


20 July 2023

Our ref: [LP:MC]

Dr James Popple
Chief Executive Officer
Law Council of Australia
19 Torrens Street
Braddon ACT 2612

By email: 

Dear Dr Popple

Proposed reform to the execution of Commonwealth statutory declarations

Thank you for the opportunity to provide feedback on the Attorney-General's Department consultation paper, *Modernising Document Execution: Consultation on proposed reform to the execution of Commonwealth statutory declarations* (**Consultation Paper**). The Queensland Law Society (QLS) appreciates being consulted in this important paper.

This response has been compiled by the QLS Litigation Rules and Privacy, Data, Technology and Intellectual Property Law Committees, whose members have substantial expertise in this area.

QLS is generally supportive of measures to allow documents such as statutory declarations and deeds to be signed electronically and witnessed via audio-visual link. QLS considers there has been a longstanding need to modernise the way in which these documents are created and used. Permitting electronic signing and witnessing of statutory declarations via audio-visual link improves access to justice, from both a cost and efficiency perspective, for our members and the general population.

We note the temporary measures introduced during the COVID-19 pandemic that allowed Commonwealth statutory declarations to be executed using electronic signatures and witnessed via audio-visual link are due to expire on 31 December 2023. QLS supports permanently retaining these measures, as has occurred in Queensland.

The ability to deal with documents in this manner has allowed individuals to create and execute documents during the COVID-19 pandemic without the significant impost on their health, time, caring responsibilities and finances (travel and other costs) that physically attending an office necessitates. Importantly, there have been particular benefits for vulnerable people and people who live and work regionally or remotely.

There are also benefits for law firms and their clients by improved efficiencies and reduced legal costs. More broadly, there are significant flow on effects for courts, government departments, other agencies and the community of more cost effective and timely delivery of documents and progression of legal matters.

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QLS supports the option to permit digital execution, using existing digital identity infrastructure, such as MyGovID or DigitalID. An advantage of this is that users must only prove their identity once to the digital identity system. This will mean that lawyers and witnesses will not need to receive, validate, take copies and securely store the identification documents of the declarant. This is particularly beneficial in the context of identification documents being compromised during recent data breaches.

Implementation of this approach would need to be readily accessible and not unduly complicated for it to work well. We have a concern that some software that might facilitate digital signatures and identity verification could limit the functionality of the document and create challenges with broader sharing of the document. Lawyers will need to have the ability to upload and edit the proposed content of the statutory declaration in the platform and then invite their client to sign it. A platform similar to existing programs such as Docusign or Adobesign should be adequate.

Further, as technology changes at a rapid pace, any prescriptive requirements must be technology-neutral and drafted in such a way as to respond to constant change.

However, QLS maintains the position that while electronic or digital execution of documents is advantageous, the ability to sign a document using traditional, paper-based execution should be retained. It is essential that individuals who do not have access to electronic or digital means of signing, or who do not have the necessary identification documents required by the digital identity system, are permitted to sign documents using wet-ink in the presence of a qualified witness.

QLS therefore supports the proposal to provide the three concurrent methods of execution outlined in the Consultation Paper.

We note this proposal is being made in the context of continued work being progressed to modernise and harmonise execution requirements for statutory declarations and deeds across Australian jurisdictions. QLS strongly supports this harmonisation process, noting it is quite common for a party or witness to a legal matter or proceeding to be based in another jurisdiction.

The difficulties posed by this geographical difference are reduced with electronic document execution and the acceptance of an electronically signed document by courts, government departments and other parties. The ability to electronically execute a document in one jurisdiction, for use in another, will alleviate the burden of cost and delay associated with compliance with different jurisdictional requirements.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via [REDACTED]

Yours faithfully,

[REDACTED]
Chloe Kopilovic
President