Modernising Document Execution Roundtable Consultations

Report for the Deregulation Taskforce, Department of Prime Minister and Cabinet

October 2021

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Executive summary

This report summarises feedback and insight provided by consumer, industry and business groups on the topic of modernising document execution, undertaken to contribute to the Deregulation Taskforce’s (the Taskforce) input to a Commonwealth-led working group on this important area of reform. PwC is delighted to have had the opportunity to support this project by delivering a series of virtual roundtables with stakeholders who were able to provide expert views and insights into how laws and industry practice governing the execution of statutory declarations and deeds has changed due to the restrictions imposed by the COVID-19, and how the Commonwealth and state and territory governments may consider future reforms in this context.

Working collaboratively with the Taskforce, PwC organised and facilitated eight virtual roundtables, lasting two hours each, across a period of seven business days in September-October 2021. 60 organisations participated in the roundtables, covering sectors including legal services, conveyancing, accounting and governance, business groups, technological services, the financial sector, public administrators, and consumer groups. A full list of roundtable attendees is contained in *Appendix A*.

The workshops took place after the release of a consultation paper by the Taskforce that provided participants with background and context for the discussions. The Taskforce invited public submissions to the consultation paper and more than 46 were received, including from many of the organisations that participated in the roundtables. This report focusses on the outcomes from the stakeholder roundtables.

1. Key themes

As discussed in “*Modernising Document Execution: Consultation on a common pathway for digital execution of statutory declarations and deeds,*” released by the Department of the Prime Minister and Cabinet on 14 September 2021, the execution of statutory declarations and deeds is an area of regulatory congestion for business. While large businesses covered by the *Corporations Act 2001* have benefited from recent regulatory reforms to modernise elements of document execution, small and medium enterprises (SMEs) that do not fall under the *Corporations Act* remain governed by a patchwork of laws and regulations by states and territories, as do consumers. Previous work commissioned by the Taskforce found that SMEs and consumers spend around 9 million hours per year printing and collecting statutory declarations, and more than 6 million hours per year printing, signing and witnessing deeds. It was estimated that saving time through enabling electronic execution of these documents could result in over $400 million of savings for people per year.

The purpose of the stakeholder roundtables was to bring to life the challenges and opportunities in document execution, including by enabling electronic execution. The sessions, structured in two parts, first asked participants to discuss present day experience and then to think toward future opportunities and possibilities. Discussion guides, distributed ahead of the roundtables, were designed to complement the questions asked in the consultation paper, and varied slightly to draw out the areas of expertise among the different groups. A survey was conducted at the end of each session to provide a baseline of common understanding of responses.

Eight themes were identified as having arisen across the roundtable sessions:

1. Change is wanted, and wanted now.

*COVID-19 restrictions accelerated the trend to replace in-person activities with digital alternatives. Temporary legislative provisions enabled digital solutions to be used, but in many cases the take up was limited. There is a lack of confidence that alternatives meet the required standards, leading to nervousness about submitting non-compliant documents. Many examples were given of individuals choosing to violate public health orders rather than risk non-compliant document execution.*

1. A paper-only process can disadvantage vulnerable Australians.

*Vulnerable cohorts of Australians often don’t have visibility or understanding of document execution, and may take a long time to complete the process or make mistakes along the way that require further iterations of execution. Australians with low mobility or sensory disability can prefer digital solutions. Reduced general use of postal services has further slowed processes where paper-based execution requires documents to be sent back and forth due to errors, especially in regional and remote areas.*

1. Small and medium sized enterprises and service providers struggle to navigate multiple regimes across states and territories.

*Inconsistencies across states and territories present serious challenges for businesses that do not fall under the jurisdiction of the Corporations Act. Small and medium enterprises, as well as service providers, are particularly affected and face disincentives to work in more than one jurisdiction as the cost of compliance with multiple separate legal frameworks is prohibitive. Common requirements are sought, irrespective of digital options. Individual regulator requirements and systems can also frustrate.*

1. Changes in the law and the “lore” are both needed.

*Legal and regulatory changes alone are insufficient to generate behavioural shifts and improve the experience of document execution. Industry practices run deep, particularly in an area as risk-averse as observation of the law, and the challenge of “lore versus law” means clear communication and messaging is required to change conventional practices. There is uncertainty around how to apply legislative frameworks such as the Electronic Transactions Acts in a world of continuing technological innovation.*

1. People often trust digital solutions more than the paper alternative.

*Paper-based systems are not “risk-free”. For example, physical paper documents can be forged and there is potential for loss. While the digital environment may carry risk, there is debate over whether overall risk is increased as digital innovations are strengthening document security and credibility in other domains. In this area of document execution where documents often are connected to a legal matter, the worry of new methods not being recognised is what tends to reinforce the perceived supremacy of paper processes.*

