



Australian Government

Department of the Prime Minister and Cabinet

Modernising Document Execution

Consultation on a common pathway for digital execution of statutory declarations and deeds



Foreword

The Australian Government is committed to making it easier to do business in Australia. Our Deregulation Agenda is focussed on reducing regulatory barriers and making it simpler and easier for businesses to grow and create jobs.

Commonwealth and state laws have not kept pace with the way Australians engage with digital communications and technologies. For example, a combination of laws prevent people from adopting new technologies in common processes like executing statutory declarations and deeds. The Deregulation Taskforce found in preliminary consultations that this can be costly and time consuming for people, and that there is an appetite for reform.

The use of statutory declarations and deeds is widespread in the day-to-day operations of business. Research by Accenture for the Deregulation Taskforce found that over 4.5 million deeds and more than 3.8 million statutory declarations are completed each year by small and medium enterprises and consumers; with reforms to the execution of these documents estimated to save over \$400 million in direct costs and wasted time each year.

In response to COVID-19, most governments introduced temporary measures to enable greater use of electronic signatures and audio-visual witnessing of documents, with the Australian Government intending to make permanent changes to the Corporations Act in this regard. The disruptions from COVID-19 showed that we can use technologies to create secure, accessible and consistent pathways for executing these important documents, while maintaining the paper-based option.

In April 2021, the Government announced that the Deregulation Taskforce and the Attorney-General's Department would examine options to enable electronic document execution. In June 2021, the Council on Federal Financial Relations decided to prioritise working together towards a common approach for document execution.

The Deregulation Taskforce, in consultation with federal, state and territory officials from Attorneys-General and Treasury departments, has identified a number of potential areas of reform to modernise document execution. These are outlined in this consultation paper.

This process provides an opportunity to go back to first principles with stakeholders, consider the temporary settings and future-proof regulations, while ensuring the objectives of these important documents continue to be met. It aims to support businesses to harness the best available technologies and direct more of their valuable time and resources towards productive activities.

Modernising document execution will complement the Government's plan for economic recovery, Digital Economy Strategy and other reforms underway to modernise business communications.

We are pleased to release this public consultation paper and invite you to share your experience and suggestions for how to modernise document execution.



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1 Introduction

1.1 Deregulation agenda

The Deregulation Agenda is a key part of the Australian Government's economic strategy, to make it easier for businesses to grow and create jobs. It aims to ensure that our regulatory settings are fit for purpose, enable people to harness the best available technology to boost productivity and competitiveness, and support well-functioning markets, innovation and business investment.

Complementing the Deregulation Agenda are strategies to support the development of the digital economy. Australia is part of an interconnected global economy and the online world is rapidly changing the business and social environment. Over the past 12 months, many Australian businesses introduced new ways of working and used digital technologies to change the services they offered, how they were delivered to others, and how they met their obligations. COVID-19 changed the way Australians engage with digital technologies and saw an increased uptake of digital technologies by businesses, consumers and governments.

Laws across the federation have not kept pace with the way Australians wish to engage and communicate through digital technologies. Some laws mandate that businesses follow certain methods of communicating or storing information that effectively prevent them from using more suitable delivery methods or adopting more effective and efficient technologies.

In response to the COVID-19 pandemic, the Australian Government implemented temporary measures allowing companies to execute documents, including deeds, electronically under the *Corporations Act 2001* (Cth).¹ These temporary measures were subsequently renewed and will be in place until 31 March 2022. The Australian Government has also announced its intention to make this measure a permanent feature of the Corporations Act. These measures replaced requirements for company officers to physically sign the same hard copy of a document to execute a document, including deeds, on behalf of a company. These reforms not only allowed companies to continue to operate during the height of the COVID-19 crisis but also demonstrated the value these reforms provided through increased flexibility and a reduction in time and costs for business. This led the Australian Government to announce their intention to implement permanent reforms to electronic execution under the Corporations Act in February 2021.²

Through its digital economy strategy, the Australian Government committed to implement smart, modern systems, settings and regulation to drive digitalisation. This includes ensuring policy, regulation and legislation are fit for the digital age in order to better reflect and respond to current, emerging and future digital technologies; keeping Australia on track to be a leading digital economy and society by 2030.

In June 2020, the Australian Government committed to modernise business communications through work to reform unnecessary regulation, reduce costs to consumers and businesses, and make it easier for businesses to communicate.³ As part of this work, the Deregulation Taskforce based in the Department of the Prime Minister and Cabinet took a 'factory floor' approach to identify regulatory barriers and burdens in relation to business communication. The execution of documents, particularly statutory declarations and deeds, was found to be an area of regulatory congestion for businesses.

Having identified statutory declarations and deeds as a priority reform for businesses, the Australian Government committed to modernising the laws and regulations governing these documents. This was initially announced as part of the

¹ The Hon Josh Frydenberg MP, 'Making it easier for business to operate during Covid-19', media release, 5 May 2020, accessed at: <https://ministers.treasury.gov.au/ministers/josh-frydenberg-2018/media-releases/making-it-easier-business-operate-during-covid-19>

² The Hon Josh Frydenberg MP, 'Extension of measures relating to virtual AGMs and signing and sending electronic documents', media release, 17 February 2021, accessed at: <https://ministers.treasury.gov.au/ministers/josh-frydenberg-2018/media-releases/extension-measures-relating-virtual-agms-and-signing>

³ The Hon Ben Morton MP, 'Cutting red tape by Modernising Business Communications and Improving Occupational Mobility', media release, 15 June 2020, accessed at: <https://ministers.pmc.gov.au/morton/2020/cutting-red-tape-modernising-business-communications-and-improving-occupational-mobility>

2021-22 Budget deregulation package. Many laws governing document execution in Australia are established under State law or are governed by the common law, and some have been subject to temporary amendments during the COVID-19 pandemic. Many States introduced temporary reforms and are in the process of considering permanent arrangements. On 11 June 2021, Commonwealth, state and territory treasurers agreed through the Council on Federal Financial Relations to prioritise document execution reforms⁴, including working together to explore a common approach across the federation.

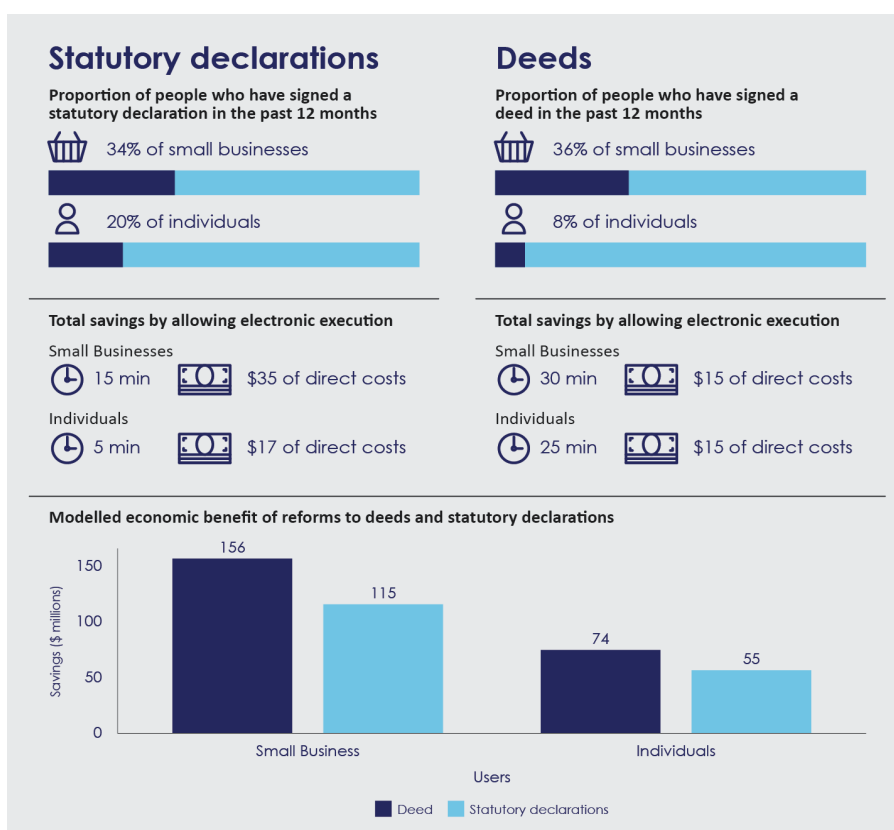
The Australian Government, States and Territories (States) have agreed to review policy settings around statutory declarations and deeds, including exploring a common approach for the permanent electronic execution of documents and alternatives to physical witnessing requirements.

