

## **Decision Checklist: Checklist for the use of electronic signatures under the Electronic Transactions Act 1999 (ETA)**

This checklist has been authored by the **LexisNexis Legal Writer team**

### **Introductory note:**

Electronic signatures are increasingly used to execute documents in a variety of contexts. The [Electronic Transactions Act 1999](#) (Cth) (ETA) provides a framework for the valid use of electronic signatures, while the [Electronic Transactions Regulations 2000](#) (Cth) provides a list of legislative exemptions. Subject to the ETA, the States and Territories also have further legislative exemptions of circumstances where an electronic signature cannot be used.

### **How to use this checklist:**

This checklist can be used to assist in determining whether an electronic signature may be used in the circumstances, with reference to Commonwealth, State and Territory legislation.

### **Other notes:**

Please see the links to State or Territory-based legislation at the end of this checklist.

### **Links to related content:**

[Electronic Transactions Act 1999](#) (Cth)

[Electronic Transactions Regulations 2000](#) (Cth)



## Decision Checklist: Checklist for the use of electronic signatures under the Electronic Transactions Act 1999 (ETA)

Can an electronic signature be used?




Check [Schedule 1](#) of the Electronic Transactions Regulations 2000 to see if the legislation is exempt from the ETA



If 'YES' the use of an electronic signature may not be appropriate in the circumstances (see also TABLE 2)

If 'NO' consider whether an electronic signature is permitted under state law (see TABLE 1)



TABLE 1: Documents for which an electronic signature CANNOT be used	
<b>COURT DOCUMENTS</b>	
➤ Documents required to be signed, lodged or filed with a judicial body in connection with legal proceedings ( <b>NSW, QLD</b> ).	
➤ Documents required to be produced to a judicial body in connection with legal proceedings or to a party to legal proceedings in connection with those proceedings ( <b>NSW, QLD</b> ).	
➤ Documents required to be retained that have been lodged, filed with or produced to a judicial body in connection with legal proceedings or that have been admitted in evidence in any legal proceedings held before a judicial body or that have been issued by a judicial body in connection with any legal proceedings ( <b>NSW, QLD</b> ).	



<b>WILLS AND POWERS OF ATTORNEY</b>	
➤ A requirement or permission relating to the creation, execution or revocation of wills, codicils and other testamentary instruments ( <b>NT, TAS, VIC, WA</b> ).	
➤ A requirement or permission relating to enduring guardians or powers of attorney ( <b>TAS</b> ) or relating to the creation of an instrument appointing an enduring power of attorney or appointing an attorney to manage a person's affairs ( <b>WA</b> ) or in respect of creating, revoking or signing a written power of attorney ( <b>NT</b> ).	
<b>DOCUMENTS REQUIRING SERVICE</b>	
➤ Documents required to be delivered by personal service ( <b>NSW, NT, TAS, QLD, SA, VIC, WA</b> ) or by post ( <b>NSW, QLD</b> ), other than laws relating to the disposition of land, to the creation or disposition of an interest in land, or to any other dealing or any other action relating to an interest in land ( <b>SA</b> ).	
➤ Written information which is required to be personally served ( <b>NT</b> ).	
<b>DOCUMENTS REQUIRING A WITNESS</b>	
➤ Documents that need to be verified, authenticated, attested or witnessed under the signature of a person other than the author of the document ( <b>NSW, SA, WA, QLD</b> ), except for laws relating to the disposition of land, to the creation or disposition of an interest in land, or to any other dealing or other action relating to an interest in land ( <b>SA</b> ).	
<b>BANKING AND FINANCE DOCUMENTS</b>	
➤ Any authorisation under the <a href="#">Trusts Accounts Act 1973</a> ( <b>QLD</b> ).	
➤ Transactions on a regulated exchange or foreign exchange transactions ( <b>QLD</b> ).	
➤ Inter-bank payment systems, agreements or clearance and settlement systems relating to securities or other financial assets or instruments ( <b>QLD</b> ).	
➤ The transfer of security rights in the sale, loan or holding of an agreement to repurchase securities or other financial assets or instruments held with an intermediary ( <b>QLD</b> ).	
➤ Bills of exchange, promissory notes, consignment notes, bills of lading or warehouse receipts ( <b>QLD</b> ).	
➤ Any transferable document or other instrument that entitles the bearer or beneficiary to claim the delivery of goods or payment of a sum of money ( <b>QLD</b> ).	
<b>OTHER</b>	
➤ <a href="#">Section 13</a> of the Second-hand Dealers and Pawnbrokers Act 1996 ( <b>SA</b> ).	