1. Requirements and standards should be more flexible and fit for purpose.

*Deeds and statutory declarations remain the de facto approach in many situations where they are not necessary. Greater regulatory flexibility to provide the appropriate level of standards around document execution could be introduced, able to be tailored to the use case and by the parties involved.*

1. Many Australians do not know what their obligations are or how to meet them.

*The complexity of legislation and regulation relating to statutory declarations and deeds - including jurisdictional variations - challenges the comprehension of these documents for many Australians. A significant number of consumers do not understand the significance or consequences of the document they are executing. A digital or distanced environment does not necessarily change this risk, but can alter the way in which consumers are impacted by lack of familiarity with the process. Greater allowance for document innovation can help to address this.*

1. Industry needs more certainty to invest in new systems.

*Adopting new technologies often requires a change in business processes and practices so as to enable the technology and use it to its full advantage. As an example, data may be inputted in a different way or validation may be required at different points along a work flow process. This requires investment of time, and often money. The smaller the business, or more dispersed the industry, the more owners will delay investment in new technology until they understand the regulatory change and are certain the change is permanent.*

The appetite for and anticipation of future change in approach was highlighted by the results of the survey that was undertaken toward the end of each session. All participants were asked:

*‘What is the likelihood that your organisation will adopt a new digitised solution to document execution? On a scale of 1 to 5… (With 5 being very likely)*

In the year 2023: **4.1 (Likely)**

In the year 2026: **4.8 (Very likely)**

1. Future thinking

Workshop participants were asked to reflect on what they thought would be the key changes or solutions that would enable adoption of digitised solutions for document execution in the future. Four areas of emerged as suggestions of areas in which focused change would enable this shift to take place.

* Changes to current practice through legislative reform
* Participants acknowledged that differences in laws, regulations and practices across jurisdictions created challenges for industry, business and consumers. At the same time, there was recognition that state and territory laws and regulations may continue to have influence in this area. Participants canvassed a range of options for greater standardisation with some supporting using Commonwealth constitutional powers to develop a single national approach rather than adoption of model legislation by states and territories.
* If a consistent approach across states and territories is not possible, then mutual recognition was viewed as critical so that a document executed validly in one jurisdiction can be assumed to be valid for the same purpose in another jurisdiction, even if aspects of how the document was executed vary from one jurisdiction to the next.
* **Technology agnostic, or technology neutral, legislation**
* Participants recognised that technological change and evolution is unfolding quickly, and that it is important for any legislative change to enable future technologies to be applied to document execution. As such, there was a strong view expressed that any new legislation or regulation related to document execution should be neutral on the type or way in which technology could be applied, and avoid specification of processes that might narrow the scope of potential technology solutions.
* **Do not digitise current, outmoded processes; make execution fit for purpose**
* Significant questions were raised as to the potential overuse of statutory declarations and deeds across a number of domains. Participants in general were supportive of reviews to determine whether statutory declarations and deeds are necessary in many situations where they are currently required, or believed to be required.
* There is support to reduce the need to use these documents in favour of alternatives, and for legislative flexibility for regulators around when a statutory declaration is required.
* **Clear messaging and communication**
* Participants often reiterated the diversity of the businesses and consumers who execute documents, and the need for clear and concise on ‘How to or what to consider for document execution’ in order to improve the understanding of what document execution implies and how to practically achieve it.
* **Local and overseas “best practice” mentions**
* Roundtable participants cited a number of local and overseas case studies that would be relevant in relation to modernising document execution. Key factors in common included: a mix of public and private sector innovation; inter-operability among different technologies or platforms; consistent standards; accessible, understandable forms of consumer education; and the preservation of competition.

The following sections of this paper provide further detail of the points summarised above.  *Appendix A* provides an overview of the roundtables and a list of organisations that participated, while *Appendix B* provides details the format of the roundtables the discussion guides that were used.

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# Key themes

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## Change is wanted, and wanted now

1. COVID-19 restrictions have accelerated the trend to replace in-person related activities with digital alternatives. Legislative exemptions enabled digital solutions to be used, but in many cases the take up was limited. There is lack of confidence that alternatives meet the required standards, leading to nervousness about submitting non-compliant documents and forcing organisations to revert to a paper process. Many examples were given of individuals choosing to violate public health orders rather than risk non-compliant document execution.

