



## Modernising Document Execution: Consultation on proposed reform to the execution of Commonwealth statutory declarations

The Attorney-General's Department (the department) is seeking stakeholder views on a proposal to amend the *Statutory Declarations Act 1959* (the Act) and the *Statutory Declarations Regulations 2018* (the Regulations) to expand the options for statutory declaration execution.

We are undertaking this work because temporary measures allowing e-execution of a Commonwealth statutory declaration are due to expire on 31 December 2023. This has provided an opportunity to revisit the 2021 Modernising Document Execution Consultation, undertaken by the Deregulation Taskforce at the Department of the Prime Minister and Cabinet (PMC).

The 2021 consultation found strong stakeholder support for the introduction of e-execution and digital execution pathways for statutory declarations. It found that the paper-based system did not meet the needs and expectations of individuals or small businesses, costing time and money.

The department has developed a proposal to amend the Act and the Regulations to establish a framework that is fit for purpose, and reflects the way that businesses and consumers want to engage and communicate digitally.

The framework would allow a Commonwealth statutory declaration to be executed in 1 of 3 ways:

- 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).

The proposal would involve minor amendments to the Act prescribing the execution options available to validly execute a Commonwealth statutory declaration, supported by regulations setting out the technical requirements for each prescribed execution option.

We are particularly interested in stakeholder views on the proposal to allow digital execution of a Commonwealth statutory declaration, which is the main subject of this paper. This aspect of the proposal would look to integrate with the [Australian Government Digital Identity System](#), and support the expansion of services offered through the myGov platform.

Government proposes to introduce amendments to the Act and Regulations to permanently provide these execution options before the temporary measures expire on 31 December 2023.

## Commonwealth statutory declarations: Purpose and Proposals

A Commonwealth statutory declaration is a legal document that contains a written statement about something that the declarant is asserting to be true. It provides a mechanism for the declarant to vouch for the veracity of its contents, where it would be difficult to prove in another way.

It is a criminal offence to intentionally make a false statement in a Commonwealth statutory declaration, carrying a penalty of four years imprisonment.

Currently, execution of Commonwealth statutory declarations requires three elements to be satisfied: the use of the prescribed form, the signing of the declaration by the declarant and the witnessing of the declarant's signature by a prescribed person.

The following sets out why each of the options within the execution framework are being considered and how they will work.

### 1. Traditional, paper-based execution

The proposal will maintain the traditional, paper-based execution option for those who do not have access to the required technology, or prefer not to engage with the other technology-based execution options. Under this option, a person would make their declaration on paper and sign it using wet-ink in the presence of a prescribed person.

### 2. E-execution

Electronic execution of Commonwealth statutory declarations will be provided for through the use of electronic signatures, witnessing via audio-visual link and the use of copies for the purpose of execution. This will make the arrangements provided for by the current temporary measures permanent. The proposal would also allow a declarant or witness to sign electronically.

The department has received positive feedback about the functioning of e-execution under the current temporary measures. Continuing to make e-execution available will provide options for those who want to engage with electronic execution but are unable or unwilling to obtain a digital identity, as required for the digital execution option.

### 3. Digital execution

The department has developed a proposal for digital execution in response to the 2021 consultation, which found that a digital execution pathway could address many problems identified by stakeholders with the paper-based-only system. Particularly, the provision of a digital execution option would benefit those who face barriers engaging with a paper-based process, such as those in rural, remote or regional parts of Australia, and those Australians experiencing low mobility or sensory issues.

The 2021 consultation recognised that paper-based systems are not 'risk-free' and digital solutions may be trusted more by the community due to 'digital innovations...strengthening document security and credibility in other domains.'<sup>1</sup>

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<sup>1</sup> Modernising Document Execution Roundtable Consultations, Price Waterhouse Cooper, October 2021, pp i-ii: [Modernising Document Execution Roundtable Consultations | Regulatory Reform](#).

The proposal for digital execution is designed to be simple and robust, and sit cohesively within the Commonwealth statutory declaration execution framework. The execution requirements will integrate the Australian Government Digital Identity System. This will allow existing digital infrastructure (e.g. myGov and myGovID) to be leveraged to provide a digital document execution service for Australians to execute Commonwealth statutory declarations.

