



# fact sheet

NUMBER 37

## Execution clauses

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This fact sheet sets out some relevant considerations when determining what execution clause should be used when executing a document (including a contract) or a deed. If an appropriate execution clause is not used, it may mean that the document or deed is not duly executed and may not be binding. Some commonly used execution clauses are provided in Appendix 1. A table of execution requirements for deeds across the States and Territories is provided in Appendix 2.

### Execution of documents (including contracts)

#### Non-corporate Commonwealth entities

Under the *Public Governance, Performance and Accountability Act 2013* (Cth) (PGPA Act), a non-corporate Commonwealth entity is a Commonwealth entity that is not a body corporate (eg a department of state or parliamentary department). It is a part of the legal entity of the Commonwealth and so executes documents in the name of the Commonwealth.

Consistently with s 23 of the PGPA Act, the accountable authority of a non-corporate Commonwealth entity, or their delegate, may sign documents on behalf of the Commonwealth. If a delegate is signing, the delegate should be satisfied that executing any document comes within the scope of their delegation (which can be limited by reference matters, including a dollar value, types of documents, the purpose of the document and other factors – for example, whether they contain an indemnity granted by the Commonwealth).

Note that documents signed by agency without proper authority can still be legally binding on the Commonwealth. This can compound the damage done by not following proper process.

For more information on delegations and authorisations, see AGS Legal Briefing No 74, *Delegations, authorisations and the Carltona principle*.

#### Corporate Commonwealth entities

A corporate Commonwealth entity is a Commonwealth entity that is a body corporate. It is legally separate from the Commonwealth.

The governing legislation of a corporate Commonwealth entity should be checked to confirm that the entity has the power to enter into the relevant arrangement and, if it does, the methods by which it may execute a document or deed.

Where no method of execution is prescribed under the governing legislation, you should ensure that the document is executed by an appropriately authorised official or officials in accordance with the usual legal requirements for the type of document.

Even if a corporate Commonwealth entity has particular legislation governing its establishment and operations, the entity may not have the legal right to enter into the relevant arrangement, including by executing a document or deed in its own name. If this is the case then a document or deed may need to be entered into in the name of the Commonwealth. In this situation, you should seek legal advice.

If the corporate Commonwealth entity is a Commonwealth company under the PGPA Act, see ‘Australian companies (including Commonwealth companies)’ below.

For more information on delegations and authorisations for corporate Commonwealth entities, see AGS Fact Sheet No 11, *Corporate Commonwealth entities – authorisations and delegations*.

## States and Territories

Similar considerations apply to execution by a State or Territory, or by a State or Territory statutory authority. If you are unsure about what execution requirements apply, you should seek legal advice.

## Australian companies (including Commonwealth companies)

### Corporations Act companies

An Australian *Corporations Act 2001* (Cth) company (including a Commonwealth company under the PGPA Act) may execute a document in one of 5 ways:

- by affixing the common seal
- by the company officers without a common seal
- by an agent
- by an attorney
- by an alternative method in the company’s constitution.

#### 1. *Execution by affixing the common seal*

An Australian company may sign a document by affixing its common seal. The common seal is an implement (typically a stamp) used to place a mark or impression on a document to authorise or agree to the document. The common seal includes the name of the company and its Australian Company Number (ACN), or its Australian Business Number (ABN) where the last 9 digits of its ABN are the same as, and in the same order as, the last 9 digits of its ACN.

If a company chooses to execute a document using its common seal then usually the common seal must be affixed in the presence of:

- 2 directors of the company
- a director and a company secretary of the company or
- the sole director, who is also the sole company secretary, of a proprietary company.

These witnesses indicate their presence by signing the document next to the common seal. The way a company seals a document can be affected by the company’s constitution, which may set out how the common seal may be affixed. For example, the constitution may require that the company’s board of directors pass a resolution authorising the affixing of the common seal to a document.

Execution using a common seal is becoming increasingly uncommon in modern Australian commercial practice.

#### 2. *Execution by the company officers without a common seal*

Under the Corporations Act, Australian companies are not required to have a common seal. If an Australian company does not have a common seal, or does not wish to use its common seal, a document can be executed by certain company officers signing the document in accordance with s 127(1) of the Corporations Act. The document must be signed by:

- 2 directors of the company
- a director and a company secretary of the company or
- the sole director, who is also the sole company secretary, of a proprietary company.