What stakeholders said

* The COVID-19 pandemic accelerated the trend toward digital document execution, but also highlighted the absence of guidelines, standards or processes for executing statutory declarations and deeds in a digital or distanced way in many instances. Professional service organisations, including in the legal industry, accept digital witnessing and signing where they can and are pleased with the digital alternatives, but seek guidance to confirm what a “standard” process and acceptability entails. There is a real concern about the implications of inadvertently failing to meet the standard required to reach legitimate execution.
* Many industries, professionals and their members felt during the COVID emergency they have had to interpret what meets standards and what does not along the way. Exemptions to legislation reduce the scope of pre-existing rules but do not provide an alternative set of guidelines or practice.
* Individuals and businesses have consciously made a decision to violate public health orders to get documents signed and witnessed during lockdown situations. Others have risked document security by sending important documents in Ubers or leaving them in a public location for another party to collect them.
* The list of parties that are able to witness and sign documents is not consistent across jurisdictions, and this reduces certainty that a document witnessed or signed in one jurisdiction will be accepted in another.

Key quotes

*“We support this transition, should’ve been done 20 years ago”*

Governance and accounting roundtable

*“Stat decs require a statement of place but when executed electronically this cannot be given effect...90% of the time people are not in the same place and time when signing”*

Legal profession roundtable

*“Documents are sent in Ubers and taxis with no one to accompany”*Governance and accounting roundtable
 *“Company officers and legal advisors are driving through Sydney seeking signatures on documents during lockdown”*
Business associations roundtable

*“There is inconsistency and lack of clarity in messaging… firms know there is digital VOI but their internal process does not allow this yet. There is concern if the digital system is strong enough to protect people under the law, so firms are still going over and above which means double up. We need messaging that a digital signature will be as secure as a physical one”*Legal profession roundtable

## A paper-only process can disadvantage vulnerable Australians

Vulnerable cohorts of Australians often don’t have visibility or understanding of the requirements to meet the standards of document execution and may either take a long time to complete the process or make mistakes along the way that require further iterations of execution. Australians with low mobility or sensory disability often prefer digital solutions. Reduced general use of postal services has further slowed processes where paper-based execution requires documents to be sent back and forth due to errors, especially in regional and remote areas.

What stakeholders said

* Vulnerable Australians often face challenges that make it difficult to execute documents. Some of these challenges apply to paper-based execution, others are relevant for digital processes:
	+ They may not have easy access to a person who is eligible to witness documents.
	+ They live in remote or rural areas where witnessing requires travel or is simply physically not possible. During COVID lockdown orders where there were 5km movement restrictions, and people could not access a post office or someone who qualified as a witness.
	+ People with certain disabilities are not able to complete the documents and requirements through paper-based mechanisms that do not support and enable their abilities.
	+ Internet connection is very poor in some locations and communities, and some people do not have access to a printer or scanner, which makes scanning documents more difficult than an either totally paper-based or totally digital solution.
	+ Some people do not have a licence and/or passport and are unable to provide 100 points of identification.
* People who are incarcerated or in hospital cannot easily complete documents, being dependent on others in those circumstances.
* Some people with disabilities prefer digital processes and are adept at using smart devices and technology.
* Information written in English ‘legalese’ may not be translated well into a foreign language, as the terminology may not make sense.
* The expansive use of QR codes, online ordering and delivery during COVID-19 pandemic has increased the comfort with the use of smartphones and related technology, including for older Australians who are often assumed to lack familiarity with digital solutions.

Key quotes

*“Adoption of COVID-19 check-in apps by members of the community at all ages demonstrates that with the right assistance age is not a detriment to uptake”*

Business associations roundtable

*“The issue is more to do with the digital divide. People living in poverty and those with limited literacy struggle the most”* Consumer associations roundtable

*“More than 25% of statutory declarations and deeds from Aboriginal communities haven't been fully completed or are not accurate, and then it has to be sent via post back out to the individual to be done again”*

Governance and accounting roundtable

*“Capacity and ability online has freed up (enabled) a lot of people who would’ve depended on other people to do (the task) for them”*Consumer associations roundtable

Legal profession roundtable

*“For a rural and remote person, it can take 6 weeks to get a home loan due in part to slow post”*

Conveyancing associations roundtable

 *“Have a variety of issues getting to places physically, but (digital execution) allows them to step in and get independence when running a gamut of processes”*

Consumer associations roundtable

 *“When (the statutory declaration) was translated into Nepalese the content still didn’t make sense”*

Consumer associations roundtable

## Small and medium sized enterprises and service providers struggle to navigate multiple regimes across states and territories

Inconsistencies across states and territories present serious challenges for businesses that do not fall under the jurisdiction of the Corporations Act. Small and medium enterprises are particularly affected and face disincentives to work in more than one jurisdiction as the cost of compliance with multiple separate legal frameworks is prohibitive.