Reflecting on lessons learned throughout the COVID-19 pandemic, and responding to community reflections of how they wish to engage with legal documents, particularly those administered by Government, providing a digital execution option to be appropriate and responsive.

### 3.1. The Requirements

‘Digital execution’ would involve the end-to-end execution of Commonwealth statutory declarations through an online platform who utilises a Digital Identity Provider approved to operate within a digital identity system maintained by the Australian Government. These requirements are intended to ensure that digital execution sits within the safeguards and frameworks set by the Australian Government.

Functional equivalence with the other execution options would be maintained in the following ways:

#### 3.1.1. The form = The online platform

The online platform would be required to:

- use a Digital Identity Provider approved to operate within a digital identity system maintained by the Australian Government
- Require the use of that Digital Identity Provider to verify the declarant’s identity as a condition to access and make the digital Commonwealth statutory declaration
- Ensure the digital process requires prescribed information of the declarant, and
- Ensure the generated Commonwealth statutory declaration has a statement applied to it confirming that it was executed using a Digital Identity Provider, the platform it was executed on, and the time and date the declaration was made.

#### 3.1.2. The signature = Declarant requirements

The declarant would be required to have a digital identity which has been proofed through the provision of at least two acceptable Australian identity documents. Currently, this is referred to as a [‘Standard’ or ‘Identity proofing level 2/2+’](#) digital identity.

The declarant would continue to be required to apply a signature within the digital execution of their Commonwealth statutory declaration. As with the e-execution option, this would be an electronic signature within the meaning set out by the ETA.

#### 3.1.3. The witness = The Digital Identity Provider

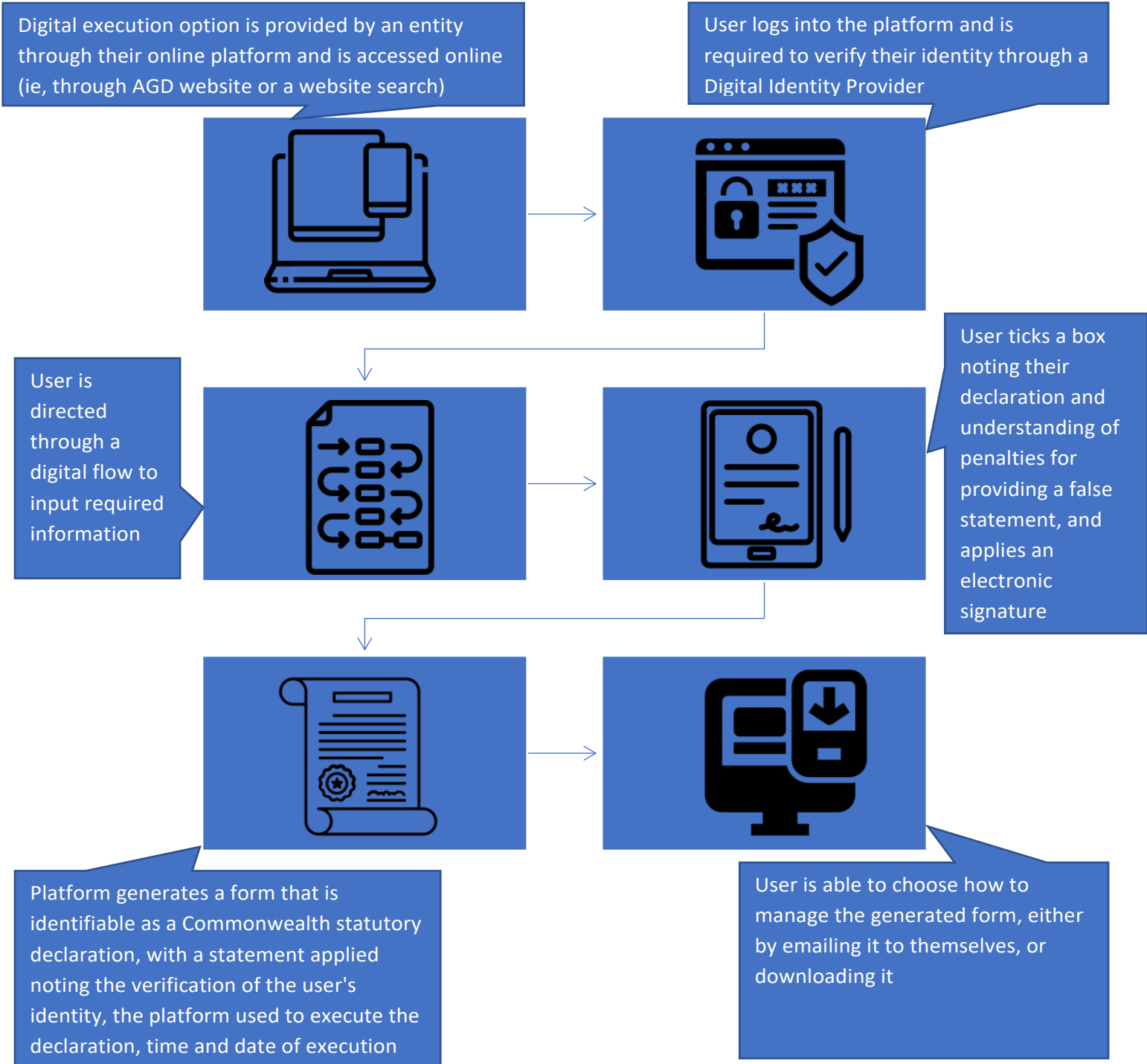
The Digital Identity Provider would be required to be approved to operate within a digital identity system maintained by the Australian Government.

