. <sup>7</sup>	be done remotely. <sup>8</sup> Witnessing is not otherwise required because of s126.	Covered by state and territory legislation and common law, and law of incorporation.	Covered by state and territory legislation and common law, and law of incorporation.
New South Wales <sup>9</sup>	Deeds may be in electronic form and signed electronically. <sup>10</sup>  (Other requirements set out in common law and <a href="#">Conveyancing Act 1919 (NSW)</a> s38.)	Signing may be witnessed by audiovisual link, with a number of procedural requirements. <sup>11</sup>	Now permitted if by s126 or s127 and, if so, is governed by those sections and s110A.	Deeds may be in electronic form and signed electronically. <sup>12</sup> (Requirements for deeds signed by agent set out in s126.)	Witnessing not required except for common seal. If the parties elect to have the execution witnessed it may be by audiovisual link, with a number of procedural requirements, <sup>13</sup> except in the case of a common seal	Deeds may be in electronic form and signed electronically. <sup>14</sup> Other requirements set out under <a href="#">Conveyancing Act 1919 (NSW)</a> ss38 and 51A, and common law and law of incorporation.	Signing may be witnessed by audiovisual link, with a number of procedural requirements. <sup>15</sup>

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	<b>Deeds (form and execution)</b>	<b>Remote witnessing</b>	<b>Electronic execution under s127 (or s126)</b>	<b>Deeds (form and execution)</b>	<b>Remote witnessing</b>	<b>Deeds (form and execution)</b>	<b>Remote witnessing</b>
					(where s127(2A) applies).		
Victoria <sup>16</sup>	Deeds may be in electronic form and signed electronically. <sup>17</sup>  (Other requirements, including sealing, set out in <a href="#">Property Law Act 1958 (Vic)</a> ss73-73B.)	Deeds may be signed without a witness. <sup>18</sup>  Signing may be witnessed by audiovisual link, with some procedural requirements. <sup>19</sup>	Now permitted if by s126 or s127 and, if so, is governed by those sections and s110A.	Deeds may be in electronic form and signed electronically. <sup>20</sup> (Requirements for deeds signed by agent set out in s126, but execution language where signed by an individual agent should say the document is sealed. <sup>21</sup> )	Deeds may be signed without a witness, except under common seal. <sup>22</sup>  Where parties elect to have it witnessed or sign under common seal, signing (and, if applicable, affixation of seal) may be witnessed by audiovisual link, with some procedural requirements. <sup>23</sup>	Deeds may be in electronic form and signed electronically. <sup>24</sup>  (Other requirements set out in <a href="#">Property Law Act 1958 (Vic)</a> ss73 -74, common law and law of incorporation).	Deeds may be signed without a witness. <sup>25</sup>  Signing and affixation of seal may be witnessed by audiovisual link, with some procedural requirements. <sup>26</sup>
Queensland <sup>27</sup>	Deeds may be in electronic form and signed electronically. <sup>28</sup>  Except in certain circumstances, powers of attorney by individuals in	Generally, deeds may be signed without a witness. But, except in certain circumstances, powers of attorney by individuals in deeds and general	Now permitted if by s126 or s127 and, if so, is governed by those sections and s110A.	Deeds and general powers of attorney for corporations may be in electronic form and signed electronically. <sup>32</sup> (Requirements for deeds signed by	Deeds and general powers of attorney for corporations may be signed without a witness, except under common seal. <sup>36</sup>	Deeds and general powers of attorney for corporations may be in electronic form and signed electronically. <sup>39</sup>  Statutory corporations and	Deeds and general powers of attorney may be signed without a witness, except under common seal. <sup>43</sup>  Fixing of a seal may be witnessed by