#### 3. *Execution by agent*

An individual acting with a company’s express or implied authority and on behalf of the company may execute a document (other than a deed). This individual is usually referred to

as an 'authorised signatory' or 'authorised representative'. The power to act as the company's agent can be conferred by a resolution of the board of the company. Refer to 'Execution by attorney or agent' below.

4. *Execution by attorney*

Refer to 'Execution by attorney or agent' below.

5. *Execution by alternative method in company's constitution*

A company's constitution may provide an alternative method by which the company may execute a document. However, it is uncommon for a constitution to prescribe an alternative method of execution. The company's constitution should be consulted and you should seek legal advice if you are relying on an alternative method of execution.

### *Corporations Act assumptions*

Under the Corporations Act, a person dealing with an Australian company is entitled to rely on certain assumptions, including that a document will bind the company if it appears to be signed in accordance with s 127(1) (method 2 above) or if it is sealed and witnessed in accordance with s 127(2) (method 1 above).

Where a document (other than a deed) has been executed by an agent in accordance with s 126 of the Corporations Act (method 3 above), a person is entitled to assume that a person held out by the company to be its agent was duly appointed and has the authority customarily exercised or performed by an agent of that kind from a similar company.

Note that the law relating to agency and deeds will continue to apply regardless of the right to rely on assumptions as provided for under the Corporations Act. Deeds must be executed by a company:

- by the company officers without a common seal in accordance with s 127(1) of the Corporations Act (method 2 above)
- by validly affixing the common seal (method 1 above) or
- under power of attorney (method 4 above).

A deed cannot be validly executed on behalf of a company by an individual acting with the company's express or implied authority – in other words, by an agent (method 3 above).

See 'Execution of deeds' and 'Execution by attorney or agent' below for more information.

### *Execution by companies not incorporated or under external administration*

Special rules apply to execution of documents by companies that have not yet been incorporated, or that are being externally administered (eg companies in liquidation, administration or receivership). For example, subject to certain approvals, the powers and functions of a company under administration can only be performed or exercised by the administrator acting as an officer of that company and not the officers of the company. If you are dealing with such a company, you should seek legal advice.

## **Aboriginal and Torres Strait Islander corporations**

A *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) (CATSI Act) corporation may execute a document in one of 5 ways:

- by affixing the common seal
- by the corporation officers without a common seal
- by an agent
- by an attorney
- by an alternative method in the company's constitution.

1. *Execution by affixing the common seal*

A CATSI Act corporation may sign a document by affixing its common seal. The common seal includes the corporation's name and its Indigenous Corporation Number (ICN).

If the corporation chooses to execute a document using its common seal then usually the common seal must be affixed in the presence of:

- 2 directors of the corporation
- a director and a corporation secretary of the corporation or
- for corporations with only 1 director, by that director.

As for Corporations Act companies, similar considerations apply to CATSI Act corporations concerning witnesses.

2. *Execution by the corporation officers without a common seal*

A CATSI Act corporation is not required to have a common seal. If the corporation does not have a common seal, or does not wish to use its common seal, a document can be executed by being signed by:

- 2 directors of the corporation
- a director and a corporation secretary of the corporation or
- for corporations with only 1 director, by that director.

3. *Execution by agent*

An individual acting with a CATSI Act corporation's express or implied authority and on behalf of the corporation may execute a document (other than a deed). This individual is usually referred to as an authorised signatory or authorised representative. The power to act as the corporation's agent can be conferred by a resolution of the board of the corporation. Refer to 'Execution by attorney or agent' below.

4. *Execution by attorney*

Refer to 'Execution by attorney or agent' below.

5. *Execution by alternative method in corporation's constitution*

A CATSI Act corporation's constitution may provide an alternative method by which the corporation may execute a document. However, it is uncommon for a constitution to prescribe an alternative method of execution. The corporation's constitution should be consulted and you should seek legal advice if you are relying on an alternative method of execution.