1.2 Economic case for reform

As part of the Deregulation Taskforce’s ‘factory floor’ approach, Accenture was commissioned to conduct a survey and found that small and medium enterprises (SMEs) and consumers completed around 3.8 million statutory declarations in 2019-20. With statutory declarations required to be physically printed and signed in the presence of an authorised witness, Accenture estimated that SMEs and consumers spent around 9 million hours a year printing and collecting statutory declarations, travelling to the locations of authorised witnesses, discussing and filling out declarations with witnesses, making copies and submitting completed declarations.

Like statutory declarations, the physical requirements around signing and witnessing deeds cost significant amounts of time and money each year. Accenture estimated that SMEs and consumers completed around 4.5 million deeds in 2019-20, adding up to more than 6 million hours spent printing, signing and physically witnessing their execution.

Figure 1: The reach and potential benefits of statutory declaration and deed reform



Source: Accenture modelling commissioned by the Deregulation Taskforce.
Note: A full-text description can be found in Appendix B.

⁴ Senator the Hon Michaelia Cash and the Hon Ben Morton MP, ‘Modernising document execution across the Federation’, media release, 11 June 2021, accessed at: <https://ministers.pmc.gov.au/morton/2021/modernising-document-execution-across-federation>

1.3 Purpose of consultation

The Deregulation Taskforce is seeking feedback from businesses, consumers, professional bodies, regulators and other stakeholders on possible reforms to modernise document execution, focussing on statutory declarations and deeds, with a view to improving the consistency of document execution across the Australian federation.

The Deregulation Taskforce has prepared this paper in consultation with a Commonwealth-State Modernising Document Execution Working Group, which has been formed to provide advice to the Council on Federal Financial Relations by November 2021. The working group includes representatives from the Deregulation Taskforce at the Department of the Prime Minister and Cabinet, Treasuries and various Attorneys-General or equivalent departments from Commonwealth, State and Territory jurisdictions.

Complementing this work, the Australian Treasury has publicly consulted on amendments to the Corporations Act, to make permanent the temporary measures put in place during the COVID-19 pandemic relating to electronic execution of company documents and meeting notifications. The latest round of public consultation on these amendments is open from 30 August to 10 September 2021. Consultation was also held in respect of these amendments in October 2020 and June 2021.

The present consultation is exploring options for a common approach to the execution of statutory declarations and deeds, including digital options while retaining the current paper-based process. The consultation is not proposing to change the way that documents are executed for significant life events, affidavits, wills and powers of attorney: the focus of this consultation is on regulatory reform to modernise business communications.

The submissions received from this consultation will inform advice to ministers and may be followed by more targeted consultations on legislation and implementation by responsible jurisdictions. The Deregulation Taskforce welcomes submissions on the matters raised in this paper, including advice on further reform opportunities.

2 Solemn documents in Australia

Statutory declarations and deeds are part of a wide class of documents known as ‘solemn documents’; a formal indication the business or individual intends to be bound by the document’s content. They were developed through Australia’s common law heritage and are now regulated by Commonwealth and State legislation. Historically, statutory declarations and deeds involved rituals of signing and witnessing, designed to communicate the solemnity of the occasion and to strengthen legal certainty, by validating the parties’ identities and confirming their intention to be bound by the legal rules that govern the transaction.

2.1 Statutory declarations

Historically, laws in each Australian jurisdiction have required statutory declarations to be written on paper and signed with wet ink. Commonwealth statutory declarations are regulated by the *Statutory Declarations Act 1959* (Cth) and *Statutory Declarations Regulations 2018* (Cth), with an exemption to the *Electronic Transactions Act 1999* (Cth) applying. State statutory declarations are governed by State legislation.⁵

Statutory declarations are used in a wide range of government and business transactions, and as a form of evidence in administrative tribunals and courts. For example:

- Governments use statutory declarations as part of applications for citizenship, visas, health benefits and licences.
- Businesses use statutory declarations in human resource processes and insurance claims.
- Courts and tribunals can admit into evidence statutory declarations.

A short history of statutory declarations⁶

The statutory declaration was created in the early 19th century as a deregulatory reform, to ‘make provisions for the abolition of unnecessary oaths’ in the United Kingdom and its colonies. Oaths, solemn declarations and affidavits were retained for events such as taking up a public office or for giving evidence in the courts, but statutory declarations intended to be the routine way of creating reliable statements and narrations of events for administrative, civil and commercial purposes. Australia’s colonial history and federal system of government meant that each jurisdiction used and reformed its statutory declarations differently.

The original policy intent of the statutory declaration was to make statements of fact more reliable by requiring them to be made in writing, in front of a witness and with an understanding that false statements could be subject to criminal penalty. The witness signed the document to confirm they had checked:

- a) the identity of the person making the statement; and
- b) the person making the statement actually signed the document at that location and time.

However, witnesses for statutory declarations have never been responsible for verifying the truthfulness of the statutory declaration.

Those authorised to witness statutory declarations were originally Justices of the Peace (JPs), public notaries and ‘other officers authorised by law’. Over time, the range of people authorised to act as witnesses has widened considerably and varies across Australian jurisdictions.

⁵ The *Statutory Declarations Act 1959* (Cth) applies in the ACT.

⁶ Further information can be found in Ryan and Taylor (2021), ‘Executing documents in a digital economy: Rethinking statutory declarations and deeds in Australia’, accessed at <http://regnet.anu.edu.au>

2.2 Deeds

Deeds are legal instruments and used widely in Australia. They generally provide a promise from one person or business to another. The most common examples of deeds include but are not limited to:

- deeds of guarantee, generally used in loans, mortgages or commercial financing, where a third party promises that the duties of another party will be fulfilled
- deeds of confidentiality, generally (but not exclusively) used in employment
- deeds of settlement and release, generally found in litigation proceedings and used to waive a claimant's cause of action
- deeds used to provide credit upon delivery of goods
- trust deeds, which establish guidelines about how a trust operates and can be used to hold property or run businesses on behalf of the beneficiaries.

The convenience of a deed is that it creates certainty and is legally enforceable, without requiring an exchange of value or a price (in law what is known as 'consideration') in the way that a contract does. Historically that certainty was accomplished by making deeds difficult to create — the deed had very specific steps required for its execution.

Over time, many of these formalities have changed, been relaxed or removed in response to business needs and advances in technology. Consequently the relationship between deeds and contractual arrangements has overlapped. There are still some distinctions, with contracts able to be executed through digital methods.

Today, depending on Australian jurisdiction, deeds can be created in person, or they can be transmitted electronically and witnessed remotely (such as through audio-visual link (AVL)). In Queensland, the requirement for witnessing has been removed under the temporary laws introduced during the COVID-19 pandemic.

A short history of deeds⁷

Deeds are a product of the common law, the body of case law created by judges and tribunals through written opinions and judgements. Deeds can be difficult to define because their uses have expanded and their forms have varied since they were originally conceived in 8th century England. Deeds have been described as the most solemn act that a person can perform with respect to a particular piece of property or other right.

The form of deeds has changed over time. Originally a deed was a 'solemn document' created in writing (on paper or parchment or vellum) through a procedure (signed simultaneously by parties who were physically present, witnessed simultaneously by third parties who were physically present, 'sealed' through affixing a seal or sticker, or imprint or stamp or making a mark on the document and 'delivered') in order to be legally valid.⁸

The formality of the deed meant that when validly created, it was perceived as certain and secure. Part of that security comes from the fact that, unlike a simple contract, the deed does not necessarily require something in return (whether it be money or another form of value).

