

ELECTRONIC SIGNATURE

Generally speaking, an electronic signature (or e-signature) is a technical process logically associated with a document which two (or more) individuals or organizations (the signatories) agree to rely on in order to express their intent to sign such document. Three components are therefore necessary: a document, a signatory and an e-signature tool. While the tool most commonly used for handwritten signatures is a simple pen, electronic signature tools are typically more complex.

From a regulatory standpoint, an electronic signature is a broad category that encompasses many types (or levels) of electronic signatures.

Depending on the country it is used in, there are differences in purpose, legal acceptance, technical implementation and cultural acceptance of electronic signatures. In particular, e-signature requirements tend to vary significantly between most “civil law” countries (including the European Union and many countries in South America and Asia), and most “common law” countries (such as the United States, Canada and Australia). Civil law countries typically support a “tiered” approach including higher levels of signature often called digital or qualified electronic signatures (typically required for specific types of contracts), as opposed to common law jurisdictions which are typically more technology-neutral.



In addition, some industries (such as healthcare or banking) and documents (such as marriage or adoption contracts) may require a higher level of e-signature.

What are the laws and regulations in Australia?

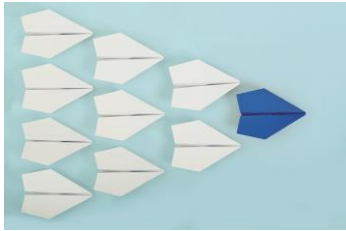
Electronic signatures are permitted in Australia per the Electronic Transactions Act 1999 (Act No. 162 as amended) and similar State legislation.

Employment related records may be electronically signed if certain safeguards are put in place:

- there should be an independent verification process to confirm the identity of the employee signing the document (ex., the electronic signature is witnessed, or the electronic signature requires a unique key to be entered before the document is electronically signed);
- a copy of the executed / signed document should be returned to the employee (when possible); and,
- having an express provision that both the employer and employee consent to using electronic signatures.

Is an electronic signature valid in Australia?

Yes. Electronic and physical signatures have the same legal value in Australia. Any disputes as to the validity of signatures (electronic or physical) will come down to a question of proof.



HR Best Practices:

Electronic signatures are generally considered valid in the employment context in Australia. When using electronic signatures, ensure that appropriate safeguards are in place and that metadata (such as time stamps) is properly recorded.

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