

## Appendix 3 – Table of execution requirements for deeds across the states and territories

	CTH	ACT	NSW	NT	Qld	SA	Tas	Vic	WA
<b>Applicable legislation</b>	<i>Corporations Act 2001 (Cth)</i>	<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>	No s 127(2) permits deeds to be executed without a signature	Yes s 219(1)(a)	Yes s 38(1)	Yes s 47(1)	Yes s 46E	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>	No s 127(1) permits deeds to be executed without a witness, whilst s 127(2) does not require the fixing of the seal to be witnessed by a non-party.	Yes s 219(1)(b)	Yes s 38(1)	Yes, unless actually sealed s 47(2)	s 46E(2), except for power of attorney documents under s 46A(1) which must be witnessed	Yes s 41(2)(a)	Yes s 63(2)	No	Yes s 9(1)(b)
<b>Must be sealed</b>	No s 127(1)	Yes Sufficient if document is expressed to be a deed or indenture or as being sealed s 219(1)(a); (3)	Yes Sufficient if document is expressed to be a deed or indenture or as being sealed s 38(1); (3)	Yes Sufficient if document is expressed to be a deed or indenture or as being sealed s 47(2)(b)	No s 46C(2)(c)	Yes Sufficient if document is expressed to be a deed or indenture or as being sealed and delivered or, for natural persons, sealed s 41(1)(b); (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>	No If the execution methods under s 127 (1) or (2) are complied with, delivery is not required. s 127(3B)	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>	Delivery not required	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	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

Appendix 3 – Table of execution requirements for deeds across the states and territories (cont.)

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<b>Potential conflict with Corporations Act s 127 execution methods</b>	N/A	No Benefits of the general formalities provisions may not apply s 219(5)(a); s 227(8)	No Benefits of the general formalities provisions may not apply s 38(5)(a); s 51A(6)	No Benefits of the general formalities provisions may not apply s 47(5)(a); s 48(6)(b)	No s 46F(2A)	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)	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>	N/A	Yes s 227	Yes s 51A	Yes s 48	Yes s 46(F)	Yes s 41(1)(b)	Yes s 63(1)(b)	Yes s 74	Yes s 10
<b>Provisions for electronic deeds</b>	Yes s 110A and s 127(3A) contemplate that deeds can be created and signed electronically in accordance with s 127.	No	Yes Deed may be created in electronic form and electronically signed and attested in accordance with Pt 3 s 38A	No	Yes s 46D, unless it is a power of attorney for non-commercial purposes which must be in paper form s 46A(1)	No	No	Yes Deeds may be created in electronic form and signed by electronic communication <i>Electronic Transactions (Victoria) Act 2000</i> (Vic) s 12A	No
<b>Remote witnessing of deeds</b>	Yes s 127(2A)	No	Yes ss 14F – 14L <i>Electronic Transactions Act 2000</i> (NSW)	No	Yes (for corporations sole and statutory corporations) s 46F(3) <i>Property Law Act 1974</i> (Qld) As noted above, there is no witnessing requirement for deeds signed by some entity types in Queensland.	No	No	Yes (where required by Victorian law) s 12 <i>Electronic Transactions Act 2000</i> (Vic) As noted above, there is no witnessing requirement for deeds signed by some entity types in Victoria.	No