⁷ Further information can be found in Ryan and Taylor (2021), 'Executing documents in a digital economy: Rethinking statutory declarations and deeds in Australia', accessed at <http://regnet.anu.edu.au>

⁸ The terms 'parchment' and 'vellum' are often used interchangeably to mean the skin of an animal that has been de-greased and specially treated for use either in writing, printing or binding.

2.3 COVID-19 witnessing amendments

As the COVID-19 pandemic spread, many individuals and business were left facing the reality of lockdowns and being required to conduct business from their homes. Many jurisdictions moved quickly and in most cases brought in temporary provisions to allow documents to be executed and witnessed through AVL. While the temporary amendments were received well by businesses and consumers, they varied across the States (see Appendix A). The need to put temporary arrangements in place quickly during COVID-19 meant that existing procedures were digitised through AVL.

Audio-visual witnessing

Currently most jurisdictions have arrangements that allow for documents to be signed electronically and witnessed online in real time using audio-visual technology. In these jurisdictions legal documents may be witnessed by AVL, through an online video-conferencing platform such as Zoom or Skype. This means the witness is able to be 'present' via an AVL. Legislative schemes enabling remote witnessing contain various requirements, including:

- all parties involved are connected through an AVL
- if the document requires the witnessing of a signature, the witness must see this take place through an AVL
- the witness must be satisfied that the document they sign is the same document or a copy of the same document signed by the signatory (the person who signed the document)
- all aspects of the witnessing by AVL should occur as close as possible (preferably on the same day)
- any other prescribed requirements that apply to the particular document being signed must also be met
- the witness must include a statement on the document that all the requirements of witnessing by AVL have been met.

AVL witnessing allows for documents to be witnessed in the 'traditional way' in the presence of the signatory. Legal professionals are generally bound by more stringent ethical and legal obligations than most witnesses, including a reassurance that a person is not impaired when signing a document. While this reassurance is not a formal requirement for non-legal professional witnesses, it is considered best practice. In order for the document to be legally valid, it requires the signatory to possess mental capacity and free will (i.e. be free from undue influence). AVL witnessing can address this by allowing a person to view the signatory in real time.

As jurisdictions start to consider making AVL witnessing permanent, we have an opportunity to consider the costs and benefits of models for witnessing in more depth, including if AVL should remain as a pathway to execute documents.

2.4 Electronic Transactions Acts

The existing legal system is generally capable of dealing with electronic transactions. However, the uniform electronic transactions legislation of the Commonwealth, states and territories provides certainty for electronic transactions and allows electronic commerce to operate on the same basis as paper based commerce.

The *Electronic Transactions Act 1999* (Cth) (the ETA) enables people to provide information or a signature, or produce or retain a document electronically. The ETA ensures that a transaction under a Commonwealth law will not be invalid simply because it was conducted through electronic communication rather than a paper-based process.⁹

The ETA was closely based on the Model Law on Economic Commerce 1996 devised by the United Nations Commission on International Trade Law. This Model Law is broadly accepted throughout Australia, with each State having their own equivalent of the ETA, which permits electronic signature in certain circumstances and contains definitions for electronic communications.

Australia has aligned its Commonwealth ETA, and its State and Territory counterparts, with the United Nations Convention on the Use of Electronic Communications in International Contracts (the Convention which builds upon the Model Law which the ETAs are based). This work was completed in 2009.

⁹ <https://www.ag.gov.au/sites/default/files/2020-03/ElectronicTransactionsAct1999infosheet.pdf>

Jurisdictions have various differing exemptions from their respective ETAs. For example, section 10 of the *Statutory Declarations Act 1959* (Cth) is exempt from the relevant ETA. Some legal procedures or activities may also be exempt under the various ETAs.

Consultation questions

1. As a business or as an individual, when and why do you use statutory declarations or deeds? Please provide any examples of the costs involved in the process. Why might you use a statutory declaration over an ordinary declaration, or a deed over a contract?

3 Issues with document execution today

Paper-based document execution has been part of Australian society since before federation. Some may find comfort in physical paper documentation compared with newer digital alternatives. In addition, the community may view paper as more serious, solemn and tangible. However, the community's comfort with paper may change as users adapt to and prefer electronic formats and devices.

Statutory declarations and deeds are often required as part of legislation and business process and perform a range of important legal and economic functions. While electronic execution can increase flexibility and reduce costs, it is not necessary for electronic execution of statutory declarations and deeds to replace physical execution – rather, electronic execution would be an alternative option. Businesses and individuals would continue to be able to physically execute statutory declarations and deeds if they prefer. The intention of this reform process is to make digital document execution more available, effective and consistent across jurisdictions.

The main issues that add complexity to deeds and statutory declarations include:

- physical paper requirements
- physical witnessing requirements
- inconsistencies across jurisdictions.

3.1 Physical paper requirements

As Australia continues to shift to a digital economy, an insistence on physical paper form is no longer convenient for most businesses and consumers. Australians may not have access to printers at home or in their immediate community. People expect information to flow faster and to have responses sooner to allow them to make timely decisions. This is difficult with respect to paper documents, which generally require the hard copy to be physically posted. In addition, with workplaces increasingly moving towards 'paper-free' environments, the requirement to use and then store paper-based documents can be inconvenient and may result in additional storage costs.

Paper documents are also prone to errors — pages can be missed or signed in the wrong place, writing or signatures can be illegible, and dates added incorrectly. Correcting errors once paper documents have been mailed can be arduous and may create delays or lead to legal ramifications for the parties involved in a transaction. Paper documents can also make it harder for recipients to verify who actually signed the document and confirm that a witness was present at the time of signing. Consequently, paper documents may be vulnerable to fraud or forgery.

There is uncertainty as to whether deeds can be digitally executed outside of temporary COVID-19 amendments, or specific regulation (such as e-conveyancing laws that specifically allow for the electronic execution of property-related deeds). This reform process can help to resolve any uncertainty.

Separately, as technology is being used by more Australians, paper documents are becoming less common in the everyday functions of government, business and individuals. Many sectors recognise the cost saving and efficiency benefits of digitisation. Examples of this are the now widely accepted use of electronic fund transfers and the recent implementation of the optional New South Wales (NSW) and South Australian digital drivers licences.

3.2 Physical witnessing requirements

Statutory declarations and deeds generally require witnessing a declarant's signature. For statutory declarations, finding and coordinating an authorised witness can be inconvenient and costly. Rearranging work commitments or travelling to find a witness can be difficult. The range of authorised witnesses for statutory declarations is different across jurisdictions, and witnesses are required to perform different roles in different jurisdictions. For example, a witness for a NSW statutory declaration is required to check the declarant's identity. However, a witness for a Commonwealth statutory declaration is not required to do so, although the Attorney-General's Department recommends that they do.

For deeds, witnesses are generally required to take 'reasonable steps' to verify the identity of the person whose signature they are witnessing ('attesting'). However, it is unlikely many people are aware of or receive training on this requirement.

What constitutes ‘reasonable steps’ is not always clear and the degree of identity verification undertaken will vary. This can present uncertainty for Australian businesses and individuals, including legal practitioners.

3.3 Inconsistencies across jurisdictions

All jurisdictions have their own laws and regulations governing statutory declarations and deeds. There are inconsistent document execution requirements across jurisdictions.

Each jurisdiction has different forms and procedures for a statutory declaration. The occupational groups authorised to witness statutory declarations and the obligations on a witness also vary (Table 1).

In NSW, statutory declarations can be witnessed by JPs, public notaries, Commissioners of the Courts and other legal practitioners. However, NSW have temporarily expanded their list to include eligible witnesses under the Commonwealth. In Victoria, statutory declarations can be witnessed by pharmacists, veterinary surgeons and many other specific occupations. In the Northern Territory, anyone over 18 years old can witness a statutory declaration. Adding complexity is that, in some jurisdictions, JPs can witness statutory declarations for use in other jurisdictions; and authorised witnesses are able to witness statutory declarations through different methods with the temporary COVID-19 amendments.

