

# Modernising document execution: Proposed reform to the execution of Commonwealth statutory declarations

Submission to the Attorney-General's Department

28 July 2023



## Contents

Who we are .....	4
Introduction .....	5
Online options for executing Commonwealth statutory declarations.....	5
Privacy protection and data security.....	6
Conclusion .....	8

## Who we are

The Australian Lawyers Alliance (ALA) is a national association of lawyers, academics and other professionals dedicated to protecting and promoting justice, freedom and the rights of the individual.

We estimate that our 1,500 members represent up to 200,000 people each year in Australia. We promote access to justice and equality before the law for all individuals regardless of their wealth, position, gender, age, race or religious belief.

The ALA is represented in every state and territory in Australia. More information about us is available on our website.<sup>1</sup>

The ALA office is located on the land of the Gadigal people of the Eora Nation.

---

<sup>1</sup> [www.lawyersalliance.com.au](http://www.lawyersalliance.com.au).

## Introduction

1. The ALA welcomes the opportunity to have input into this consultation on proposed reform to the execution of Commonwealth statutory declarations, being conducted by the Attorney-General's Department.
2. Our submission responds to the matters outlined in the consultation paper, entitled *Modernising Document Execution: Consultation on proposed reform to the execution of Commonwealth statutory declarations* ('Consultation Paper'), which was released by the Attorney-General's Department in July 2023.
3. In our submission, the ALA will respond by addressing the following:
  - a. Our members' support for online options for executing Commonwealth statutory declarations; and
  - b. The need to ensure privacy protections and data security in any and all online processes for executing Commonwealth statutory declarations.

## Online options for executing Commonwealth statutory declarations

4. Access to justice is a deeply important value to ALA members and their clients across Australia. This includes equal access to legal processes for all individuals, a value which is enshrined in internal law.<sup>2</sup>
5. ALA members thus broadly support the proposal to amend the *Statutory Declarations Act 1959* (Cth) and the *Statutory Declarations Regulations 2018* (Cth) to expand the options for Commonwealth statutory declaration execution, allowing execution in any one of the following three ways detailed in the Consultation Paper:<sup>3</sup>
  - 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).

---

<sup>2</sup> See, eg, *International Covenant on Civil and Political Rights* (ratified by Australia in 1980).

<sup>3</sup> Attorney-General's Department, Australian Government, *Modernising Document Execution: Consultation on proposed reform to the execution of Commonwealth statutory declarations* (Consultation Paper, July 2023) 1.

6. The ALA notes the maintenance of the traditional, paper-based process for executing a Commonwealth statutory declaration, which we submit is essential for those who cannot access or do not wish to access the relevant technology required for the e-execution and digital execution of Commonwealth statutory declarations.
7. The ALA contends that the other two options – e-execution and digital execution – will facilitate access to justice and legal processes. The ongoing availability of e-execution and the introduction of digital execution will make the signing and witnessing stages of executing a Commonwealth statutory declaration easier, especially for clients who are located in rural, regional and remote areas, as well as for those who are elderly, injured, in hospital, in care, housebound or who have limited mobility.
8. ALA members have also reported that e-execution – currently available only as a temporary measure (due to expire on 31 December 2023)<sup>4</sup> – has been helpful for legal practitioners, especially for practitioners who work from home and/or are themselves located in rural, regional or remote places.
9. The ALA, therefore, believes that the aforementioned legislation and regulations should be updated to reflect e-execution and digital execution as options for the execution of a Commonwealth statutory declaration – subject to privacy and data security considerations detailed in the remainder of this submission.

## **Privacy protection and data security**

10. All lawyers have a legal obligation to keep their clients' information safe and confidential, including in the execution of Commonwealth statutory declarations.
11. As such, the support of ALA members for formalising online options for executing Commonwealth statutory declarations – and undoubtedly the willingness of all legal practitioners and members of the general public to execute Commonwealth statutory declarations via e-execution or digital execution – is contingent upon the assurance of privacy protection and data security.

---

<sup>4</sup> Ibid.