**If permitted under state law, is the use of an electronic signature uncertain for the document type?**



<b>TABLE 2: Documents for which the use of an electronic signature is uncertain</b>		<b>?</b>
<b>DEEDS</b>		
<ul style="list-style-type: none"> <li>➤ A deed requires a witness for its execution. Attestation by electronic signature is excluded by law in NSW, QLD, WA and SA and uncertainty exists as to whether a witness can sign a document electronically in the other states and territories.</li> </ul>		
<b>DOCUMENTS SIGNED UNDER S 127 OF THE CORPORATIONS ACT 2001</b>		
<ul style="list-style-type: none"> <li>➤ The Corporations Act is <b>exempt</b> from the ETA pursuant to the <a href="#">Electronic Transactions Regulations 2000</a> (Cth). <a href="#">Section 127(1)</a> of the Corporations Act allows a company to execute documents without a common seal if signed by two company directors, a director and a secretary or a sole director/secretary (if applicable). Section 129 of the Corporations Act states that if documents appear to have been executed in accordance with section 127(1), it can be assumed that these documents have been validly executed. However, if documents under s 127(1) are executed with electronic signatures, the other party cannot rely on the ETA as providing legislative validation for the method of execution, given that the Corporations Act is exempt from the ETA.</li> </ul>		
<b>DOCUMENTS THAT NEED TO BE REGISTERED</b>		
<ul style="list-style-type: none"> <li>➤ Certain regulators and third parties will require wet ink signatures. Land titles offices, stamp duty authorities and regulators such as ASIC or ASX may require originals that have been physically signed. Check with the relevant authority whether electronically signed documents will be accepted as valid.</li> </ul>		





**If an electronic signature is permitted in the circumstances, can the substantive requirements for an electronic signature be met?**



<b>TABLE 3: Substantive requirements for the use of an electronic signature</b> <span style="float: right;">✓</span>	
<b>(1) IDENTIFICATION: Has a method been used to identify the signatory and indicate their intent to approve the information communicated?</b>	
<ul style="list-style-type: none"> <li>➤ A formal verification of identity is not required so long as the identity of the signatory can be readily determined.</li> <li>➤ Intent can be shown through the action of inserting or drawing an electronic signature or by the signatory typing their name.</li> <li>➤ Protocols should be maintained around the use of electronic signatures, including password-gating access and implementing a procedure for authorising their use.</li> </ul>	
<b>(2) RELIABILITY: Is the method of identification as reliable as would be considered appropriate for the purposes of the communication?</b>	
<ul style="list-style-type: none"> <li>➤ Reliability should be considered objectively in light of all the circumstances, including the type of document being signed and any other relevant agreements.</li> </ul>	
<b>(3) CONSENT: Has the counterparty consented to the use of electronic communication to fulfil the signature requirement?</b>	
<ul style="list-style-type: none"> <li>➤ If dealing with an authority or statutory body, check whether electronic signatures are accepted as binding.</li> <li>➤ Where possible, a clause should be inserted into all relevant contracts stating that the parties may use and be bound by electronic signatures.</li> </ul>	



**If an electronic signature is permitted in the circumstances, and the substantive requirements can be met, an electronic signature may be used.**



FURTHER REFERENCES
<b>Commonwealth Legislation</b> <ul style="list-style-type: none"> <li>➤ <a href="#">Electronic Transactions Act 1999</a> (Cth)</li> <li>➤ <a href="#">Electronic Transactions Regulations 2000</a> (Cth)</li> </ul>
<b>Australian Capital Territory</b> <ul style="list-style-type: none"> <li>➤ <a href="#">Electronic Transaction Act 2001</a> (ACT)</li> </ul>
<b>New South Wales Legislation</b> <ul style="list-style-type: none"> <li>➤ <a href="#">Electronic Transactions Act 2000</a> (NSW)</li> <li>➤ <a href="#">Electronic Transaction Regulations 2017</a> (NSW)</li> </ul>
<b>Northern Territory Legislation</b> <ul style="list-style-type: none"> <li>➤ <a href="#">Electronic Transactions (Northern Territory) Act 2000</a> (NT)</li> <li>➤ <a href="#">Electronic Transactions (Northern Territory) Regulations 2001</a> (NT)</li> </ul>
<b>Queensland Legislation</b> <ul style="list-style-type: none"> <li>➤ <a href="#">Electronic Transactions (Queensland) Act 2001</a> (Qld)</li> </ul>
<b>South Australian Legislation</b> <ul style="list-style-type: none"> <li>➤ <a href="#">Electronic Communications Act 2000</a> (SA)</li> <li>➤ <a href="#">Electronic Transactions Regulations 2017</a> (SA)</li> </ul>
<b>Tasmanian Legislation</b> <ul style="list-style-type: none"> <li>➤ <a href="#">Electronic Transactions Act 2000</a> (Tas)</li> <li>➤ <a href="#">Electronic Transactions Regulations 2011</a> (Tas)</li> </ul>
<b>Victorian Legislation</b> <ul style="list-style-type: none"> <li>➤ <a href="#">Electronic Transactions (Victoria) Act 2000</a> (Vic)</li> <li>➤ <a href="#">Electronic Transactions (Victoria) Regulations 2010</a> (Vic)</li> </ul>
<b>Western Australian Legislation</b> <ul style="list-style-type: none"> <li>➤ <a href="#">Electronic Transactions Act 2011</a> (WA)</li> <li>➤ <a href="#">Electronic Transactions Regulations 2012</a> (WA)</li> </ul>