Maximum penalties for making a false declaration differ, ranging from three to fifteen years of imprisonment. These variations may reflect a combination of factors, including historical developments in each jurisdiction. The effect of different penalties – including potential financial penalties – is unclear.

Table 1: Statutory declaration witness responsibilities and penalties by jurisdiction

Jurisdiction	Check that text fulfils legislative requirements / sign all pages	Confirm declarant identity	Cross out blank space	Tell/check the declarant understands possible legal penalties	Remind/ask the declarant if the declaration is true	Observe the declarant sign the declaration	Provide contact details	Maximum penalty for false declaration (years of imprisonment)
NSW		✓			✓	✓		7
VIC	✓		✓		✓	✓	✓	5
QLD	✓							3
WA	✓				✓			4
SA	✓	✓	✓	✓	✓	✓	✓	4
TAS	✓							15
ACT/CTH						✓	✓	4
NT	✓					✓	✓	3

Source: Accenture analysis commissioned by the Deregulation Taskforce based on Justice of the Peace handbook guidelines in each jurisdiction; Attorney-General’s Department (2021) ‘Complete a statutory declaration’

There is generally no recognition of other jurisdictions' statutory declarations. The following case study illustrates where a document executed in one jurisdiction may not be acceptable in another jurisdiction or area of law.

Case study: Invalid use of a statutory declaration from another jurisdiction

In 2007, the Federal Court of Australia dismissed an appeal from a Federal Magistrates Court decision where the appellant, an unsuccessful visa applicant, was found not to have satisfied the requirements of the applicable migration legislation in establishing he had suffered domestic violence. It was held in part that he had not provided a statutory declaration in the form prescribed by the migration legislation. The appellant, a migrant on a partner visa, sought to explain a marriage breakdown by making a statutory declaration alleging domestic violence. Neither he nor the authorised witness who signed the statutory declaration understood that the *Migration Regulations 1994* (Cth) referred only to a Commonwealth statutory declaration, not a Victorian one which had been submitted.

Source: *Mohamed v Minister for Immigration and Citizenship and Another* (2007) 96 ALD 114.

For deeds, creating a legally valid instrument requires the business or the individual to follow the execution requirements that apply to them and apply within the relevant jurisdiction. Corporations are regulated by the Corporations Act. The *Corporations (Coronavirus Economic Response) Determination (No. 1) 2020* (Cth) created temporary rules to expand the modes of execution of documents by a company under section 127 of the Corporations Act, to include:

'...use of electronic signatures, execution of documents in electronic form. Those reforms, now before Parliament would enable corporations to sign and execute deeds without witnessing... However, other types of entities, in other jurisdictions, including state and federal governments, partnerships, trusts and unincorporated associations need to follow different procedures to create deeds.'

In addition, some jurisdictions may require a deed in circumstances where others do not. As an example, some States may require finance documents which convey an interest in land to be deeds, while others do not.

International approaches to document execution processes can be informative.

While approaches to document execution vary in other countries, many have allowed for the use of electronic signatures as an alternative to 'wet ink' signatures in the execution of certain documents. The European Union provides for a hierarchy of electronic signatures and mutual recognition across member states; whereas other jurisdictions are more technology neutral and flexible around signatures for those involved. Regulators, such as the Land Registry in the United Kingdom (UK), have fast tracked work in response to COVID-19 to accept witnessed electronic signatures across a broader range of documents through associated digitisation of processes.

A number of federal governments, such as Canada, have developed model legislation or common frameworks to achieve greater consistency across jurisdictions.

International approaches¹⁰

EU

In 2014, the EU introduced a hierarchical classification standard for the use of electronic signatures when signing documents across different member states. The standard set out that a 'qualified electronic signature' (a digital signature created by a device that meets the most complicated technical requirements) provides the highest level of admissibility in EU courts and has an equivalent legal effect to a handwritten signature. This reform allowed for the digital execution of documents without the need for documents to be printed on paper and signed with wet ink signatures. A qualified electronic signature in one member state is mutually recognised in all other member states.

UK

Electronic signatures are deemed equivalent to wet ink signatures and widely used in the UK for commercial agreements, as provided for by the *Electronic Communications Act 2000* (UK). For example, in human resourcing documents, commercial agreements between corporate entities, consumer agreements and real estate documents.

The UK preserved some of the EU regulations in its law relating to electronic signatures, including regulations distinguishing types of electronic signatures, in order to provide clarity to businesses when using electronic signatures and maintain consistency across jurisdictions.

The UK identified types of handwritten documents not typically appropriate for electronic signatures, such as real property documents for registration, wills and powers of attorney. However, there has been a general move towards greater use and acceptance of digital communications and electronic signatures by regulatory bodies. For example, digital signatures in land transactions have been legally enabled since 2002 and the Land Registry has fast-tracked work in response to COVID-19 to accept witnessed electronic signatures across a broader range of documents, accompanied by updated practice guides developed with industry.

Canada

Canada permits the use of electronic and digital signatures through various pieces of legislation at federal and provincial levels, and is technology neutral in its approach. Canada originally implemented a general definition for electronic signatures through model legislation. However, despite the legislative goal of uniformity, individual provinces have adopted different laws and regulations that govern the use of electronic signatures, such as different reliability tests.

Consultation question

2. What barriers, challenges or difficulties have you experienced with physical document execution? Do you have examples relating to paper requirements, witnessing requirements or jurisdictional inconsistencies? Are there other barriers that aren't captured here? What can we learn from international approaches?

¹⁰ Further information can be found in Ryan and Taylor (2021), 'Executing documents in a digital economy: Rethinking statutory declarations and deeds in Australia', accessed at <http://regnet.anu.edu.au>

4 Objectives and principles of reform

The Deregulation Taskforce has identified several outcomes and principles as a framing device for considering possible reforms to document execution. We welcome your feedback on these, with a view to potential reform options. Intended outcomes include:

- reduced costs (both monetary and time) for businesses, individuals and government
- allowing businesses, individuals and government to execute documents in their preferred manner while still meeting the regulatory objectives consistent with technological neutrality to facilitate innovation
- making it easier for businesses and individuals to engage with government processes.

Technology can be used to provide a different path for document execution, in addition to the current physical approach. Reforms enabling electronic methods should ensure the execution of statutory declarations and deeds remains reliable, secure, consistent, accessible, and provide certainty.

4.1 Reliability

Reforms should provide a minimum level of assurance for both paper and electronically executed documents. It is important that electronically executed documents are legally valid, enforceable and achieve their intended purpose. Statutory declarations and deeds are widely utilised throughout Australia in the commercial and private sphere, from regular everyday interactions to high value transactions. Reforms should provide the same level of assurance and not displace, or disturb, the existing reliability of physically executed documents. In addition, reforms should be technology neutral and allow businesses, individuals and government to execute documents in their preferred manner while still meeting the policy intent.

Currently, physical witnessing can provide an assurance that a named person genuinely executed a statutory declaration or deed. Reforms should ensure that digitally executed documents can and will be accepted by both the government and private sector as reliable and accurate. Part of this consultation is to gauge the prospects of retaining reliability and assurance if in-person witnessing is removed or remote witnessing by AVL is extended. If businesses or individuals choose to digitally sign statutory declarations and deeds, the law will treat it as a validly executed document which can be relied upon by third parties and in court.

4.2 Security

Reforms should address potential concerns regarding document security and fraud risk. There are a range of risks for both physical and digital document execution and storage. One of the aims of the reforms is to improve overall risk management and security, drawing on the benefits of technology. Electronic document execution should provide security and privacy to the declarant and the recipient.

Another objective is to provide a secure framework for businesses and individuals so they can digitally execute documents with minimal risk to information (whether it be personal, commercial or otherwise) being compromised. Simultaneously, reforms would allow third parties to rely on digitally executed documents, knowing it came from the intended recipient.

