



# **Australasian Council of Justices Associations (ACJA)**

Submission to the Australian Government Attorney-  
General's Department

on

The Proposed Reform to the Execution of  
Commonwealth Statutory Declarations

*ACJA is the body which represents affiliated Justices of the Peace associations from each of the Australian States and the Australian Capital Territory. The individual members of these associations are volunteer justices of the peace who reside and provide witnessing services in urban, regional and rural locations throughout Australia, The Royal Federation of New Zealand Justices Associations is also affiliated with ACJA.*

## Introduction

1. This submission is from the Australasian Council of Justices Associations (ACJA).
2. ACJA welcomes the opportunity to comment on the proposed reform to the execution of Commonwealth Statutory Declarations.
3. This submission has been prepared by ACJA on behalf of the 13 affiliated Australian Justice of the Peace Associations. Every endeavour has been made to discuss this submission with these associations and to establish a sector view within the limited timeframe for public consultation.
4. ACJA is a non-partisan and non-sectarian organisation, concerned with the pure and impartial administration of the law.

## Overview

1. ACJA welcomes the opportunity to comment on the proposed reform to the execution of Commonwealth Statutory Declarations.
2. ACJA supports in principle the overall aim of the reform proposal to streamline and modernise the execution of Commonwealth Statutory Declarations by making available three alternative execution media:
  - traditional paper-based execution (requiring wet-ink signatures and in-person witnessing)
  - e-execution (allowing electronic signatures and witnessing via audio-visual link), and
  - digital execution (end-to-end online execution, with digital identity providers to verify identity and satisfy witnessing requirements).
3. The majority of our comments address the third alternative (digital execution) which is being proposed for the first time. As a progressive organisation, we recognise that the rapid development of information technology (IT) is an important agent for change. Through the process of adapting to this change we are cognisant and supportive of the need to modernise processes by making them streamlined and making internal administration more efficient. Moreover, we are particularly supportive of those aspects of the proposal to make it easier for organisations and individuals to access an execution medium that best suits their particular circumstances.
4. In this submission, ACJA will specifically comment on the functions, powers and expertise of Justices of the Peace which include the taking of declarations under the provisions of the Commonwealth *Statutory Declarations Act 1959*.
5. In our commentary, we do raise concerns over:
  - The absence, in the digital execution option, of the human gatekeeping function performed by experienced witnessing officers in both the paper-based and e-execution options
  - The absence of structured training arrangements to support eligible witnessing officers wishing to participate in the e-execution option
  - The potential for declarants to not properly comprehend the significance and adverse implications of making a false declaration when making a declaration via the digital execution option, without the involvement of a human witness to reinforce these matters

- The inability of a digital execution system to detect behavioural nuances that might alert a human witness to the declarant's reluctance to declare the content of the statutory declaration is truthful.

## **Specific Comments**

An essential function of ACJA-affiliated associations is to ensure their Justices of the Peace members receive sufficient training, education and support to enable them to discharge their duties in the most proficient manner possible, to their respective communities wherever they may be and whatever the specific need might be.

Each of the Australian States and Territories appoints justices of the peace under the legislation of that jurisdiction, primarily to perform volunteer certifying, witnessing and authorising duties in support of the jurisdiction's justice administration system. Under the provisions of the Commonwealth's *Statutory Declarations Act 1959*, these officers are also authorised to witness Commonwealth statutory declarations.

The volunteer duties of an Australian Justice of the Peace may include but are not limited to:

- (i) Witnessing signatures
- (ii) Certifying documents
- (iii) Taking declarations, oaths or affirmations
- (iv) And a plethora of other tasks including being a nominated witness for police interviews with young persons and other community activities as respected individuals.

In respect to this submission, the relevant function, power and expertise of an Australian Justice of the Peace is to witness declarations under the provisions of the *Statutory Declarations Act 1959*. A statutory declaration under the Statutory Declarations Act 1959 is a document recording a statement in writing which the person making the statement declares, in the presence of an authorised witness, to be true, being aware of the penalties for making a false declaration.