### *CATSI Act assumptions*

Under the CATSI Act, a person dealing with a CATSI Act corporation is entitled to rely on certain assumptions, including that a document will bind the corporation if it appears to be signed in accordance with s 99-5(1) (method 2 above) or if it is sealed and witnessed in accordance with s 99-5(2) (method 1 above).

Where a document (other than a deed) has been executed by an agent in accordance with s 99-1 of the CATSI Act (method 3 above), a person is entitled to assume that a person held out by the corporation to be its agent was duly appointed and has the authority customarily exercised or performed by an agent of that kind of a similar corporation.

As for Corporations Act companies, similar considerations in relation to deeds and the law of agency apply to CATSI Act corporations.

### *Execution by corporations not incorporated or under external administration*

As for Corporations Act companies, special rules apply to execution of documents by CATSI Act corporations that have not yet been incorporated, or that are being externally administered.

## **Individuals**

An individual may execute a document by simply signing it. Although not generally required by law, it is prudent for an individual's signature to be witnessed by a person who is not party to the document.

See 'Execution of deeds' below for the additional witnessing requirements where an individual executes a deed.

## Other Australian entities

When dealing with other entities, such as local governments and universities, you should check the relevant legislation or other relevant constituent documents to determine whether the entity has the power to enter into the relevant arrangement and, if it does, the methods by which it may execute a document or deed.

If you are unclear about whether an entity has the power to enter into the relevant arrangement, or the methods by which it may execute a document or deed, then you should seek legal advice.

## Foreign entities

There is no Australian legislation which governs how foreign entities should execute documents or deeds. Foreign entities should execute a document or a deed in accordance with the laws of their jurisdiction. Depending on the nature of the transaction, it may be appropriate to require the foreign entity to provide an opinion letter in favour of the Commonwealth entity from the foreign entity's external legal advisers stating that the document has been executed in accordance with all local legal requirements. For low-risk arrangements, written confirmation from a senior officer of the entity to the same effect should be obtained. For high-risk or high-value transactions, you should consider whether specific advice should be sought from a legal adviser practising in the relevant jurisdiction.

Where a foreign entity is executing a deed, it should do so by affixing its seal if it has one. If it does not have one, the execution clause should include a place for a seal to ensure that the deed complies with Australian legal requirements.

A foreign company that is carrying on a business in Australia must be registered under Pt 5B.2 of the Corporations Act. Upon registration, the foreign company receives an Australian Registered Body Number (ARBN). The foreign company must set out in its business documents the following information:

- its name
- its ARBN
- its place of incorporation or formation
- that the liability of members is limited (if appropriate).

Information on registered foreign companies, including details of directors and local agents, can be obtained from the Australian Securities and Investments Commission. This information can be used to confirm details of the officers that have executed the document.

Where execution of a document by a foreign company takes place outside of Australia, you should consider requiring the execution to be notarised by a notary public to add to your level of confidence that the signatories have been properly identified and the method of execution is appropriate for the relevant jurisdiction.

## Partnerships

For a partnership to be bound by a document or a deed, either all partners to the partnership or an individual authorised by all the partners (whether or not the individual is a partner) should execute the document or deed. Typically, documents or deeds will be executed by a partner on behalf of a partnership.

An authorised individual may only execute a deed on behalf of a partnership where, by a deed executed by all the partners in the partnership, they have been authorised to do so.

To verify that an individual is validly authorised to enter into an arrangement on behalf of a partnership, you should request a copy of the relevant authority given by the partnership. This authority may be set out in the partnership deed or a power of attorney. If you cannot obtain a copy of the relevant authority, you should consider obtaining a representation and warranty from the individual in the execution clause that they have authority to execute the document or deed on behalf of the partnership.

Under the Partnership Acts in each State and Territory, an incorporated limited partnership may execute a document:

- without using a common seal (whether it has one or not) if the document is signed by a general partner or
- as a deed if the document is:
  - expressed to be executed as a deed
  - is executed with the use of a common seal or by being signed by a general partner.

Refer also to 'Execution by attorney or agent' below.

## Trusts

Dealing with trusts can raise complex legal issues. A trust is not a legal entity, so it cannot contract in its own right. Documents and deeds relating to trusts are entered into by the trustee of the trust.

