
MEMORANDUM – Office of General Counsel

PRIVATE AND CONFIDENTIAL, DO NOT DISTRIBUTE TO ANY THIRD PARTY OUTSIDE WSU

Date: 8 May 2022

From: Nicole Bannerman, General Counsel

Subject: **OFFICE OF GENERAL COUNSEL GUIDE TO AUTHENTICATION OR EXECUTION OF DOCUMENTS**

1. Summary of the law regarding execution in New South Wales

In New South Wales, different categories of documents may be authenticated (that is, executed) in the ways set out below. (In this guidance note, the term “authentication” has been used for consistency with University policies):

- a. Wet ink signature (physical signature on an original document in ink).
- b. Electronic signature (affixing of a typed name or a digitized image of a handwritten signature on a digital document electronically)
- c. Digital signatures (type of Electronic Signature that includes a digital certificate issued by a third party for independent identity validation).
- d. Common Seal (affixing a seal and signature on an original document).

2. Authentication method

The authentication method will be determined by the nature of the document being executed by the University and the University’s Delegation of Authority Policy. In general, the monetary value of the transaction, the length of the term, the complexity of the document, and the seniority of the authorised delegate should be taken into account in determining whether it is appropriate to apply an electronic signature, and whether authentication should be witnessed.

With regard to witnessing of the authentication of documents, it should be noted that the authentication of Deeds **must** be witnessed, and this may now be done using audio visual technology (refer to paragraph 4 below). Although it is not essential, from a legal perspective, for the authentication of other documents to be witnessed, the OGC recommends that the authentication of certain categories of documents should be witnessed for evidentiary purposes. Table 1 below sets out the authentication method recommended by the Office of General Counsel for commonly used documents and identifies which should be witnessed.



Table 1. recommended authentication method and witnessing

Type of document	Type of signature (authentication method)	Witnessing	Common Seal
Non-legal documents , e.g. letters, emails, internal documents and memos.	Wet-ink or Electronic Signature	not required	n/a
MoU, Heads of Agreement, Term Sheet	Wet-ink or Digital Signature	Optional - In-person or remote. The OGC recommends witnessing for MOUs with overseas parties.	n/a
Low risk Agreements , e.g. domestic Student Placement Agreements; University low risk templates	Wet-ink or Digital Signature	Optional - In-person or remote.	n/a
Low-Risk Deeds , e.g. NDAs, certain property transactions with Australian entities.	Wet-ink or Digital Signature	In-person or remote	n/a
Other Deeds e.g. Deeds with non-Australian entities; Deeds of Settlement and Release	Wet-ink Signature	In-person	
University Awards (e.g. testamur, award of degree) or documents/instruments required by law to affix the Common Seal of the University under the Western Sydney University (University Seal and Authentication) Rule.	n/a	n/a	Wet-ink Signature only
Lease, licence and NSW Land Registry Services (LSR) Dealings	Wet-ink or Digital Signature	In-person or remote	n/a
Other Property Dealings , e.g. interstate dealings.	Wet-ink Signature	In-person	n/a



International Agreements and Deeds	Wet-ink Signature	In-person	n/a
Other Agreements	Wet-ink Signature	In-person	n/a
Other documents	Wet-ink Signature	In-person	n/a

Table 1 is subject to various [University Policies](#) (including but not limited to the [Delegations of Authority Policy](#); [Western Sydney University \(University Seal and Authentication\) Rule](#); [Acceptable Use of Digital Services Policy](#); [Digital Services Implementation Policy](#)), and any University contract template user guides.

3. Electronic signature requirements

It should be noted that a Digital Signature is one type of Electronic Signature. To ensure the authentication of a document by Electronic Signature is valid under New South Wales law, the following requirements must be satisfied:

- a. It must be possible to identify the person signing the document;
- b. The person's intention in signing the document must be clear;
- c. The electronic method used must be reliable as would be appropriate given the circumstances of the transaction;
- d. The person to whom the signature is given must consent to the transaction; and
- e. document for the transaction must be subject to the laws of New South Wales, Australia.

Points 1-3 - Digital Signatures which indicate that an electronic signature has been applied and the date when this occurred will be sufficient. For all other Electronic Signatures the OGC recommends that the following statement is inserted at the time of execution:

"Electronic signature of me, [..insert name..] affixed by me, or at my direction, on [..insert date..]"

Point 4 – The consent of the person signing the document may be inferred by the conduct of the parties and evidenced by an exchange of emails or by expressly confirming consent within the terms of the documents.

Point 5 – Different jurisdictions (i.e. states, countries) may have conflicting laws regarding the validity of electronic signatures and remote witnessing. The jurisdiction and governing law of the document is usually evidenced by the inclusion of a governing law clause in the contract terms.

4. Remote witnessing requirements using audio visual technology

The witnessing of the authentication of a document by audio visual technology such as Zoom or Microsoft Teams must satisfy requirements set out below to ensure that the authentication is valid, and the transaction must be subject to the laws of New South Wales, Australia.

The person witnessing the signing of a document by audio visual link (i.e. the witness) must:

- a. Physically observe the person signing the document (i.e. the signatory/authorised delegate) sign the document in real time using a second screen;
- b. attest or otherwise confirm the signature was witnessed by signing the document or a copy of the document (i.e. the counterpart);



- c. be reasonably satisfied that the document that the witness signs is the same document or a copy of the document signed by the signatory; and
- d. endorse the document, or the copy of the document, with the following statement:

"This document was signed in the witness' presence or signed in counterpart and witnessed over audio visual link in accordance with section 14G of the Electronic Transactions Act 2000 (NSW)."

5. Accepting electronic execution from third parties

Generally, the University will accept authentication of documents from third parties in accordance with Table 1. However, it is important to verify that the third party has satisfied the above-mentioned requirements to ensure the authentication is valid.

6. Adobe Sign products

The University uses two Adobe Sign products for authentication of documents. The Adobe Sign Electronic Signature is a free product whereas the University pays licence fees for the Adobe Sign Digital Signature. Digital Signatures **must** be used in the circumstances set out in Table 1

For advice on the authentication of specific documents, please submit a request for legal service on WesternNow which the Office of General Counsel will respond to.

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