What stakeholders said

* It is expensive for businesses to comply with different requirements across jurisdictions. These differences can also prevent scalability of end-to-end digital processes and products that could be rolled out nationwide.
* The list of parties that are able to witness and sign documents is not consistent across jurisdictions, so a document that has been legally witnessed in one jurisdiction may not be recognised in another. Practitioners would like to see mutual recognition, where if a document is executed legally in one jurisdiction that it would be accepted in another.
* Businesses operating in multiple states or territories feel they need to engage lawyers to ensure they are compliant with instructions on execution. Legal firms have created maps and diagrams in an effort to simplify the explanation of different requirements across jurisdictions.
* Consumers in smaller jurisdictions that have unique rules, standards or processes will be at a disadvantage as it makes less commercial sense for service providers to adapt their products or services for a relatively small number of customers, or invest in accommodating for those differences.
* Some legal service providers, for example justices of the peace, are themselves small businesses and do not have the resources to understand jurisdictional differences or consistently invest in new technology or business processes.
* Whilst the real estate industry has advanced toward accepting digital contracts, conveyancing still requires paper-based processes as land registries are encumbered by certain regulations and statutory requirements.

Key quotes

*“Our law firm sent us cheat sheets (on digital execution) which are 8 pages long, cannot summarise this stuff it’s so technical”*Governance and accounting roundtable *“When borders open and people can move around, will they be able to use a stat dec from their current employer with an employer in another state?”*Legal profession roundtable

*“Preference is to get consistency across states so there are not multiple processes”*Technology industry roundtable

*“Mutual recognition and consistency across states - if jurisdictions do have different requirements then make sure they accept what others have done”*
Legal profession roundtable

*“Pathway to consistency through Commonwealth Act as opposed to state legislation”*Legal profession roundtable

*“It's expensive to change processes if it is not consistent across jurisdictions”*

Technology industry roundtable *“Our lawyers have created a map for a customer-facing staff trying to simplify down the differences (across jurisdictions)”*Governance and accounting roundtable *”As a JP I haven’t had training since I started 40 years ago”*Legal services roundtable

*“Some land registries require wet signatures and paper documents. That is where conveyancers are burdened.”*Conveyancing associations roundtable

 *“Our office will use Sign IT but lawyers are still nervous and many are conflating the audio-visual element (of witnessing a document) with the electronic signature. (They ask) is witnessing actually required? There are so many permutations. There are different parameters with the line (under a signature) where it states ‘witnessed in accordance with… ‘ Some rules have been removed in Victoria and a few other jurisdictions but not universally across Australia. Consistency is very much needed”* Conveyancing associations roundtable

## Changes in the law and the “lore” are both needed

Legal and regulatory changes alone are insufficient to generate behavioural shifts and improve the customer experience in document execution. Industry practices run deep, particularly in an area as risk-averse as compliance with the law, and the question of “lore versus law” means clear communication and messaging is required to change conventional practices.

What stakeholders said

* Legal practitioners and others who rely on statutory declarations and deeds are aware that these documents are often used in significant transactions and will need to stand the test of time.
* New digital solutions or systems will be adopted, but only when the industry is confident they will be strong enough to provide enduring protection to people under the law.
* There was active debate about whether communities and customers understand the difference between a deed and an ordinary contract or a statutory declaration and a declaration. Many agreed with the view that statutory declarations and deeds are often sought on the basis of convention rather than legal requirement.
* Regulatory changes can help give the push to certain industries that may be persisting with administrative processes that are no longer required from a regulatory perspective.
* Electronic Transactions Acts at Commonwealth, State and Territory levels have been in place since the late 1990s. While the intention is for the language in the Acts to mirror each other, there are inconsistencies and this leads to uncertainty among users around how the provisions should apply in practice, especially as new technologies have come along. While flexibility is welcome, the uncertainty undermines the adoption of digital practices.

Key quotes

*“Previously a deed did not need to be witnessed by a lawyer. Now because of the uncertain status of AV witnessing validation, people tap into their lawyers more. It is more expensive for clients”*Legal profession roundtable

*“We have been using audio-visual for witnessing and stat decs, and lawyers have been asking how to do AV witnessing but people are not confident they are following the process and whether the tools they are using are robust and suitable”*Legal profession roundtable

*“Legal profession are advising Australians, corporates, if they're not onboard then there’s no hope”*
Governance and accounting roundtable

*“Agree with not having hard copy originals but the issue is having the confidence that courts will accept things. In the wills space, the industry has not moved to electronic yet there's still a lack confidence proving authenticity of the document”*Public administrators roundtable

*“Mumbo jumbo comes out of legal documents, it’s ridiculous”*
Financial services roundtable
 *“There are 200,000 JPs in Australasia, and about 75% are not willing or possibly able to provide AV (audio visual) witnessing”* Legal profession roundtable