4.3 Consistency

Statutory declarations and deeds are documents that are managed across all jurisdictions with differing requirements. This can result in confusion over templates or risk of administrative error, with potential for significant delays and financial penalties. This reform process presents an opportunity for the Commonwealth and the States to reduce the regulatory burden and risk for businesses and individuals by improving consistency across jurisdictions.

In addition, there should be consistency for all situations in which a document is intended to be used. For example, if a statutory declaration is able to be executed in one way for a particular department or organisation, it should also be able to be made the same way for other organisations. Similarly, if court or tribunal statutory declarations are able to be made in one court, it should be equally recognised in other courts (so that evidence admissible in one court is admissible in all).

This reform process aims to develop a common approach, minimising inconsistencies and streamlining requirements across jurisdictions. It would allow businesses and individuals to digitally execute and lodge statutory declarations and deeds so that they can be accepted across all jurisdictions, whether it be at a land titles office or court.

4.4 Accessibility

Reforms to document execution should improve accessibility, including for vulnerable people and those without access or a preference for digital technologies. Accessibility can be improved by reducing transaction costs, such as those which might be incurred through different approaches to document execution, and continuing to allow for technological innovation and forms of business communication.

The reform process should provide a framework that will allow for greater accessibility to secure document transactions for everyone in Australia, regardless of their physical location. Using digital methods, while maintaining physical methods, would provide more variety and options. For example, electronic witnessing or digital verification could offer more accessibility for regional communities and people with disability.

4.5 Certainty

Certainty should be provided to stakeholders in the reform process, avoiding confusion and legal ambiguity. Certainty would assist government, business and the community and would mitigate the risk from the exercise of discretion.

Reforms should enable courts to accurately interpret a legal provision in accordance with policy intent. Simultaneously, the reform should provide the flexibility to cater for the development of new technologies.

Consultation question

41. What would you consider to be a desirable outcome from reforming document execution? Are these the right principles for reform? Are there other outcomes or principles we should consider?

5 Proposed options

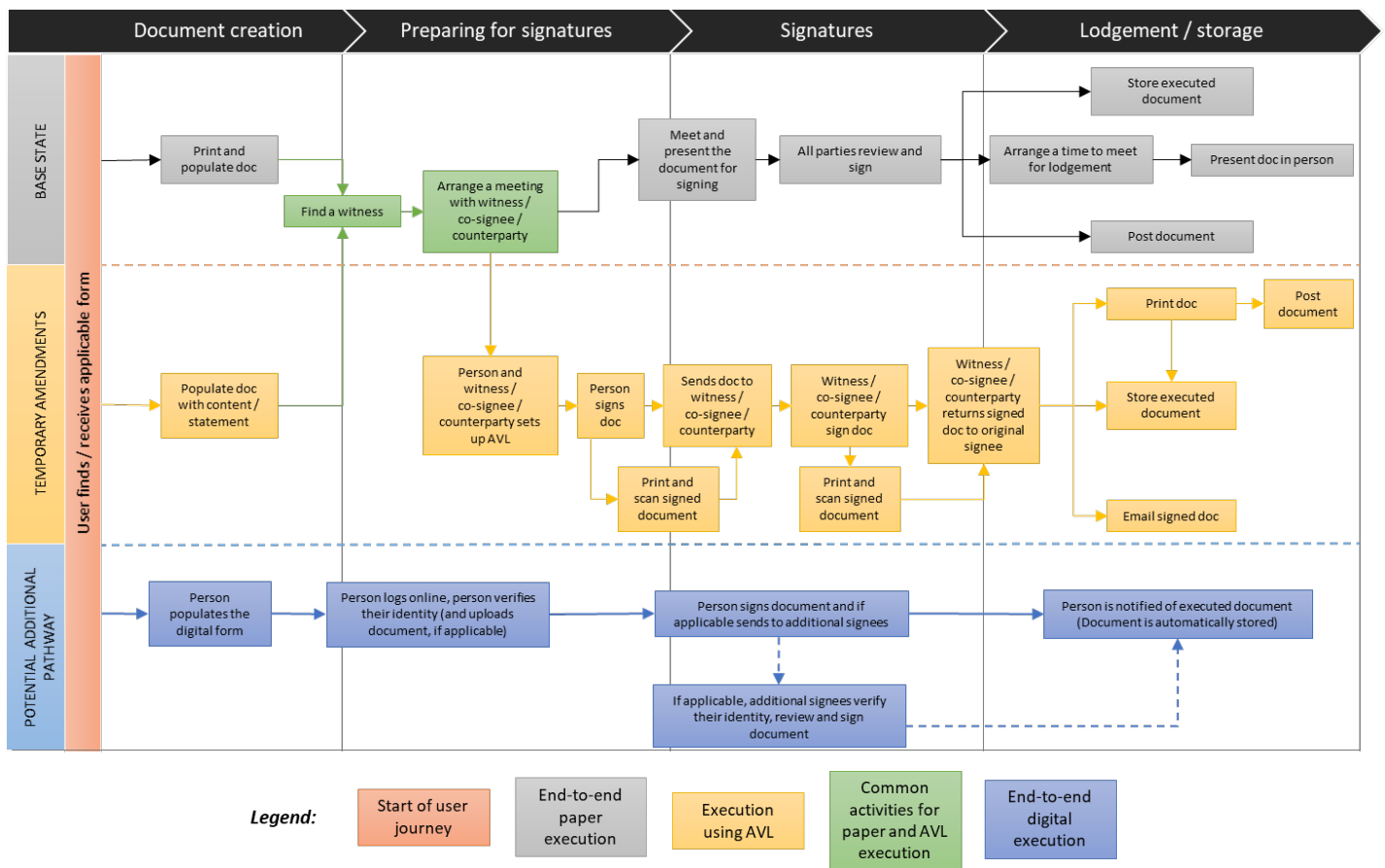
The COVID-19 pandemic prompted the Commonwealth and State governments to amend legislation to permit electronic signatures in circumstances that would otherwise not be allowed. However, as these amendments were generally temporary, many jurisdictions are taking steps to consider permanent reforms. A list of Commonwealth and State government actions can be found in Appendix A.

The current regulatory and technological climate provides an opportunity to take further steps and allow for greater digitisation of document execution. Several potential and non-mutually exclusive options have been developed for consultation, informed by the pattern of recent reforms across jurisdictions, the above mentioned issues and principles:

- allowing digital options
- providing common definitions and standards
- allowing digital verification in place of witnessing
- improving national consistency and usability.

These potential options provide a starting point for consideration by Australian businesses, individuals, professional services and government. Depending on the design of the reform, digital execution could achieve the same policy intent as physical execution and address inconsistencies in current practices. Any reform would apply prospectively. An illustrative outline of current and future pathways is provided below, ranging from the paper-based approach (base state) to a digital pathway and hybrid options such as those we have at present under some temporary amendments.

Figure 2: Current and future pathways process map



Note: A full-text description can be found in Appendix B.

5.1 Allowing digital options

Potential reforms would allow for digital alternatives to paper-based document execution to be available as a choice for individuals and businesses. Digital alternatives to physical processes are available throughout the document execution process, including in the printing, signing and witnessing steps.

At present, there is a general requirement for statutory declarations and deeds to be signed on paper in the presence of a witness. As an example of a digital alternative, most jurisdictions have passed temporary amendments during the COVID-19 pandemic to allow electronic signing and witnessing of statutory declarations over AVL - Victoria has made permanent changes to this effect.

In NSW, Victoria and Queensland, deeds and agreements may be executed electronically. In NSW, deeds can be witnessed via AVL. Deeds do not generally need to be witnessed in Victoria and Queensland. In Victoria, witnessing via AVL is available when a witness to a deed is required. In the Australian Capital Territory, South Australia, and the Northern Territory, while individuals may not execute deeds electronically, they may execute agreements electronically. In Western Australia, while individuals may execute some agreements electronically, individuals cannot execute agreements creating or disposing an interest in land or deeds electronically.