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	<b>Deeds (form and execution)</b>	<b>Remote witnessing</b>	<b>Electronic execution under s127 (or s126)</b>	<b>Deeds (form and execution)</b>	<b>Remote witnessing</b>	<b>Deeds (form and execution)</b>	<b>Remote witnessing</b>
	deeds and general powers of attorney must be a physical document and witnessed. <sup>29</sup>	<p>powers of attorney must be a physical document and witnessed.<sup>30</sup></p> <p>There is no remote witnessing provision for deeds and powers of attorney.</p> <p>In relation to affidavits and statutory declarations, witnessing can be done by audiovisual link subject to complying with significant procedural requirements.<sup>31</sup></p>		<p>agent are set out in s126.)</p> <p>Deeds and general powers of attorney may be signed through officers in similar ways to s127, and with split execution.<sup>33</sup></p> <p>To sign a deed or general power of attorney on behalf of a company, an agent does not need to have been appointed by a deed.<sup>34</sup></p> <p>Where an agent or attorney is signing a deed, the language of the deed must indicate it is signing in such capacity.<sup>35</sup></p>	<p>Fixing of a seal may be witnessed by audiovisual link, if the document states it is being so witnessed.<sup>37</sup></p> <p>In relation to affidavits and statutory declarations, witnessing can be done by audiovisual link with some significant procedural requirements.<sup>38</sup></p>	<p>foreign corporations may sign deeds and general powers of attorney through their officers (without a seal) in similar ways to s127, and with split execution.<sup>40</sup></p> <p>In addition, foreign corporations may sign deeds and general powers of attorney according to their law of incorporation and statutory corporations may sign according to their statute.<sup>41</sup></p> <p>To sign a deed or general power of attorney on behalf of a corporation, an agent does not need to have been appointed by a deed.<sup>42</sup></p>	<p>audiovisual link, if the document states it is being so witnessed.<sup>44</sup></p> <p>In relation to affidavits and statutory declarations, witnessing can be done by audiovisual link with some significant procedural requirements.<sup>45</sup></p>

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	Deeds (form and execution)	Remote witnessing	Electronic execution under s127 (or s126)	Deeds (form and execution)	Remote witnessing	Deeds (form and execution)	Remote witnessing
South Australia	No changes to existing requirements, set out in common law and <a href="#">Law of Property Act 1936 (SA)</a> s41, and arguably, under <a href="#">Electronic Communications Act 2000 (SA)</a> .	No changes to existing requirements.	No state provisions, but now permitted if by s126 or s127 and, if so, is governed by those sections and s110A.	No changes to existing requirements under state law but now permitted if by s126 or s127 and governed by those sections.	No changes to existing requirements under state law but now permitted for common seal under s127(2A) with few procedural requirements.	No changes to existing requirements. Requirements are set out in <a href="#">Law of Property Act 1936 (SA)</a> s41, common law and law of incorporation, and arguably, under <a href="#">Electronic Communications Act 2000 (SA)</a> .	No changes to existing requirements. Remote witnessing is not permitted.
Western Australia	No changes to existing requirements, set out in common law and <a href="#">Property Law Act 1969 (WA)</a> s9, and arguably, under <a href="#">Electronic Transactions Act 2011 (WA)</a> .	The temporary COVID-measures have expired and remote witnessing is no longer permitted.	No state provisions, but now permitted if by s126 or s127 and, if so, is governed by those sections and s110A.	No changes to existing requirements under state law but now permitted if by s126 or s127 and, if so, is governed by those sections.	The temporary COVID-measures have expired and remote witnessing is no longer permitted under state law but now permitted for common seal under s127.	No changes to existing requirements. Requirements are set out in <a href="#">Property Law Act 1969 (WA)</a> ss9-10, common law and law of incorporation, and arguably, under <a href="#">Electronic Transactions Act 2011 (WA)</a> .	The temporary COVID-measures have expired and remote witnessing is no longer permitted.