*“Rolling conveyancing processes where contact with consumers rolling into one process. Not only just digital signing, but verifying  and ensuring confirmation of transfer of funds. In the UK model there is a thing called confirmation of pay e-service where account details are matched with the account number. We don’t do that in Australia and it costs us about $1****26 million dollars in misdirection fraud and scams here, which is a huge sum. The banks have got no appetite in Australia to bring this in cause it’s not their money.****In the UK they are forced to do it and had great success. When processes are bundled together and consumers can confidently purchase or sell property – this is the ultimate end goal for us “*Conveyancing associations roundtable

## People often trust digital solutions more than the paper alternative

Paper-based systems are not “risk-free”. For example, paper documents carry the risk of forgery and potential for loss. While the digital environment may carry risk, there is debate over whether overall risk is increased. The fear of new methods not being recognised is what tends to reinforce the perceived supremacy of paper processes.

What stakeholders said

* Consensus across the participants indicated strong awareness of digital execution security features such as identity verification, audit trails and recording in the case of audio-visual solutions.
* There was debate regarding the consideration that physical witnessing can act as an assurance against coercion, with recognition that coercion can also occur in a physical environment, and that practices are evolving to reduce the risk of coercion and enable effective witnessing in audio-visual settings.
* End to end digital solutions and processes have already been implemented and are used and trusted across other industries and areas of regulation that require a high degree of verification.
* There are technology safeguards available for most processes involved in statutory declarations and deeds, including secure electronic signing, digital identification verification, identification safeguards, digital tokens and digital secure data storage.

Key quotes

*“With paper documents there is no audit trail, it's a subjective evaluation of an individual. There is no evidence for a dispute later on”*Technology industry roundtable

*“A Digital signature is the issuing of a digital certificate that is associated to the signature, so you know when the individual has signed - confirming not only the identity but what they have signed”*
Technology industry roundtable

“*People like the convenience of being able to have our driver's licence on our phone in NSW*”

Conveyancing associations roundtable

“*Neobanks’ ambition is 100% digital, no branch, but will modify the offering to see if it can support 1% of customers through transaction*”

Financial services roundtable

*“From the banking royal commission, there was the example of an elderly woman who nearly lost her home when she provided a guarantee deed for her daughter's business which was always going to fail (coercion not related to paper or digital process)”*Consumer associations roundtable

*“Not opposed to making deeds less reliant on paper based approaches, but it needs to be twinned with better protection for those signing deeds”*
Consumer associations roundtable

*“Shouldn't rule biometrics out as method for providing assurance of authenticity of who making statements”*Public administrators roundtable

 *“The trend in the US and UK is the move to [supplying[ evidence, to prove later on what actually was in the 'signing' moment”* [such as video]
Technology industry roundtable

*“The signature will become a commodity”*Technology industry roundtable

## Requirements and standards should be more flexible and fit for purpose

Statutory declarations and deeds remain the de facto approach in many situations where they may not be necessary. Greater flexibility in legal and/or regulatory requirements to suit specific needs could be adopted while retaining the appropriate level of governance around document execution. Some legislative provisions relating to providing false solemn statements have become symbolic. Some document or procedural requirements exceed the practical needs of regulators or the courts. The intention of use of the document should dictate what the relevant processes and requirements are, based on the use case and individual.

What stakeholders said

* There was a commonly held view across groups that deeds are often unnecessarily used when simple agreements could validly serve the same purpose, without the same level of formality that deeds involve.
* Many public administrators reported that some of the document or procedural requirements, such as for a statutory declaration or the witnessing element, exceed their practical requirements in administering a program effectively and efficiently. Current requirements, such as what is stated in regulation, constrain their ability to take a more risk-based approach to administration.
* Many people no longer understand the importance of solemn declarations, which devalues the effectiveness of these documents.
* It was noted that enforcement of statements made in statutory declarations and deeds under their enabling legislation seldom occurs, and most activities will be covered by alternative legislation providing recourse for false statements or failure to comply with a deed. How a document is validated as ‘solemn’ requires further evaluation, as other tools may be just as effective in that regard but reduce overall regulatory burden.
* Documents that are more solemn should require more stringent safeguards for execution. There are examples of overseas jurisdictions where the standards for execution of documents that require a high level of governance, for example in real estate, are set by the industry rather than applying by law to all documents of that type.