The execution clause that should be used will depend on what type of entity the trustee is (eg a company execution clause should be used if the trustee is a company). If you are unable to confirm that the trustee has the power to enter into the arrangement (which can usually be ascertained by examining the trust instrument), you should consider obtaining a representation and warranty from the trustee that it has the power to execute the document or deed on behalf of the trust.

While a trust is not a legal entity, it may be a tax entity. Where the trust is registered for GST purposes, it will have its own ABN. You should therefore confirm that the ABN being used is the ABN of the trust and not the ABN of the trustee. For example, for a trust where a company is trustee, the description of the party should read 'Company X ACN XXX XXX XXX ABN YY YYY YYY YYY (trustee for the Y trust)' where ABN YY YYY YYY YYY is the ABN of the trust.

To determine the risks involved in including any trust provisions or acknowledgments in the document or deed, it is important to know the nature of the trust involved.

Publicly traded trusts, such as listed property trusts and investment funds, have a high degree of public visibility of their financial situation through their published accounts and prospectuses. When dealing with these types of entities, the trustee will often seek to include provisions limiting their liability to the assets of the trust and include an acknowledgment in the execution clause that they are signing as 'trustee for the X trust'.

Private trusts – for example, special purpose trusts, such as property development or investment vehicles, or businesses running a trading trust – are likely to have a significantly different risk profile. Risks may arise in the context of including provisions limiting the liability of the private trust to the trust assets, particularly in the case of a small trust. This risk can also arise by inserting a reference to the trust in the execution clause (eg signed as 'trustee for the X trust'), as this may limit liability by implication. If you are dealing with a private trust, some measures that can be taken to mitigate risks include:

- ensuring the document contains appropriate representations and warranties covering all eventualities – these need to be tailored for the circumstances but could include words in the interpretation section to the effect that 'if [Contractor] is a trustee, [Contractor] enters this contract personally and in its capacity as trustee and represents and warrants that it has the power to perform its obligations under this contract'
- obtaining a copy of the trust deed and considering whether the transaction is within the scope of the trust and the extent to which the trustee is indemnified
- having a financial adviser review the financial statements of the trust and considering the assets of both the trust and the contracting party in its own right.

Caution should be exercised in arrangements involving private trusts. Legal advice should be sought to ensure that the arrangements and matters concerning the description of the parties in the documents or deeds for those arrangements, and the execution of those documents or deeds, are appropriate.

## Incorporated associations

You should ask for a copy of the association's rules and statement of purposes to determine:

- who is authorised to sign a document on behalf of the association (usually, 2 committee members)
- whether the document to be executed is one that the association can validly enter into.

Generally, it is the act of registration that establishes an incorporated association as a legal entity. The association's status as a legal entity in turn gives it the capacity to enter into arrangements. You should ensure that the association is in fact incorporated by checking the status of its incorporation under the relevant State or Territory associations incorporation legislation.

## Unincorporated associations

An unincorporated association is not a legal entity and so cannot contract in its own right. As a general rule, arrangements involving unincorporated associations should be treated with care. You should seek legal advice where a party is an unincorporated association.

## Execution of deeds

As with execution of documents, the requirements for execution of deeds will vary depending on the types of entities that are party to the deed. The requirements outlined above will continue to apply in addition to specific formalities applicable to the execution of deeds.

A deed cannot be executed in part only. Where an attempt is made, by use of any form of words, to limit the effect of execution, the result will be that either the purported execution will be altogether ineffectual or the deed will be altogether binding.

## Specific formalities applicable to the execution of deeds

Subject to statutory modification, the execution of a deed consists of 3 acts:

- signing
- sealing
- delivery.

Below is a brief description of the requirements of each act necessary for the execution of a deed as well as how these acts have been modified by legislation.

### Signing

The signing of a deed is required by statute in all jurisdictions. In all States and Territories except Western Australia and the Australian Capital Territory, statute provides that an individual may also meet this requirement by affixing his or her mark to the deed.

### Sealing

At common law, sealing is essential to the validity of a deed. A seal was originally an impression of a person's crest or coat of arms. As the use of personal seals by individuals became rarer, the sealing process became artificial.