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	Deeds (form and execution)	Remote witnessing	Electronic execution under s127 (or s126)	Deeds (form and execution)	Remote witnessing	Deeds (form and execution)	Remote witnessing
Tasmania	No changes to existing requirements, set out in common law and <a href="#">Conveyancing and Law of Property Act 1884 (Tas)</a> s63, and arguably, under <a href="#">Electronic Transactions Act 2000 (Tas)</a> .	The temporary COVID-measures have expired and remote witnessing is no longer permitted.	No state provisions, but now permitted if by s126 or s127 and, if so, is governed by those sections and s110A.	No changes to existing requirements under state law but now permitted if by s126 or s127 and governed by those sections.	The temporary COVID-measures have expired and remote witnessing is no longer permitted under state law but now permitted for common seal under s127.	No changes to existing requirements. Requirements are set out in <a href="#">Conveyancing and Law of Property Act 1884 (Tas)</a> s63, common law and law of incorporation, and arguably, under <a href="#">Electronic Transactions Act 2000 (Tas)</a> .	The temporary COVID-measures have expired and remote witnessing is no longer permitted.
Australian Capital Territory	No changes to existing requirements, set out in common law and <a href="#">Civil Law (Property) Act 2006 (ACT)</a> s219, and arguably, under <a href="#">Electronic Transactions Act 2001 (ACT)</a> .	The temporary COVID-measures have expired and remote witnessing is no longer permitted.	No territory provisions, but now permitted if by s126 or s127 and, if so, is governed by those sections and s110A.	No changes to existing requirements under territory law but now permitted if by s126 or s127 and, if so, is governed by those sections.	The temporary COVID-measures have expired and remote witnessing is no longer permitted under territory law but now permitted for common seal under s127.	No changes to existing requirements. Requirements are set out in <a href="#">Civil Law (Property) Act 2006 (ACT)</a> s227, common law and law of incorporation, and arguably, under <a href="#">Electronic Transactions Act 2001 (ACT)</a> .	The temporary COVID-measures have expired and remote witnessing is no longer permitted.

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	Deeds (form and execution)	Remote witnessing	Electronic execution under s127 (or s126)	Deeds (form and execution)	Remote witnessing	Deeds (form and execution)	Remote witnessing
Northern Territory	No changes to existing requirements, set out in common law and <a href="#">Law of Property Act 2000 (NT)</a> ss46-49, and arguably, under <a href="#">Electronic Transactions (Northern Territory) Act 2000 (NT)</a> .	No changes to existing requirements. Remote witnessing not permitted.	No territory provisions, but now permitted if by s126 or s127 and, if so, is governed by those sections and s110A.	No changes to existing requirements under territory law but now permitted if by s126 or s127 and, if so, is governed by those sections.	No changes to existing requirements under territory law but now permitted for common seal under s127.	No changes to existing requirements. Requirements are set out in <a href="#">Law of Property Act 2000 (NT)</a> ss46-49, common law and law of incorporation, and arguably, under <a href="#">Electronic Transactions (Northern Territory) Act 2000 (NT)</a> .	No changes to existing requirements. Remote witnessing not permitted.

<sup>1</sup> [Corporations Act 2001 \(Cth\)](#) as permanently amended by [Corporations Amendment \(Meetings and Documents\) Act 2022 \(Cth\)](#).

<sup>2</sup> Section 110A [Corporations Act 2001 \(Cth\)](#) (as amended).

<sup>3</sup> Sections 126(6) and 127(3A) [Corporations Act 2001 \(Cth\)](#) (as amended).

<sup>4</sup> Sections 110A, 126(6) and 127(3A) [Corporations Act 2001 \(Cth\)](#) (as amended).

<sup>5</sup> Section 126(6) [Corporations Act 2001 \(Cth\)](#) (as amended).

<sup>6</sup> Sections 126(4) and 127(3A) [Corporations Act 2001 \(Cth\)](#) (as amended).

<sup>7</sup> Sections 126(7) and 127(3B) [Corporations Act 2001 \(Cth\)](#) (as amended).

<sup>8</sup> Section 127(2A) [Corporations Act 2001 \(Cth\)](#) (as amended).

<sup>9</sup> Part 2B of the [Electronic Transactions Act 2000 \(NSW\)](#), as inserted by section 1.5 of the [Stronger Communities Legislation Amendment \(Courts and Civil\) Act 2020 \(NSW\)](#).

<sup>10</sup> Section 38A [Conveyancing Act 1919 \(NSW\)](#).

<sup>11</sup> Sections 14F to 14J [Electronic Transactions Act 2000 \(NSW\)](#) as amended by [Electronic Transactions Amendment \(Remote Witnessing\) Act 2021 \(NSW\)](#).