Key quotes

*“The deed is a dodo”*
Legal profession roundtable *“The ability to tick a box in an electronic form, using a user’s account as verification of identity provides an alternative to statutory declarations with trackers for verifiability”*Public administrators roundtable *“There is scope for stat decs to be removed but we're encumbered by the regulation and legislation”*Conveyancing associations roundtable

*“Should the concept of deeds and written contracts be merged? The special rules around deeds are poorly understood and could be applied as an exception rather than a rule”*Legal profession roundtable
 *“Any measures introduced should be principles based rather than prescriptive to provide “safe harbour” to facilitate valid execution, rather than set up traps that could invalidate execution”*Legal profession roundtable
 *“See a lot of risk behaviour, where people make up their own mind of what is the level of acceptable risk. That’s not a good situation for the industry - it puts land registry, consumers and conveyancers at risk”*Conveyancing associations roundtable
 *“Maybe there’s different classes of documents and different approaches for each, because there are varying levels of risk associated with the documents”*Conveyancing associations roundtable *“We need to retain the ability to identify someone a long way away”*
Financial services roundtable

## Many Australians do not know their obligations or how to meet them

The complexity of legislation and regulation relating to statutory declarations and deeds - including jurisdictional variations - challenges the comprehension of these documents for many Australians. A significant number of consumers do not understand the significance or consequences of the document they are executing. A digital or distanced environment does not necessarily change this risk, but can alter the way in which consumers are impacted by lack of familiarity with the process.

What stakeholders said

* All groups highlighted the difficulties faced by businesses and consumers alike in understanding the purpose, intent and requirements of these documents.
* A key impediment to the understanding of these documents is the jurisdictional inconsistencies which contributes to difficulty communicating requirements “in plain English” and particularly impedes small and medium enterprises from growing into other Australian states or territories.
* The legal profession highlighted the difficulties in advising their clients because of differing requirements and a lack of understanding of the purpose and requirements of these documents. It was also raised that many consumers often do not understand the process, in particular the nature of the declaration and how executing these documents differs from others such as simple contracts.
* In some jurisdictions a verification of identity and witnessing a sworn statement can be required for the simplest of scenarios.

Key quotes

*“What the differences are between deeds and written agreements continue to be very poorly understood by practitioners and business people”*Legal profession roundtable *“In some instances it needs to be beyond a normal declaration, be some form of solemnity so people are aware and to reduce incidences of fraud”*

Technology industry roundtable

*“Not much good if I have to get a lawyer to interpret everything every 5 minutes. It's costly, counterproductive and makes us uncompetitive in many ways”* Business associations roundtable *“Need a statutory declaration when sick days are taken”*
Business associations roundtable

*“Lawyers are nervous about getting it wrong, they want a 1 page table to tell them everything”* Legal profession roundtable *“Some authorities say needs to be on paper, great step forward held back by paper”*Legal profession roundtable *“Simple language, don't think it's just for older people, just about anyone would benefit from this”*Conveyancing associations roundtable

## Industry needs more certainty to invest in new systems

Adopting new technologies often requires a change in business processes and practices to enable the technology and use it to its full advantage. As an example, data may need to be inputted in a different way or validation may be required at different points along a work flow process. This change process requires investment of time, and often money. The smaller the business, or more dispersed the industry, the more owners will delay investment in new technology until they understand the regulatory change and are certain the change is permanent.

What stakeholders said

* Businesses large and small have reported a strong willingness and interest in embracing the increased use of digital solutions.
* These businesses report the uncertainty surrounding the enduring nature of the acceptance and validity of these documents is a key blocker of investment in digitisation, as well as the vast amount of red tape, inconsistencies across jurisdictions and lack of easy access to information.
* Technology firms outlined the innovations occurring in other sectors, including internationally. If governments provide a clear legal framework for electronic document execution, they would be able to design innovative solutions that meet user needs.
* Where some have attempted to transition to digital execution there is significant apprehension relating to the validity of the execution, causing a reversion to paper.
* Domestic and International reforms and digital solutions have seen an adoption to digital processes of mass scale:

Key quotes

*“If we’re given the framework, we know what to do”*
Technology industry roundtable

 *“In Australia we are too risk averse, it stifles businesses and how they operate”*Business associations roundtable *“We’re meant to have a 200 billion red tape industry and that’s nothing to be proud of”*Business associations roundtable *“Getting enough ground swell, business process in place and governances”*Financial services roundtable *“Small businesses are bogged down in red tape and nowhere to turn to”*
Business associations roundtable
“*Services NSW has managed to push everyone off storefront to a concierge service over to a screen where they are able to do what they need to do so will never need to go again to a store”*

Governance and accounting roundtable

“*60,000 transactions a day through land registry in the UK, adopting these heavily and moving away from witnessing”* Technology industry roundtable

*“Hefty expense in changing from deeds to agreements, and this inhibits movement”*Technology industry roundtable

# Suggestions for future thinking

As encouraged by the *“Modernising Document Execution”* consultation paper, participants were invited to nominate opportunities connected with the modernisation of document execution and potential further reforms. The suggestions that emerged from the stakeholder roundtable sessions were often related to discussion of challenges faced with document execution at present, and in many cases ideas were based on positive perceptions of experiences with jurisdictions in Australia or with overseas practices or approaches.