12. The ALA notes from the Consultation Paper regarding digital execution in particular:

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.<sup>5</sup>

...

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.<sup>6</sup>

13. Further, in relation to the Australian Government Digital Identity System, the ALA notes the following:<sup>7</sup>

The Australian Government Digital Identity System is delivered by a number of organisations who work together to provide a safe, secure and convenient way to prove who you are online.

The System is delivered by Services Australia, the Australian Taxation Office, Home Affairs and the Department of Finance and is used by many government services to verify their users.

14. Concerns have been raised very recently about privacy protection and data security through the Australian Government Digital Identity System and within Commonwealth Government agencies like Services Australia and the Australian Taxation Office, after highly-publicised cyber attacks and data breaches revealed systemic vulnerabilities in privacy protection and data security.<sup>8</sup>

---

<sup>5</sup> Ibid.

<sup>6</sup> Ibid 3.

<sup>7</sup> Australian Government, *System partners* (Web Page) <<https://www.digitalidentity.gov.au/system-partners>>.

<sup>8</sup> See, egs, Ry Crozier, 'Services Australia finds 'high risk' vulnerability in identity exchange', *iTNews* (online, 23 February 2023) <<https://www.itnews.com.au/news/services-australia-finds-high-risk-vulnerability-in-identity-exchange-591218>>; Sarah Curnow and Kevin Nguyen, 'Fake myGov profiles are being used to hack ATO accounts. Sue found this out the hard way', *ABC News* (online, 18 December 2022) <<https://www.abc.net.au/news/2022-12-18/ato-tax-hacked-via-mygov-services-australia-exploit/101781656>>; Tom McIlroy, 'ATO battling 3m hack attempts a month', *Australian Financial Review* (online, 20 October 2022); Emilia Terzon, 'Medibank, Optus hacks and ATO attacks expose identity-theft risks, warn cyber security experts', *ABC News* (online, 21 October 2022) <<https://www.abc.net.au/news/2022-10-21/medibank-data-breach-cyber-expert-warning/101557684>>; Josh Taylor, 'Government considers centralising digital ID verification on myGov in wake of Optus breach', *The Guardian* (online, 7 October 2022) <<https://www.theguardian.com/technology/2022/oct/07/government-considers-centralising-digital-id-verification-on-mygov-in-wake-of-optus-breach>>; Nick Evershed and Josh Taylor, 'AI can fool voice recognition used to verify identity by Centrelink and Australian tax office', *The Guardian* (online, 17 March 2023)

15. As recently as February 2023, the Office of the Australian Information Commissioner made recommendations as to how Services Australia must improve its privacy policy, privacy management plan, and data breach response plan in relation to Services Australia's handling of personal information as part of the Identity Exchange for the Australian Government Digital Identity System.<sup>9</sup>

16. It will be imperative, therefore, that the most strict privacy protections and policies plus the most secure data management systems are in place when e-execution is formalised and digital execution is introduced as part of a framework for how Commonwealth statutory declarations can be executed. This will ensure public trust in and willingness to use e-execution and digital execution in the execution of Commonwealth statutory declarations, including for members of the legal profession.

## Conclusion

17. The Australian Lawyers Alliance (ALA) welcomes the opportunity to have input into this consultation on proposed reform to the execution of Commonwealth statutory declarations.

18. The ALA is available to provide further assistance to the Attorney-General's Department on the issues raised in this submission.



**Shaun Marcus**

**National President,**

**Australian Lawyers Alliance**

---

<<https://www.theguardian.com/technology/2023/mar/16/voice-system-used-to-verify-identity-by-centrelink-can-be-fooled-by-ai>>.

<sup>9</sup> Office of the Australian Information Commissioner, Australian Government, *Handling personal information: Services Australia's role as the Identity Exchange* (Web Page, 16 February 2023)

<<https://www.oaic.gov.au/privacy/privacy-assessments-and-decisions/privacy-assessments/handling-personal-information-services-australias-role-as-the-identity-exchange>>.