<sup>12</sup> Section 38A [Conveyancing Act 1919 \(NSW\)](#) as amended by the [Customer Service Legislation Amendment Act 2021 \(NSW\)](#).

- <sup>13</sup> Sections 14G to 14I [Electronic Transactions Act 2000 \(NSW\)](#) as amended by [Electronic Transactions Amendment \(Remote Witnessing\) Act 2021 \(NSW\)](#).
- <sup>14</sup> Section 38A [Conveyancing Act 1919 \(NSW\)](#).
- <sup>15</sup> Sections 14G to 14I [Electronic Transactions Act 2000 \(NSW\)](#) as amended by [Electronic Transactions Amendment \(Remote Witnessing\) Act 2021 \(NSW\)](#).
- <sup>16</sup> [Electronic Transactions \(Victoria\) Act 2000 \(Vic\)](#) as amended by s67 [Justice Legislation Amendment \(System Enhancements and Other Matters\) Act 2021 \(Vic\)](#).
- <sup>17</sup> Section 12A [Electronic Transactions \(Victoria\) Act 2000 \(Vic\)](#) (as amended).
- <sup>18</sup> Witnessing of deeds has never been a requirement of Victorian law except affixation of common seal.
- <sup>19</sup> Section 12 [Electronic Transactions \(Victoria\) Act 2000 \(Vic\)](#) (as amended).
- <sup>20</sup> Section 12A [Electronic Transactions \(Victoria\) Act 2000 \(Vic\)](#) (as amended).
- <sup>21</sup> Section 73A [Property Law Act 1958 \(Vic\)](#).
- <sup>22</sup> Witnessing of deeds has never been a requirement of Victorian law except affixation of common seal.
- <sup>23</sup> Section 12 [Electronic Transactions \(Victoria\) Act 2000 \(Vic\)](#) (as amended).
- <sup>24</sup> Section 12A [Electronic Transactions \(Victoria\) Act 2000 \(Vic\)](#) (as amended).
- <sup>25</sup> Witnessing of deeds has never been a requirement of Victorian law except affixation of common seal.
- <sup>26</sup> Section 12 [Electronic Transactions \(Victoria\) Act 2000 \(Vic\)](#) (as amended).
- <sup>27</sup> [Property Law Act 1974 \(Qld\)](#), [Oaths Act 1867 \(Qld\)](#) and [Powers of Attorney Act 1998 \(Qld\)](#) as amended by the [Justice and Other Legislation Amendment Act 2021 \(Qld\)](#) and the [Justice and Other Legislation Amendment Act 2023 \(Qld\)](#). Note: The [Property Law Act 1974 \(Qld\)](#) (as amended) is to be repealed by the new [Property Law Act 2023 \(Qld\)](#). However, the new 2023 Act makes no substantive change to the law relating to the execution and form of deeds. The relevant provisions of the new 2023 Act will commence once proclaimed in the government gazette. This has not occurred as at the date of this document.
- <sup>28</sup> Section 46D [Property Law Act 1974 \(Qld\)](#) (as amended) (and s50 [Property Law Act 2023 \(Qld\)](#) – see above note on the commencement of the 2023 Act).
- <sup>29</sup> Section 46A [Property Law Act 1974 \(Qld\)](#) (as amended) (and s47 [Property Law Act 2023 \(Qld\)](#) – see above note on the commencement of the 2023 Act).
- <sup>30</sup> Section 46A [Property Law Act 1974 \(Qld\)](#) (as amended) (and s47 [Property Law Act 2023 \(Qld\)](#) – see above note on the commencement of the 2023 Act).
- <sup>31</sup> Part 6A, Division 5, Subdivision 2 [Oaths Act 1867 \(Qld\)](#) (as amended).
- <sup>32</sup> For deeds, s46D [Property Law Act 1974 \(Qld\)](#) (as amended) (and s50 [Property Law Act 2023 \(Qld\)](#) – see above note on the commencement of the 2023 Act). For general powers of attorney, s24F [Powers of Attorney Act 1998 \(Qld\)](#).
