
The Legality of Electronic Signatures

Australian law includes various Electronic Transactions statutes ('ET Laws') at both the state and federal level. Collectively, the ET Laws allow the vast majority of documents to be executed electronically.

Rule of general validity

The ET Laws establish as a general rule that electronic signatures carry the same weight and legal effect as paper and ink signatures. The Electronic Transactions Act 1999 (Cth) states: "For the purposes of a law of the Commonwealth, a transaction is not invalid because it took place wholly or partly by means of one or more electronic communications."

Application of the ET laws

The ET Laws do not apply to all transactions. Certain documents are excluded, including wills, powers of attorney, and some documents that relate to dealings with land.

It is noteworthy that exclusion from the ET Laws alone does not prevent a document from being signed electronically. The validity of electronic signatures on documents that are excluded will be dependent on the general law. The general law in some instances has set a low threshold in determining that electronic signatures are valid.

Record retention

Certain laws in Australia require a person to record information in writing. If the information is recorded in electronic form it will be taken to meet these requirements where:

- (a) at the time of recording, it was reasonable to expect that the information would be readily accessible to use for subsequent reference; and
- (b) it is recorded in a particular kind of data storage device to the extent that this is required.

Requirements under Australian law

Subject to certain provisions in the ET Laws and any other exclusions that may apply, an electronic signature will be considered legally valid if it meets three requirements:

1/ Identification requirement

A method is used to identify the person signing and to indicate the person's intention in respect of the information communicated.

2/ Reliability requirement

The method used for signing was reliable when all of the circumstances are taken into account.

3/ Consent requirement

The party to whom the signature is required to be given consents to the signing party executing the document by way of electronic signature.

Beyond the ET laws–Best practices

Compliance with the electronic signature laws is only a basic step in selecting a system for electronic signature transactions. Like their paper counterparts, electronically signed documents may become the subject of a dispute.

In the event of a dispute regarding an electronically executed contract, merely complying with the ET Laws is not enough. The signature process must provide sufficient proof to uphold the transaction.

To this end, DocuSign's comprehensive approach includes:

- Audit trail tracks all signer actions;
- Secure encryption so documents can be read and signed only by designated users;
- Unique signatures created by each user, accessible only to that user, and stored securely online;
- Sign document blocks so users can 'initial' and 'sign' specific areas of a document;
- User authentication leveraging email, access code, and/ or third-party ID check;
- Time-stamping of every step in the document process; and
- Transaction summary provides complete document history.

Admissibility into evidence

The Commonwealth Evidence Act and its State and Territory counterparts generally allow for electronic records and their productions to be admissible into evidence. In the case of an electronic signature, then, it is important to demonstrate to the satisfaction of the courts that:

- (a) the appropriate level and amount of information surrounding the signing process was retained; and
- (b) the system used to retain the information was reliable.

Using a reliable e-signature service, such as DocuSign eSignature, will assist you in meeting this threshold.

About DocuSign

DocuSign helps organisations connect and automate how they prepare, sign, act on and manage agreements. As part of the DocuSign Agreement Cloud, DocuSign offers eSignature: the world's #1 way to sign electronically on practically any device, from almost anywhere, at any time. Today, more than 500,000 customers and hundreds of millions of users in over 180 countries use DocuSign to accelerate the process of doing business and to simplify people's lives.

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