This potential reform is not only an opportunity to make temporary COVID-19 amendments a permanent feature, but to provide more digital options, including allowing for statutory declarations and deeds to be executed electronically without a physical document. This may require the Commonwealth and States to amend their legislation to provide people with the option of signing and otherwise executing statutory declarations digitally, in addition to current physical documentation methods. For example, to allow an electronic signature to be applied.

A digital alternative would also provide flexibility for a range of hybrid models, such as split execution where one party to a deed may prefer an electronic option while the other party has only a hard copy option available to them.

5.2 Providing common definitions and standards

The Commonwealth ETA and its State counterparts operate from a principle of technology neutrality, allowing businesses and individuals to choose a signature method that provides the level of security appropriate for the transaction. The ETA focuses on the purpose of a signature rather than the form by which that signature is satisfied. Additionally, the signature method must be as reliable as appropriate for the purposes for which the information was communicated.

There may be a need for a minimum standard on what an electronic and digital signature method should entail in document execution. In determining the appropriateness of a signature method, a number of legal and technical factors may be taken into account. These factors could include: the function of signature requirements in the relevant statutory environment; reliability and consent in using a particular method; the type of transaction; the capability and sophistication of the relevant communication systems; and the value and importance of the information in the electronic communication. Different degrees of security may be needed for different transactions.

If necessary, the ETA definition or other legislation could be improved to better take these factors into account. Developing and introducing common definitions, whether it be through legislation or by specific model clauses, could reduce confusion and simplify processes.

Opportunities for a minimum level of consistency for the appropriate form of electronic signatures could be present through identifying minimum standards. Additionally, for the purposes of a comprehensive reform, common data standards and metadata standards may need to be identified and defined. Guidelines could also be updated and improved for users and practitioners. These may assist in improving reliability, security, consistency, accessibility and certainty through document execution reform.

Land title registration

When estates and interests in land are dealt with, supporting documents such as statutory declarations and deeds, may be required to facilitate recordings in the land titles registry. As part of their obligations, state registrars must ensure that the lodgement of documents, including statutory declarations and deeds, meets stringent requirements of authorisation and identification.

Where there is uncertainty, the registrar may be required to exercise their discretion as to whether the method of electronic signature used is reliable and appropriate for the purpose it is used for. This contrasts with electronic conveyancing registry instruments (not required to be witnessed), which must be digitally signed under the Electronic Conveyancing National Law (ECNL) to which all States are parties. The ECNL does not specify the type of electronic signature required to be used in order to accommodate evolving technologies. However, the operating requirements made under the ECNL can be updated to keep pace with advances in technology.

To overcome uncertainty, clarity around the minimal acceptable form of electronic signatures and witnessing could be developed by regulators, suited to requirements.

5.3 Allowing digital identity verification in place of witnessing

One potential option to ease physical witnessing requirements is to enable a form of digital identity verification for electronic signatures. With current technology and platforms, users prepare and submit documents online. However, under a fully digital pathway, users could adopt digital solutions that could be taken to fulfil witnessing requirements. Examples of these digital solutions include:

- electronic signatures with enhanced levels of security and identity verification (digital signatures); or
- digital identity.

Identity verification is a key aspect of determining a person's eligibility for a government payment. Services Australia worked co-operatively with a number of State governments to facilitate identity verification of customers who had been affected by the bushfires. This included trialling the use of the Australian Government's Face Verification Service (FVS) to enable customers impacted by the bushfires to use facial recognition to confirm their identity through matching against images of the customer held by a government agency, such as the Passport Office and State and Territory drivers licence authorities.

During the 2019-20 bushfires, Services Australia extended their trial of the Department of Home Affairs FVS to support the administration of the Australian Government Disaster Recovery Payment. Using the FVS, Services Australia were able to verify a person's identity when they did not have physical access to their identity documents.

Case study: The 2019-20 bushfires - FVS

A customer in his 90s attended the Mt Barker Service Centre in early January 2020. He was evacuated from his home, leaving all his belongings (including all identity documents) thinking he would return when it was safe. Unfortunately, his home and property were destroyed due to fires in the area. This customer was able to have his emergency payment granted with no further requirement for him to return to the Centrelink office, because the FVS was used to verify his identity. A regulatory solution should be as light touch as possible, and technology neutral, allowing for further innovation and choice by the relevant parties that is appropriate for their transaction.

Digital signatures

A digital signature is a cryptographic technique that applies a mathematical algorithm to an electronic document or communication with a digital certificate's private signing key. This creates a unique seal which is inherently difficult to forge and can be checked by a relying party to confirm the document or communication has not been altered or interfered with, providing significant security benefits over traditional 'electronic signatures'.

Certification Authorities, Digital Certificates and Digital Signatures are all features of a Public Key Infrastructure (PKI). The Digital Transformation Agency (DTA) maintains the Gatekeeper PKI Framework, the accreditation regime for the operation and use of PKI-technologies. Further information on this program is available at: <https://www.dta.gov.au/our-projects/digital-identity/gatekeeper-public-key-infrastructure-framework>

Digital signatures are not a new form of technology. They are primarily used to verify the authenticity of transactions and are being used more widely in personal, commercial and government transactions.

When users submit transactions, they must prove to every node in the system that they are authorised to spend those funds while preventing other users from also spending those funds. Every node in the network will verify the conditions of the submitted transaction and check all other nodes' work to agree on a correct state. A digital signature algorithm is used widely for secure data transmissions in internet banking, e-conveyancing, remote computer access and identity verification.

Digital safeguards may allow for the execution of documents to be conducted entirely online without the need for a witness. For example, a digital certificate is an electronic data structure signed by a certification authority. The digital certificate includes a cryptographic key pair which can be used to create digital signatures. This verifies the identity of the business or individual sending a message, and then provides the receiver with the means to encode a reply.

Digital identity

Digital identity is a digital version of a typical paper-based identity check, which can enable an individual to be sufficiently distinguished when interacting online, including when accessing online services. Digital identity is not a replacement for physical documents such as a birth certificate, visa, drivers licence or passport.

Digital identity could be used to confirm the identity of an individual who participates in the electronic document execution ecosystem. The level of identity proofing required for a given document execution should be proportional to the required level of confidence in the claimed identity in that context. For example, under the DTA's Trusted Digital Identity Framework, Identity Proofing (IP) Level 2 is considered appropriate when a low-medium confidence level is required (such as for provision of utility services), while IP Level 3 is considered appropriate when a high level of confidence is required (e.g. to access welfare or related government services).

Further information on the Australian Government's Digital Identity Program is available at: <https://digitalidentity.gov.au>

The reform would allow people the flexibility to use safe, secure and appropriate digital identity and signature services where they consider it appropriate and suitable to their needs.

Historically, the witnessing requirement provides an essential safeguard which can ensure a person is executing a document freely and voluntarily. Authorised digital signature providers have developed sufficiently to include more complex criteria such as identity checks, timeframes to execute documents and assigning the execution of documents to third parties.

Reforms to document execution could facilitate the adoption of these technologies where users consider they would meet their needs. Amendments may be needed to the ETAs and other relevant legislation to enable document execution in this manner while meeting the multiple objectives and principles of reform.

5.4 Improving national consistency and usability

The execution of statutory declarations and deeds can be subject to differing regulations across jurisdictions, which can be cumbersome for businesses and individuals, and raise uncertainty. Two options which could address inconsistencies across jurisdictions include:

- a consistent approach to document execution, involving common requirements and other aspects of the documents; and/or
- providing for the mutual recognition of statutory declarations formed in different jurisdictions.

As previously mentioned, there are different regulatory requirements across jurisdictions. The most prevalent include different design format obligations and witness requirements.

The template for a statutory declaration differs by jurisdiction. In addressing unnecessary inconsistencies, improvements could be made to the usability and accessibility of templates from a user perspective, including to:

- follow a more modern, accessible format
- use plain English
- clarify the roles and obligations of witnesses.