Changes to current practice through legislative reform

* Participants acknowledged that differences in laws, regulations and practices across jurisdictions created challenges for industry, business and consumers. At the same time, there was recognition that state and territory laws and regulations may continue to have influence in this area. Participants canvassed a range of options for greater standardisation with some supporting using Commonwealth constitutional powers to develop a single national approach rather than adoption of model legislation by states and territories.
* If a consistent approach across states and territories is not possible, then mutual recognition was viewed as critical so that a document executed validly in one jurisdiction can be assumed to be valid for the same purpose in another jurisdiction, even if aspects of how the document was executed vary from one jurisdiction to the next.
* A number of participants were familiar with recent changes to legislation in Queensland and supported an approach in which the changes in Queensland were mirrored by other jurisdictions.
	+ *“Commonwealth heads of power could provide a pathway for deeds to be executed. They have powers to do so under the constitution”*Legal profession roundtable
	+ *“Pathway to consistency through Commonwealth Act as opposed to state”*Legal profession roundtable
	+ *“A national framework and consistent approach to ground whatever reforms you are looking at”*Technology industry roundtable
	+ *“Support QLD which allows foreign entities to execute in accordance with their jurisdictions rather than under common law”*Legal profession roundtable

It is important for legislation and regulation to provide a framework, but remain technology agnostic, or neutral

* Participants recognised that technological change and evolution is unfolding quickly, and that it is important for any legislative change to enable future technologies to be applied to document execution. As such, there was a strong view expressed that any new legislation or regulation related to document execution should be neutral on the type or way in which technology could be applied, and avoid specification of processes that might narrow the scope of potential technology solutions.
	+ *“Avoid legislating how it’s done but provide mechanisms to ensure there is a much more documented process”* Technology industry roundtable
	+ *“Businesses want to choose what works for them”*
	Conveyancing associations roundtable
	+ *“We need to make sure we don't prescribe too much down the line of how people do it or what they do it. Let people in their own business like a bank defines process that makes sense to them and how they need to get that document signed*”

Technology industry roundtable

Invest in change that allows document execution to be fit for purpose, rather than digitising current, outmoded processes

* Separate to the question of technological solutions to document execution, significant questions were raised as to the potential overuse of statutory declarations and deeds across a number of domains. Participants in general were supportive of reviews to determine whether statutory declarations and deeds are necessary in many situations where they are currently required, or believed to be required.
* There is support to reduce the need to use these documents in favour of alternatives, and for legislative flexibility for regulators around when a statutory declaration is required.
* Several examples were given in overseas jurisdictions where the overall legal framework for document execution is high level and principles based, leaving industries to take accountability for developing the standard of document that is required for specific transactions. Participants were interested in the opportunity to further explore this approach.
	+ *“On top of the Government framework for signing across industry, each industry needs to have a different standard”*
	 Technology industry roundtable
	+ *“In the USA, they have established a mortgage standard called MISMO for any mortgage or real estate transaction online”*Technology industry roundtable
	+ *“If it’s a platform and provided by a third party, you hope there’s a level of insurance they’re mitigating against the risk”*Conveyancing associations roundtable

Clear messaging and communication

* Participants often reiterated the diversity of the businesses and consumers who execute documents, and the need for clear and concise on ‘How to or what to consider for document execution’ in order to improve the understanding of what document execution implies and how to practically achieve it.
* Adoption of new technologies and processes for document execution can be implemented well if consumers and businesses are taken on the journey through end-to-end digital pathways. This should include how the documents are managed, stored, maintained and verified along the journey/life cycle. Particular consideration should also be given to real-world application of the Electronic Transactions Acts and the flexibilities that they offer.
* Effective messaging and communication will be varied according to the different types of consumers and the many uses that they may have for document execution, as well as their personal circumstances.
	+ *“Test from end to end and consider the context of how and when using these documents”*Consumer association roundtable
	+ *“Looking carefully who you're working with for co-design is important”*Consumer association roundtable