Legislation in all jurisdictions has simplified compliance with the requirement of sealing. Generally speaking, the effect of this legislation is that a deed is deemed to have been sealed where the following 2 conditions are met:

- It is described as a deed or is expressed to have been sealed.
- It is attested (witnessed) in accordance with the relevant legislation.

#### 1. *The deed is described as a deed or is expressed to have been sealed*

In all States and Territories except Victoria, the words 'Executed as a deed' are sufficient to meet this requirement. In the Australian Capital Territory, a deed that is executed and attested in accordance with the signing and attestation requirements will be taken to be sealed. In Victoria, the words 'Signed, Sealed and Delivered' should be used.

## 2. *The deed is attested (witnessed) in accordance with the relevant legislation*

The purpose of attestation is to provide a witness who can be called to prove execution. Persons present when the instrument is executed are not attesting witnesses unless they sign as witnesses attesting the execution.

In all States and Territories except Victoria (and the Northern Territory and Queensland, where the deed is actually sealed), a deed must be attested by at least 1 witness who is not a party to it. As a matter of best practice, attestation should be required in all cases.

There are special requirements for attestation of wills, and ordinary and enduring powers of attorney, which are prescribed by State and Territory legislation.

Certain additional requirements also apply in New South Wales and South Australia where:

- the deed is executed by a person acting at the direction and in the presence of the party to the deed or
- in New South Wales only, where the deed is executed by a person affixing his or her mark.

In these cases, legal advice should be sought to ensure that the correct procedure is used.

There is some legal uncertainty on whether a body politic can rely on modern legislation which replaces the requirement to affix a seal. In the Northern Territory, Queensland, South Australia, Tasmania and Victoria, it is prudent to include a seal or a place for a seal for a body politic. In the case of the Commonwealth, it is also prudent to include a seal or place for a seal where the choice of law clause stipulates the law of the Australian Capital Territory. If you are in any doubt about the execution requirements for a body politic, you should seek legal advice.

## Delivery

Delivery has always been a common law requirement of a valid deed. Traditionally, formal delivery by an individual consisted of the person touching or indicating the document and saying words to the effect of 'I deliver this my act and deed' or 'I deliver this as my deed'. A particular form of words or conduct is no longer required for delivery. Instead, what is necessary is intention to deliver, which can be established by any words or conduct that shows that the party who executes the instrument regards it as presently binding on that party. For example, there is case law to suggest that intention will not be present unless all parties have executed the document and legal obligations have arisen.

## Electronic deeds

In New South Wales, it is now possible to electronically sign and attest a deed in electronic form under s 38A of the *Conveyancing Act 1919* (NSW). If you propose to rely on an electronic deed and you are uncertain of how this section may apply to your situation, you should seek legal advice.

## Considerations in relation to the law of agency and execution of deeds by Corporations Act companies and CATSI Act corporations

A Corporations Act company can execute a deed through an agent if the agent is specifically authorised to enter into deeds by an instrument executed by the principal under seal (eg a power of attorney deed). Although an individual acting with a company's express or implied authority and on behalf of the company can sign documents (including contracts), a deed cannot be executed in this manner. A deed must be executed:

- by affixing the company's common seal
- under s 127 of the Corporations Act or
- by an attorney (see below).

Similarly, a CATSI Act corporation must execute a deed:

- by affixing the corporation's common seal
- under s 99-5 of the CATSI Act or
- by an attorney (see below).

## Statutory deeds

The above execution requirements relate to execution of deeds as that term is usually used to refer to the common law concept of a deed. Legislation may state that a document satisfying relevant requirements will be a deed or have effect as a deed, even though the document would not otherwise be a deed (eg deeds of company arrangement under the Corporations Act or registered dealings affecting *Torrens* title land). Such statutory deeds may have different execution requirements. If legislation requires that a deed be used, it is a question of statutory interpretation whether 'deed' means an ordinary deed or a statutory deed. If you are uncertain of what method of execution may apply, then you should seek legal advice.

## Execution by attorney or agent

### Power of attorney

In some cases, a party will execute a power of attorney authorising a person to bind it in certain circumstances. Powers of attorney are subject to different statutory requirements in each State and Territory. You should ask to see a copy of the power of attorney to check that:

- it is current
- it appears to be executed in a way which will bind the other party
- it covers execution of the document or deed in question
- it has been registered (if required).