The obligations for someone making a statutory declaration, the information that they are required to provide and complete, and the maximum penalty for a false declaration, vary by jurisdiction. The range of people who are eligible to witness a statutory declaration, their qualifications, the role that they are expected to perform (from passive to more solemn functions) and how they are able to conduct the process (such as through the use of AVL) varies between some jurisdictions.

Differences also exist in document execution requirements between areas of law and the entities involved, including non-corporates. Commonwealth and State governments could amend legislation to achieve greater consistency of requirements, such as through the use of model clauses and penalties that may be enacted by each jurisdiction.

Another option, which is not mutually exclusive, would be to allow for mutual recognition of documents executed in other jurisdictions. For example, this could be achieved by amending the *Statutory Declarations Act 1959* (Cth) to recognise a statutory declaration executed in another jurisdiction per the regulations in that jurisdiction. This would ensure that any regulations requiring a Commonwealth statutory declaration would be satisfied by a declaration from any other State jurisdiction. In addition, the States may amend their respective legislation to ensure that statutory declarations made in other jurisdictions would also be recognised. This approach could allow for jurisdiction-specific differences in regulations to continue where appropriate, while improving interoperability for users.

Consultation questions

42. Should electronic execution of statutory declarations and deeds be permitted? What would be the benefits and costs for you of digital options?
43. Is witnessing a necessary requirement for statutory declarations and deeds? Are there documents that should still require the presence of either a physical witness or a witness over AVL? Do advances in digital identity verification make witnessing requirements redundant?
44. What minimum reliability requirements should apply to the electronic execution of statutory declarations and deeds? Are the existing provisions in the ETA appropriate and effective? From your perspective, would providing common requirements and definitions, enabling digital verification or improving national usability increase reliability?
45. What processes and/or technologies do you consider appropriate for executing statutory declarations and deeds electronically? Please provide examples.
46. Have you experienced problems with executing documents across jurisdictions? Please outline what issues you faced. How would greater consistency affect you?

6 Further risks and opportunities

There are a range of further considerations and opportunities in the reform of document execution.

6.1 Risk of multiple pathways for executing documents

This reform process would provide digital mechanisms for the execution of statutory declarations and deeds, while maintaining the current physical or paper-based approach. The availability of multiple pathways may lead to initial uncertainty for users. However, this has been managed in other policy spaces. Reforms should not mandate specific technology but allow businesses, consumers and governments the ability to use the most suitable and efficient way of executing documents to fulfil their requirements.

6.2 Risk to vulnerable communities

Individuals and businesses need the flexibility, certainty and confidence to conduct their day-to-day transactions in a form that suits their needs, whether that is digitally or in physical form; and this includes protection from fraud.

The Australian population is diverse and vulnerabilities should be taken into account in designing potential reforms to statutory declarations, deeds and their execution. Designing additional digital pathways for document execution with these communities in mind will provide vulnerable Australians with further options for executing statutory declarations and deeds. For example, people with disability may benefit from more than paper-based options.

However, some vulnerabilities may relate to low English literacy, disability, health or age. Other risks in this context may relate to digital literacy, capability and access to technology. In addition, there may be circumstances where physical execution of a document is preferred due to potential undue influence, such as where the parties are not at arm's length.

6.3 Managing costs

Document execution reforms should decrease the cost of business. The broader Australian community recognises the benefits of digital technology, and businesses and individuals are already using similar platforms and options for some activities, such as electronic bank transfers, credit card payments and e-conveyancing.

Digital platforms and software vary in the functions that they offer to business and individuals. Software is widely available to enable people to apply a basic electronic signature, witness or share documents at very low cost compared with physical execution processes. Some third-party solutions have developed to integrate these activities (helping individuals and businesses through the document execution cycle from document creation to signature and identity verification) and can vary in their broader service offerings. Further innovation would be expected as organisations look to meet user needs.

There may be costs associated with the implementation of a digital pathway to execute statutory declarations and deeds that may fall on the consumer, businesses or government. Such costs can be incurred in the development and operation of a platform or as result of system compatibility issues. Competition between different third-party providers of technology solutions can help minimise costs – providing value for money and choice to consumers, business and other users.

6.4 Risks relating to digital security and interoperability

Digital technology should enable simplified and faster government interaction with business and industry. However, there is some level of risk for digital security and the continued availability of services. Most individuals and business operate digitally and put appropriate safeguards in place for their circumstances. Platforms used for the execution of documents should be capable of providing suitable document security and assurance.

Document execution platforms would be enhanced if they are interoperable with other systems used in government and private transactions. This would require appropriate system design and possible modification to existing administrative arrangements - ranging from enabling people to lodge documents electronically with an organisation as part of a broader administrative or commercial process (such as with a regulator) to being compatible with and meeting the strict rules and

standards under Australia's Trusted Digital Identity Framework. Appropriate design can allow flexibility in document execution and mitigate risks.

6.5 Further opportunities

Statutory declarations and deeds are commonly used in commercial activities and are an initial focus for government. However, there are a range of other reform opportunities connected with the modernisation of document execution. We want to hear about further opportunities and potential reform directions.

Consultation questions

47. Are there risks with document execution that might lead to an adverse outcome for you, your clients or other third parties as a result of reforms to document execution?
48. Do you have suggestions as to other potential reforms relating to document execution?
49. Are there other issues with document execution not canvassed in this paper that you wish to share?

7 Consultation questions

Stakeholders are invited to share their experience and suggestions for how to modernise document execution.

The following is a consolidation of the questions placed in earlier parts of the paper on different matters. Feedback is appreciated on some or all of these questions, but are a guide only.

1. As a business or as an individual, when and why do you use statutory declarations or deeds? Please provide any examples of the costs involved in the process. Why might you use a statutory declaration over a standard declaration, or a deed over a contract?
2. What barriers, challenges or difficulties have you experienced with physical document execution? Do you have examples relating to paper requirements, witnessing requirements or jurisdictional inconsistencies? Are there other barriers that aren't captured here? What can we learn from international approaches?
3. What would you consider to be a desirable outcome from reforming document execution? Are these the right principles for reform? Are there other outcomes or principles we should consider?
4. Should electronic execution of statutory declarations and deeds be permitted? What would be the benefits and costs for you of digital options?
5. Is witnessing a necessary requirement for statutory declarations and deeds? Are there documents that should still require the presence of either a physical witness or a witness over AVL? Do advances in digital identity verification make witnessing requirements redundant?
6. What minimum reliability requirements should apply to the electronic execution of statutory declarations and deeds? Are the existing provisions in the ETA appropriate and effective? From your perspective, would providing common requirements and definitions, enabling digital verification or improving national usability increase reliability?
7. What processes and/or technologies do you consider appropriate for executing statutory declarations and deeds electronically? Please provide examples.
8. Have you experienced problems with executing documents across jurisdictions? Please outline what issues you faced. How would greater consistency affect you?
9. Are there risks with document execution that might lead to an adverse outcome for you, your clients or other third parties as a result of reforms to document execution?
10. Do you have suggestions as to other potential reforms relating to document execution?
11. Are there other issues with document execution not canvassed in this paper that you wish to share?

8 How to make a submission

The Deregulation Taskforce, based in the Department of the Prime Minister and Cabinet, invites submissions in response to the consultation paper.

Submissions can be made online at deregulation.pmc.gov.au/priorities/modernising-business-communications/modernising-document-execution/make-a-submission or via post. Hard copy submissions can be posted to:

Deregulation Taskforce – MDE Consultations
Department of the Prime Minister and Cabinet
PO Box 6500
CANBERRA ACT 2600
Australia

The Department will consider hardcopy submissions received by post; however, these submissions will not be published on the website. **We welcome submissions received up to Friday 8 October 2021.**

Privacy collection notice

Providing personal information in your submission is voluntary. We may publish your submission (including your name), **unless you request for your submission to remain anonymous or confidential**, or if we consider (for any reason) that it should not be made public. We may redact parts of published submissions as appropriate. Submissions may be redacted to remove defamatory or sensitive material. Submissions containing offensive language or inappropriate content will not be responded to and may be destroyed.

The Department reserves the right not to publish all or part of a submission. Contact us for more information at MDE@pmc.gov.au.