A statutory declaration creates a legal duty on the declarant to tell the truth. Under the current legislation, the declarant must be personally present before an authorised witness. When signing a statutory declaration, an authorised witness is both attesting that the declaration was made before him or her, and witnessing the signature of the client.

In the 'General Comments' which follow, ACJA maintains that, in the completion of a statutory declaration, Justices of the Peace are specifically trained to:

- Provide reasonable assurance the declarant understands the content of the declaration and the penalties for making a false declaration.
- Ensure the declaration is substantively in the proper form by ensuring the correct wording is used, all required information is completed, and the declaration is complete.
- Help prevent identity fraud because they will reasonably satisfy themselves as to the identity of the declarant.
- By acting in the capacity as an authorised witness in the witnessing of the statutory declaration, be regarded as providing increased formality to the making of the statement so that the declarant may be less likely to provide a false statement.

## **General Comments**

### **1. e-Execution issues**

Although we support, in principle, the proposal to make this alternative a permanent option for the execution of Commonwealth statutory declarations, we express the following comments and reservations:

- We acknowledge that, for some people, especially those in remote or overseas locations, those in isolation for health or safety reasons or those with mobility limitations, a face-to-face, paper-based execution can be impractical. For some others, the e-execution option can mean a considerable saving in time and other resources.
- To accommodate these situations, we agree the e-execution option should be made permanent. However, some more thought needs to be given to the manner in which this option is implemented going forward.
- We contend that the vast majority of individuals within the wide range of categories of profession authorised to witness Commonwealth statutory declarations are not only unaware of the proper process for correctly witnessing these documents (as described in the final paragraph of the Specific Comments section) but are also unfamiliar with the associated proper processes for witnessing via audio-visual link.
- In comparison, groups of Justices of the Peace in several Australian States have undertaken specific training to enable them to satisfactorily perform the e-execution of statutory declarations (as well as several other legal document categories, including affidavits) in a manner that retains the integrity of the paper-based process. As far as we are aware, no other category of eligible witnesses has put in place equivalent arrangements.
- So how does a prospective e-execution declarant know who to contact to find an authorised witness who not only is knowledgeable and experienced in properly witnessing statutory declarations but is also trained, knowledgeable, experienced and competent in undertaking the witnessing process via audio-visual link?
- If e-execution is to become a permanent option for Commonwealth statutory declarations, we recommend an arrangement should be put in place to facilitate the connection of prospective e-execution declarants with those State-based structured groups of JPs who have been specifically trained to perform this process in a proper manner.
- ACJA and its affiliated JP associations will be happy to assist the Australian Government Attorney-General's Department in giving effect to this recommendation.

### **2. Digital Execution option – the witnessing process**

ACJA acknowledges that those entities which are required to regularly make statutory declarations for business purposes (an estimated 3.8 million declarations annually<sup>1</sup>) could be saved considerable time (estimated at 9 million hours annually<sup>1</sup>) and other resources if those regular declarations could be generated in an end-to-end digital process without the necessity to interface with an authorised witness. Undoubtedly, in the long term, the overall financial savings could be considerable. However, this proposal is not risk-free. In respect of the proposal to introduce a digital execution option, ACJA makes the following comments:

<sup>1</sup> Australian Government Attorney-General's Department website page re Consultation on this proposed reform