- <sup>33</sup> For deeds, ss46F and 46H [Property Law Act 1974 \(Qld\)](#) (as amended) (and ss52 and 55 [Property Law Act 2023 \(Qld\)](#) – see above note on the commencement of the 2023 Act). For general powers of attorney, ss24H and 24K [Powers of Attorney Act 1998 \(Qld\)](#).
- <sup>34</sup> For deeds, s46F(1)(d) [Property Law Act 1974 \(Qld\)](#) (as amended) (and s52(1)(d) [Property Law Act 2023 \(Qld\)](#) – see above note on the commencement of the 2023 Act). For general powers of attorney, s24H(1)(d) [Powers of Attorney Act 1998 \(Qld\)](#).
- <sup>35</sup> For deeds, s46F(7) [Property Law Act 1974 \(Qld\)](#) (as amended) (and s52(7) [Property Law Act 2023 \(Qld\)](#) – see above note on the commencement of the 2023 Act). For general powers of attorney, s24H(7) [Powers of Attorney Act 1998 \(Qld\)](#).
- <sup>36</sup> For deeds, s46F [Property Law Act 1974 \(Qld\)](#) (as amended) (and s52 [Property Law Act 2023 \(Qld\)](#) – see above note on the commencement of the 2023 Act). For general powers of attorney, s24H [Powers of Attorney Act 1998 \(Qld\)](#).
- <sup>37</sup> Section 46F(3) [Property Law Act 1974 \(Qld\)](#) (as amended) (and s52(4) [Property Law Act 2023 \(Qld\)](#) – see above note on the commencement of the 2023 Act). For general powers of attorney, s24H(3) [Powers of Attorney Act 1998 \(Qld\)](#).
- <sup>38</sup> Part 6A, Division 5, Subdivision 2 [Oaths Act 1867 \(Qld\)](#) (as amended).
- <sup>39</sup> For deeds, s46D [Property Law Act 1974 \(Qld\)](#) (as amended) (and s50 [Property Law Act 2023 \(Qld\)](#) – see above note on the commencement of the 2023 Act). For general powers of attorney, s24F [Powers of Attorney Act 1998 \(Qld\)](#).
- <sup>40</sup> For deeds, ss46F and 46H [Property Law Act 1974 \(Qld\)](#) (as amended) (and ss52 and 55 [Property Law Act 2023 \(Qld\)](#) – see above note on the commencement of the 2023 Act). For general powers of attorney, ss24H and 24K [Powers of Attorney Act 1998 \(Qld\)](#).
- <sup>41</sup> For deeds, ss46F(2A) and 46F(5) [Property Law Act 1974 \(Qld\)](#) (as amended) (and ss52(3) and 52(5) [Property Law Act 2023 \(Qld\)](#) – see above note on the commencement of the 2023 Act). For general powers of attorney, ss24H(4) and 24H(5) [Powers of Attorney Act 1998 \(Qld\)](#).



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<sup>42</sup> For deeds, s46F(1)(d) [Property Law Act 1974 \(Qld\)](#) (as amended) (and s52(1)(d) [Property Law Act 2023 \(Qld\)](#) – see above note on the commencement of the 2023 Act). For general powers of attorney, s24H(1)(d) [Powers of Attorney Act 1998 \(Qld\)](#).

<sup>43</sup> For deeds, s46F [Property Law Act 1974 \(Qld\)](#) (as amended) (and s52 [Property Law Act 2023 \(Qld\)](#) – see above note on the commencement of the 2023 Act). For general powers of attorney, s24H [Powers of Attorney Act 1998 \(Qld\)](#).

<sup>44</sup> For deeds, s46F(3) [Property Law Act 1974 \(Qld\)](#) (as amended) (and s52(4) [Property Law Act 2023 \(Qld\)](#) – see above note on the commencement of the 2023 Act). For general powers of attorney, s24H(3) [Powers of Attorney Act 1998 \(Qld\)](#).

<sup>45</sup> Part 6A, Division 5, Subdivision 2 [Oaths Act 1867 \(Qld\)](#) (as amended).