It would perform the role of the witness by digitally verifying the identity of the declarant prior to their being able to access and execute digital Commonwealth statutory declaration through the online platform.

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This function would be confirmed through the application of a statement on the generated declaration noting that it was executed using a Digital Identity Provider, the platform it was executed on, and the date and time the declaration was made.

The digital execution option could therefore potentially present as follows to users:



### 3.2. Verification and Reliability

The prescribed requirements have been designed to enable community confidence in digitally executed Commonwealth statutory declarations, by verifying the providers through which it was executed, and requiring those providers to sit within, and rely on, a digital identity system maintained by the Australian Government.

Currently, this would mean the [Australian Government Digital Identity System](#) (the AGDIS), which is based on the core principles of privacy, security and integrity. The AGDIS allows Australians to maintain one digital identity, mitigating the risk of misuse of personal data and fraud, and providing individuals with confidence that their data is safe and secure. The AGDIS is currently delivered by Services Australia, the Australian Taxation Office, Home Affairs and the Department of Finance, and is relied upon by government agencies to provide online services to people with a digital identity. The Australian Government Digital Identity System website notes:

*The Australian Government is allowing a number of state and territory government agencies to participate in the Australian Government Digital Identity System on a pilot basis as a part of our testing of the readiness of the Australian Government Digital Identity System to expand beyond the Australian Government.*

The proposal to facilitate digital execution of Commonwealth statutory declarations prioritises flexibility, adaptability, and is designed to accommodate this future expansion of the AGDIS to state and territory and private sector participants, should Government decide to expand the framework.

### Request for comment

We are seeking stakeholder feedback on the proposal outlined in this paper. In particular, we are interested in views on:

1. Benefits stemming from the proposal in relation to:
  - a. Traditional, paper-based execution
  - b. E-execution
  - c. Digital execution
2. Concerns stemming from the proposal in relation to:
  - a. Traditional, paper-based execution
  - b. E-execution
  - c. Digital execution
3. Specific views on the proposals relating to:
  - a. Making the current temporary measures enabling electronic execution permanent
  - b. Providing a digital execution option, including the requirements set out for this and views on how this will work in practice.

in addition to any other comments.

We would appreciate receiving your comments by **COB 28 July 2023**.

Please don't hesitate to contact us at [ModernisingDocumentExecution@ag.gov.au](mailto:ModernisingDocumentExecution@ag.gov.au) should you have any questions or concerns. We sincerely thank you for your engagement.