- The Consultation Paper identifies three entities to be involved in the digital execution model:
  - The Declarant
  - The Online Platform
  - The Digital Identity Provider
- The digital execution process comprises the following steps:
  - The Declarant accesses an approved Online Platform that is authorised to make available a Commonwealth statutory declaration for digital execution.
  - The Online Platform interfaces with an approved Digital Identity Provider to verify the identity of the declarant.
  - Once identity is verified, the Online Platform enables the declarant to (a) insert the content of their declaration, (b) confirm (via a box tick) they understand the penalties for making a false declaration, (c) declare (via a box tick) the content is the truth, (d) digitally insert their signature and (e) access the executed declaration in a digital format.
- The Consultation Paper infers that, under this model, a Digital Identity Provider performs the traditional role of the witness to the statutory declaration. However, it is ACJA's assertion that the Digital Identity Provider performs only one element (albeit an important one) of the traditional witnessing process – i.e. verifying the identity of the declarant.
- In reality, the Online Platform performs the majority of the “witnessing” process – i.e. ensuring the declarant (a) confirms their understanding of the penalties for making a false declaration, (b) declares the content to be the truth and (c) completes their execution by attaching their digital signature.
- ACJA is concerned that, under this option, the absence of an experienced human witnessing officer makes it easier for the declarant to tick the penalty and truth boxes without proper comprehension and consideration of what these matters really mean. A justice of the peace would require the declarant to speak aloud the content of the declaration of truth statement. This element is missing from the digital model.
- If the digital execution model is implemented, ACJA suggests strongly that the witnessing process performed by the Online Platform should involve more than just ticking boxes. In the modern online world, everyone has become accustomed to being required to tick a box on a website to confirm they have read and understand a 20-page policy document, in order to progress any further. In practice, hardly anyone reads the policy document but they tick the box anyway because they know they cannot complete the online process without doing so. The regularity of this occurrence has desensitised consumers to the significance of the content of the matters they supposedly confirm by ticking the box.
- ACJA recommends that the witnessing process developed by the Online Platforms should, after the declarant initially (a) confirms their understanding of the penalties for making a false declaration and (b) declares the content of their declaration is true and correct, and before being allowed to insert their digital signature, require the declarant to respond to follow-up questions to reinforce the significance of both these matters and to confirm their initial responses.
- If required, ACJA would be happy to provide assistance with the drafting of appropriate witnessing questions for use by the Online Platforms.

### **3. Digital Identity Verification**

While ACJA, its affiliated JP associations and the individual members of those associations have considerable experience and expertise in the verification of identity by the personal sighting of relevant identity documents, digital identity verification is a matter outside that area of our expertise.

We expect other agencies and individuals may comment on the proposal to make this process mainstream under the digital execution option being proposed. However, notwithstanding our reservations based on a lack of experience and expertise in this area, ACJA declines to do so.

### **4. Approved Online Platforms**

ACJA is concerned that the intimate and comprehensive knowledge and experience of Australian Justices of the Peace and their member associations, acquired over the last one hundred years and longer, in the proper witnessing of statutory declarations, will be omitted from the proposed Digital Execution option.

ACJA recommends that the online platforms of Australian Justice of the Peace associations be eligible for inclusion in the cohort of government-approved Online Platforms proposed for involvement with the Digital Execution option. This will allow the acquired expertise of these associations in the proper witnessing of Commonwealth statutory declarations to continue to be utilised in all three execution media.

## **Summary**

In principle, ACJA supports the reform of the execution process for Commonwealth Statutory Declarations as proposed in the Consultation Paper. With regard to the implementation of this reform initiative, ACJA makes the following recommendations:

- With the e-execution option, ACJA recommends an arrangement should be put in place to facilitate the connection of prospective e-execution declarants with those State-based structured groups of JPs who have been specifically trained to perform this process in a proper manner.
- ACJA and its affiliated JP associations will be happy to assist the Australian Government Attorney-General's Department in giving effect to this recommendation.
- With the digital execution option, ACJA recommends that the witnessing process developed by the Online Platforms should, after the declarant initially (a) confirms their understanding of the penalties for making a false declaration and (b) declares the content of their declaration is true and correct, and before being allowed to insert their digital signature, require the declarant to respond to follow-up questions to reinforce the significance of both these matters and to confirm their initial responses.
- If required, ACJA would be happy to provide assistance with the drafting of appropriate witnessing questions for use by the Online Platforms.

- ACJA recommends that the online platforms of Australian Justice of the Peace associations be eligible for inclusion in the cohort of government-approved Online Platforms proposed for involvement with the Digital Execution option. This will allow the acquired expertise of these associations in the proper witnessing of Commonwealth statutory declarations to continue to be utilised in all three execution media.

ACJA thanks the Australian Government Attorney-General's Department for the opportunity to participate in this consultation process.