Information you provide in your submission, including personal information, may be disclosed to the Australian Government, State and Territory governments and their departments and agencies; and third parties who provide services to the Department, for the purposes of informing and supporting the work of the Deregulation Taskforce. This information may also be used to communicate with you about your submission and the consultation process.

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Refer to our [Privacy Policy](#) and consultation privacy notice on our submission webpage to find out more.

Appendix A – Relevant COVID-19 measures

Table A1: COVID-19 reforms to statutory declarations

Jurisdiction	Pre-COVID requirements	Temporary amendments	Expiry date of temporary amendments
Cth	Physical signing and physical witnessing. <i>Statutory Declarations Act 1959</i> (Cth); <i>Statutory Declarations Regulations 2018</i> (Cth).	Nil	Nil
NSW	Physical signing and physical witnessing. <i>Oaths Act 1900</i> (NSW) Pt 4.	Audio visual link witnessing. <i>Electronic Transactions Act 2000</i> (NSW) Part 2B.	1 January 2022
VIC	Physical signing and physical witnessing. <i>Oaths and Affirmations Act 2018</i> (Vic) Pt 4.	Electronic signing and audio visual link witnessing. <i>COVID-19 Omnibus (Emergency Measures) (Electronic Signing and Witnessing) Regulations 2020</i> (Vic) Pt 3.	Permanent reform Bill passed 16 March 2021 <i>Justice Legislation Amendment (System Enhancements and Other Matters) Act 2021</i> .
QLD	Physical signing and physical witnessing. <i>Oaths Act 1867</i> (QLD) Pt 4.	Electronic signing and audio visual link witnessing. Expanded list of approved witnesses for physical signing. <i>Justice Legislation (COVID-19 Emergency Response—Documents and Oaths) Regulation 2020</i> (Qld) Pt 3B.	30 September 2021 *Proposed to be extended to 30 April 2022, subject to passage of legislation.
WA	Physical signing and physical witnessing. <i>Oaths, Affidavits and Statutory Declarations Act 2005</i> (WA) Pt 4.	Electronic signing and audio visual link witnessing. <i>COVID-19 Response and Economic Recovery Omnibus Act 2020</i> (WA) Pt 2, Div 4.	31 December 2021
SA	Physical signing and physical witnessing. <i>Oaths Act 1936</i> (SA) Pt 3.	Expanded list of approved witnesses for physical signing. <i>COVID-19 Emergency Response (Section 16) Regulations 2020</i> (SA) s.4, sch 1.	17 September 2021 *Proposed to be extended to 30 April 2022, subject to passage of legislation.
TAS	Physical signing and physical witnessing. <i>Oaths Act 2001</i> (Tas) s.14.	Electronic signing and audio visual link witnessing. <i>Notice under s 17 of COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020</i> (Tas).	2 September 2021
ACT	Physical signing and physical witnessing. <i>Statutory Declarations Act 1959</i> (Cth); <i>Statutory Declarations Regulations 2018</i> (Cth).	Electronic signing and audio visual link witnessing. <i>COVID-19 Emergency Response Act 2020</i> (ACT) s.4.	End of COVID-19 emergency period per <i>Emergencies Act 2004</i> (ACT)
NT	Physical signing and physical witnessing. <i>Oaths, Affidavits and Declarations Act 2010</i> Pt 4.	No relevant amendments.	-

Table A2: COVID-19 reforms to deeds

Jurisdiction	Pre-COVID Requirements	Temporary COVID Amendments	Expiry of Temporary Amendments
Cth	Physical signing (without common seal) or physical witnessing (with common seal). <i>Corporations Act 2001</i> (Cth) s.127(1)-(2).	Electronic creation, signing and audio visual witnessing. <i>Corporations (Coronavirus Economic Response Determination) (No 3) 2020</i> (Cth) s.6.	Renewed until 31 March 2022. The Government has committed and consulted on draft legislation to make these changes permanent.
NSW	Physical or electronic creation, signing and witnessing. <i>Conveyancing Act 1919</i> (NSW) s.38-38A.	Audio visual link witnessing. <i>Electronic Transactions Amendment (COVID-19 Witnessing of Documents) Regulation 2020</i> (NSW) Sch 1, Pt.1.	1 January 2022
VIC	Physical creation and signing but no witnessing requirements. <i>Property Law Act 1958</i> (Vic) s.73.	Electronic creation and signing. Audio visual link witnessing (if applicable). <i>COVID-19 Omnibus (Emergency Measures) (Electronic Signing and Witnessing) Regulations 2020</i> (NSW), Pt 2, Div 3.	Permanent reform Bill passed 16 March 2021 <i>Justice Legislation Amendment (System Enhancements and Other Matters) Act 2021</i> .
QLD	Physical creation, signing and witnessing. <i>Property Law Act 1974</i> (QLD), Pt 6.	Electronic creation and signing. Removal of witnessing requirements. <i>Justice Legislation (COVID-19 Emergency Response—Documents and Oaths) Regulation 2020</i> (QLD) Pt 3D.	30 September 2021 *Proposed to be extended to 30 April 2022, subject to passage of legislation.
WA	Physical creation, signing and witnessing. <i>Property Law Act 1969</i> (WA) s.9.	No relevant amendments.	-
SA	Physical creation, signing and witnessing. <i>Law of Property Act 1936</i> (SA) s.41.	No amendments regarding creation or signing.	-
TAS	Physical creation, signing and witnessing. <i>Conveyancing and Law of Property Act 1884</i> (Tas) s.63.	No relevant amendments.	-
ACT	Physical creation, signing and witnessing. <i>Civil Law (Property Act) 2006</i> (ACT) s.219.	Physical creation and signing, but audio visual link witnessing. <i>COVID-19 Emergency Response Act 2020</i> (ACT) s.4.	End of COVID-19 emergency period per <i>Emergencies Act 2004</i> (ACT)
NT	Physical creation, signing and witnessing. <i>Law of Property Act 2000</i> (NT) s.47.	No relevant amendments.	-

Appendix B – Figure descriptions

Figure 1: The reach and potential benefits of statutory declaration and deed reform

Figure 1 is an infographic, split in two columns for statutory declarations and deeds. For statutory declarations:

- 34 per cent of small businesses and 20 per cent of individuals have signed a statutory declaration in the past 12 months
- Small business could save 15 minutes and \$35 in direct costs and individuals could save 5 minutes and \$17 worth of direct costs if electronic execution was allowed.

For deeds:

- 36 per cent of small businesses and 8 per cent of individuals have signed a deed in the past 12 months
- Small businesses could save 30 minutes and \$15 in direct costs and individuals could save 25 minutes and \$15 in direct costs if electronic execution of deeds was allowed.

The figure has a column chart at the bottom. The chart displays the modelled economic benefit of potential reforms to statutory declarations and deeds. The chart shows that for small businesses there would be a benefit of \$156 million through reforms to deeds and \$115 million in reforms to statutory declarations. For Individuals there would be a benefit of \$74 million through reforms to deeds and \$55 million through reforms to statutory declarations

Figure 2: Current and future pathways process map

Figure 2 displays a process map of the current base state, the temporary amendments and proposed additional pathway for reforms to document execution. For the base state:

- The Document must be printed and populated
- A witness must be found
- A meeting must be arranged in person between the individual, witness, co-signee, and counterparty
- Meeting occurs where all parties review and sign
- Document is either stored, posted or dropped off for lodgement in person.

For temporary amendments the process is

- Document is populated
- A witness must be found
- Witness sends an Audio Visual Link to witness execution
- Document is signed, Document may need to be printed and scanned
- Document is sent to witness, co-signee, and counterparty to sign document. Document may need to be printed and scanned
- Document is returned to signee
- Document is stored or sent.

For proposed additional pathway:

- Person populates digital form
- Person logs online and confirms their identity
- Person signs document and send to witness, co-signee and counter party (as required)
- The document is reviewed
- Once signed, register/ original signee is notified. The document is automatically stored.