Registration is required in Tasmania in all circumstances. It is not required in Victoria, Queensland, South Australia and Western Australia. In the other States and Territories, a power of attorney must be registered in the following circumstances:

- Australian Capital Territory and New South Wales: if it gives the attorney the power to execute a deed or to transfer an interest in land (other than a lease or an agreement for a lease for not more than 3 years)
- Northern Territory: if it gives the attorney the power to exercise dealings in relation to land (other than a lease of land for a period of not more than 1 year).

It may be prudent to include in the execution clause a statement from the attorney that the attorney has no knowledge that the power of attorney has been revoked.

### Agents

When a party intends to execute an agreement using an agent, the most important issue that arises is ensuring that the agent has been given the requisite authority by the principal. As noted above, the Corporations Act and the CATSI Act provide for certain assumptions to be made in this respect when dealing with agents of companies or corporations. If you are unsure about whether an agent has the requisite authority, you should seek legal advice.

Where an agent is proposing to execute a document or deed on behalf of a principal, you should ask to see a copy of the power of attorney or other deed authorising the agent to execute the document or deed.

## Execution by counterparts

It is common commercial practice for parties to execute documents by exchanging counterparts. This method is legally effective for contracts. The legal position for deeds is less clear, but it is common commercial practice to execute deeds by counterparts. As a matter of best practice, each party should exchange a duly executed, hard-copy counterpart of the whole deed. It is also prudent to include a clause in the deed to record the parties' agreement that the deed may be executed in counterparts.

**For more information please contact** **Kenneth Eagle** *National Manager Commercial*

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## Appendix 1 – Commonly used contract execution clauses

These execution clauses will need to be amended where the document is a deed. In all jurisdictions 'signed, sealed and delivered' can be acceptable.

### Execution by the Commonwealth

SIGNED for and on behalf of the )  
Commonwealth of Australia ^as )  
represented by^ ^name of agency^ )  
by: )

\_\_\_\_\_  
^Name of signatory^

\_\_\_\_\_  
*Signature*

In the presence of:

\_\_\_\_\_  
^Name of witness^

\_\_\_\_\_  
*Signature of witness*

### Execution by an individual

SIGNED for and on behalf of )  
^Party Name^ by: )  
 )  
 )

\_\_\_\_\_  
^Name of signatory^

\_\_\_\_\_  
*Signature*

In the presence of:

\_\_\_\_\_  
^Name of witness^

\_\_\_\_\_  
*Signature of witness*

## Execution in accordance with section 127 of the Corporations Act

EXECUTED by ^Party Name^ )  
 ^Party ACN^ in accordance with )  
 the requirements of section 127 of )  
 the *Corporations Act 2001* (Cth) )  
 by:

\_\_\_\_\_  
 ^Name of director^

\_\_\_\_\_  
*Signature of director*

\_\_\_\_\_  
 ^Name of director/secretary^

\_\_\_\_\_  
*Signature of director/secretary*

## Execution by affixing the company seal

THE COMMON SEAL of ^Party )  
 Name^ ^Party ACN^ the affixing of )  
 which was witnessed by: )  
 )

\_\_\_\_\_  
 ^Name of director^

\_\_\_\_\_  
*Signature of director*

\_\_\_\_\_  
 ^Name of director/secretary^

\_\_\_\_\_  
*Signature of director/secretary*

## Execution by a Power of Attorney

SIGNED for and on behalf of )  
 ^Party Name^ ^Party ACN^ by: )  
 )

\_\_\_\_\_  
 ^Name of signatory^

\_\_\_\_\_  
*Signature*

who is authorised by Power of Attorney ^Number or Date^ ^insert details of registration (if any), for example 'and registered with the office of the NSW Registrar-General'^ and who declares that ^he/she^ has at the time of execution of this document no notice of its revocation.

