

8 October 2021

Deregulation Taskforce – MDE Consultations
Department of the Prime Minister and Cabinet

Via [submission portal](#)

Dear Sir/Madam

Modernising Document Execution

Chartered Accountants Australia and New Zealand (CA ANZ) and CPA Australia (together 'the Major Accounting Bodies') provide this response to the Deregulation Taskforce's (the Taskforce) consultation document on *modernising document execution* ('the consultation document'). Together, we represent over 300,000 professional accountants in Australia, New Zealand and around the world.

Businesses have always been at the forefront of embracing technology-enabled practices, and the COVID-19 pandemic has presented us with the opportunity to embed many such practices into statutory requirements that govern business conduct. For example, the temporary measures introduced out of pandemic-driven necessity such as electronic signing and audio-visual document witnessing have been found to work and to be sufficiently meritorious to warrant being made permanent - with further modifications or safeguards as appropriate.

The ability to use technology has been an important driver for statutory change during the pandemic. Establishing a framework for statutory document execution that brings about national consistency, common definitions and standards, in addition to introducing digital options for document execution, will engender confidence in the new processes and ensure that the uptake and reform is not piecemeal.

Our members, as professionals who may need to witness the signing of a Statutory Declaration and the execution of other legal documents will consider the streamlining of document execution across the Federation as a positive move from Government. Currently, the time and resources spent by our members in undertaking these activities (which are often bound by hard copy and wet signature requirements) would be better utilised within the business and/or advising clients.

An overarching roadmap

The Major Accounting Bodies support the aim of the Deregulation agenda, which is to ensure that '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.'

Whilst we see this consultation as a step towards this aim, we encourage the Taskforce to consider, as part of the overarching digital strategy, a roadmap that clearly outlines and ‘connects the dots’ to other existing and future projects being carried out by Government, such as DirectorID, MyGovID, modernising business communications and amendments to the *Corporations Act 2001* to enable virtual meetings and electronic communications. While a roadmap may not contain all of the information for future projects, it should illustrate the intended connectivity, helping to dispel a misconception that work being carried out is piecemeal and reactive.

Jurisdictional Inconsistencies – Statutory Declarations

Updating the way in which statutory declarations may be executed is overdue. Different legislative instruments apply across Australia and witness qualifications are not uniform across the States and Territories. This has been a longstanding frustration for the many enterprises conducting business across Australia.

For example, most Australian jurisdictions passed temporary amendments during the COVID-19 pandemic to allow electronic signing and witnessing of statutory declarations over an audio-visual link. Victoria has made these changes permanent. To be truly effective, national consistency is needed in the mode of witnessing, witness qualifications and associated procedures.

We consider the mutual recognition by States and Territories of statutory declarations formed in other States and Territories to be a sensible first step towards a more consistent approach to document execution nationally.

Safeguards

Managing the safeguards surrounding digital engagement is also critical – to mitigate the risk of fraud and to safeguard people’s privacy on both sides of a transaction. The Government has indicated that it has an objective for a secure framework to minimise the risk of information being compromised. This would be welcomed by the commercial and professional sectors and by members of the public. In this regard, the Gatekeeper Public Key Infrastructure Framework and the Digital Identity Program both appear to provide options for users, the choice of which may be dictated by the nature of the transaction. However, there needs to be further clarity about how these programs will be integrated into the Government’s reform package, how they can be accessed and what educational initiatives will be provided to facilitate understanding and uptake.

Interoperability and transactional flexibility

It is imperative that risk management be part of interoperability. The success of a nationally consistent approach would be boosted if document execution platforms were interoperable with other systems used in government and private transactions. It would be useful to have further detail in due course about what the Government is contemplating with respect to interoperability and document execution platforms, including document security and assurance. This information could also be outlined within a roadmap which considers potential connectivity with other projects. For example, what would be its system design timelines? What modification in administrative arrangements are being contemplated for interoperability? How would the Government most effectively educate the community about the changes?

Technology neutrality

Making document execution technology neutral would allow businesses, consumers and governments to use the most suitable and efficient way of executing documents (including paper-based options) to fulfil their requirements. Consistency in the application of those different modes across jurisdictions will be key for these changes to be successful for all Australians, including those with varying levels of digital skills and those who may not have access to reliable technology.

The vast range of new and emerging technologies emphasises the need for a technology neutral framework. We note that the research paper "[Executing documents in a digital economy: rethinking statutory declarations and deeds in Australia](#)" refers to blockchain technology and its smart contract function. We recommend the Taskforce considers the benefits and usability of blockchain technology when developing the overarching roadmap.

Costs

The adoption of a common approach in relation to document execution and the use of technology raises several issues and further questions, including that of cost. There is little doubt that the reform process will be positive in terms of time saved and overall convenience. While competition between different third-party providers of technology solutions is likely to contribute to a competitive market, by providing choice to users, more detail is needed about the associated expenses including education and implementation – particularly for the business and professional sectors.

Extending electronic execution of documents to other areas of statutory communications

As noted in our recent submission to Treasury on [Treasury Laws Amendment \(Measures for Consultation\) Bill 2021: Use of technology for meetings and related amendments](#), it will be important for the extension of electronic execution of documents to be applied to other areas of interaction with government. For example, the Australian Securities and Investments Commission (ASIC) currently requires ASIC Registered Agents and Digital Service Providers to obtain an original "wet" signature on [Form 362 Notification by a company to nominate or cease a registered agent or contract address](#) and retain the original signed form for no less than seven years. We believe such regulatory compliance requirements could benefit from technology-based solutions to replace the current paper-based approach to regulatory compliance.

Extending electronic execution of documents to a wider range of legislation

We suggest that the Government expands the scope of electronic execution of documents to a wider range of legislation, in particular, outdated requirements such as written notices, records and non-electronic forms which require physical signature approval.

For example, section 18(3) of the Superannuation Industry (Supervision) Act 1993 requires the Australian Prudential Regulation Authority to be informed of an election being made by written notice that is: (a) in the approved form; and (b) signed by the trustee. It is not clear whether this notice can be carried out or signed electronically.

Further, in accordance with the Corporations Act 2001 (the Act) there are a number of sections which require a director of the company to sign a financial report (section 298(2)(c)). The company's auditor is also required to provide a written and signed auditor independence declaration (307C) and auditor's report (section 324AB(3) and (section 324AD(1)). The Act does not specify if these signatures can be executed electronically.

Education and awareness raising

As noted above, it will be important for Government to raise awareness and provide ongoing education to support the community and business with any reforms. This support would encourage uptake. We offer our assistance to work with the appropriate government agencies to design and roll out appropriate training to our members and businesses to assist with the implementation of the reforms.

If you have any questions about our submission, please contact Karen McWilliams (CA ANZ) at karen.mcwilliams@charteredaccountantsanz.com or Ram Subramanian (CPA Australia) at ram.subramanian@cpaaustralia.com.au.

Yours sincerely

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