In the presence of:

\_\_\_\_\_  
 ^Name of witness^

\_\_\_\_\_  
*Signature of witness*

## Appendix 2 – Table of execution requirements for deeds across the States and Territories

	ACT	NSW	NT	Qld	SA	Tas	Vic	WA
<b>Applicable legislation</b>	<i>Civil Law (Property) Act 2006</i>	<i>Conveyancing Act 1919</i>	<i>Law of Property Act 2000</i>	<i>Property Law Act 1974</i>	<i>Law of Property Act 1936</i>	<i>Conveyancing and Law of Property Act 1884</i>	<i>Property Law Act 1958</i>	<i>Property Law Act 1969</i>
<b>Must be signed (not just sealed)</b>	Yes s 219(1)(a)	Yes s 38(1)	Yes s 47(1)	Yes s 45(1)	Yes s 41(1)(a)	Yes s 63(1)(a)	Yes s 73(1)	Yes s 9(1)(a)
<b>Must be witnessed (attested) by a non-party</b>	Yes s 219(1)(b)	Yes s 38(1)	Yes, unless actually sealed s 47(2)	Yes, unless actually sealed s 45(2)	Yes s 41(2)(a)	Yes s 63(2)	No	Yes s 9(1)(b)
<b>Must be sealed</b>	Yes s 219(1)(a)  Sufficient if document is expressed to be a deed or indenture or as being sealed s 219(3)	Yes s 38(1)  Sufficient if document is expressed to be a deed or indenture or as being sealed s 38(3)	Yes Sufficient if document is expressed to be a deed or indenture or as being sealed s 47(2)(b)	Yes Sufficient if document is expressed to be a deed or indenture or as being sealed s 45(2)	Yes s 41(1)(b) Sufficient if document is expressed to be a deed or indenture or as being sealed and delivered or, for natural persons, sealed s 41(5)	Yes Sufficient if document is expressed to be a deed or indenture or as being sealed and delivered or, for natural persons, sealed; corporations only need seal if so required by enactment under which it is created or any other law s 63(1)(b), (5)	Yes Sufficient if expressed to be sealed s 73A	No Only corporations need to seal deeds s 9(2)
<b>Must be delivered</b>	Yes Common law	Yes Common law	Yes Common law	Yes Words expressing delivery sufficient s 47(2)	No s 41(3)	No s 63(3)	Yes Common law Common law rule that agent must be authorised under seal to deliver on behalf of the principal revoked s 73B	Yes 'Formal delivery' is not necessary, but the intention to be immediately bound is still required s 9(3); <i>Monarch Petroleum NL v Citco Australia Petroleum Ltd</i> [1986] WAR 310
<b>Inference of delivery from execution</b>	Yes Common law	Yes Common law	No s 49	No s 47(1)	Delivery not required	Delivery not required	Yes Common law	Yes Common law
<b>Saving provision for defectively executed deed</b>	No	No	No	No	Yes Provided that 'it appears from evidence external to the deed that the party intended to be bound by it' s 41(4)	Yes Provided that 'it appears from evidence external to the deed that the party intended to be bound by it' s 63(4)	No	No
<b>Potential conflict with Corporations Act s 127 execution methods</b>	No s 227(8) Benefits of the general formalities provisions may not apply s 219(5)(a)	No s 51A(6) Benefits of the general formalities provisions may not apply s 38(5)(a)	No s 48(6)(b) Benefits of the general formalities provisions may not apply s 47(5)(a)	No s 46(6) Benefits of the general formalities provisions may not apply s 45(5)(a)	No There is no inconsistency, as the saving provision in s 41(4) permits validation of defective execution where Corporations Act s 127 differs from the requirements of s 41: <i>Gibbons v Pozzan</i> [2007] SASC 99	No Only provision in s 63 dealing with corporations states use of common seal is not required unless specified by law or enactment under which the corporation is created s 63(1)(b) As with SA, there is also a saving provision in s 63(4)	No s 74(6)	No Possibly yes Section 9(1)(b) would appear to require attestation in addition to Corporations Act s 127(1) signatures
<b>Additional provisions supporting execution by corporations</b>	Yes s 227	Yes s 51A	Yes s 48	Yes s 46	Yes s 41(1)(b)	Yes s 63(1)(b)	Yes s 74	Yes s 10
<b>Provisions for electronic deeds</b>	No	Yes Deed may be created in electronic form and electronically signed and attested in accordance with Pt 3 s 38A	No	No	No	No	No	No