Local and overseas “best practice” mentions

* Roundtable participants cited a number of local and overseas technological adoptions that they thought had attributes that would be relevant for document execution. Key factors in common included: a mix of public and private sector innovation; inter-operability among different technologies or platforms; consistent standards; accessible, understandable forms of consumer education; and the preservation of competition.
* Services NSW were mentioned by many participants in terms of gaining the trust of the population around digital security and reliability. Some participants also spoke favourably of the online concierge service that supports capability building for customers who may not be familiar with using digital systems.
* It was felt that the general use and acceptance of digital means of proving identity and signing documents is further progressed in Europe, the UK and the US than in Australia. At the same time, it was recognised that professional services firms such as accounting firms have played a significant role in quickly rolling out new technologies and business practices to many Australian businesses and households, and that this experience could be replicated for document execution.
* Conveyancing was discussed widely as an area that has partly progressed with digital transformation in Australia but where work remains to be done. In the UK the HM Land Registry has moved to a digital transaction process.
	+ “*Vaccine certificate is a good example of something that has come up is recent times and a new use case of how to show been vaccinated to get into locations”*
	Public administrators roundtable
	+ *“Digital identity, by Services NSW done great with the QR code and check in they are so efficient”*Governance and accounting roundtable
	+ *“Services NSW so efficient I love them”* Governance and accounting roundtable
	+ “*Victorian legislation permits land titles to be signed and witnessed electronically”*

Conveyancing associations roundtable.

* + “*Electronic instruments are digitally signed and that accounts in Victoria for over 97% of instruments lodged”* Conveyancing associations roundtable.
	+ *“Land registry in UK, approve use of Docusign sign and digital signing process to have equivalent standing as witnessing”*Technology industry roundtable
	+ *“60,000 transactions a day through land registry in UK, adopting these heavily and moving away from witnessing”*Technology industry roundtable
	+ *In the US (online remote notarisation is about dealing with Wills, Trusts) recognising that the digital experience is better than physical experience*Technology industry roundtable
	+ *“Europe has a very robust process, defined framework of regulations to do that. How electronic signature and how person is identified and pushing that back out as long as meet regulations or registered provider then you can sign that document in in that way”*Technology industry roundtable
	+ *“Australia are leaders with cloud accounting and Accountants were instrumental”*Technology industry roundtable

As discussed earlier in this paper, participants viewed the likelihood that their organisation would adopt a new digitised solution for document execution by 2026 as 4.8 out of 5.0, so very likely. The technology solutions were largely thought to be in hand, but would not be embraced by industry until legislation and regulatory reform provide certainty and confidence on the standards that will be set. Beyond that, any change requires a significant amount of communication and messaging to support widespread adoption of technology as well as the processes that utilise that technology. Informative practices are evolving overseas as well as in Australia that can help to inform the next phases of work in modernising document execution.

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### Roundtable details

1. The Deregulation Taskforce within the Department of Prime Minister & Cabinet and PwC commenced working together on 13 September, 2021 to support the broader public consultation on the modernisation of document execution program. The public consultation comprised of two streams of engagement, the first being a public consultation paper and invitation for written submissions which was undertaken by the taskforce. The closing date for written submissions was 8 October 2021.
2. The second component of the consultation process was the undertaking of a series of industry roundtables which sought further feedback and insights to support the work of the taskforce.
3. **Roundtable sessions held between 28 September and 7 October 2021.**
4. A range of national organisations were invited to participate in the roundtables. Representatives from the organisations below accepted invitations to attend. Members of a Commonwealth-State Modernising Document Execution Working Group of officials were invited to observe the discussions

Table 1 Roundtable attendees

|  |  |
| --- | --- |
| Roundtable | Attendees |
| **Governance and accounting roundtable**28 September 2021 | Australian Institute of Company DirectorsChartered Accountants Australia and New ZealandCastlepoint SystemsCPA AustraliaGovernance Institute of AustraliaIndigenous Business AustraliaSM SolvencyiCognitionSplitPayments |
| **Conveyancing roundtable**28 September 2021 | Australian Institute of Conveyancers NationalAustralian Registrars National Electronic Conveyancing CouncilHousing Industry AssociationProperty Council of AustraliaReal Estate Institute of Australia |
| **Financial services roundtable**29 September 2021 | Association of Superannuation Funds of AustraliaAustralian Investor Relations AssociationAustralian Payments NetworkAustralian Banking AssociationFinancial Services CouncilFinTech AustraliaInsurance Council of AustraliaCommonwealth Bank/BankWestMortgage Finance Association of AustraliaAllianzInsurance Council of Australia |
| **Legal services roundtable**29 September 2021 | AllensAustralasian Council of Justices' AssociationsBetar Lawyers & NotariesClayton UtzGilbert and TobinLaw Council of AustraliaLegal Services CouncilKing & Wood MallesonsMigration Law CommitteeNorton Rose Fulbright |
| **Technology industry roundtable**30 September 2021 | Technology Council of AustraliaDocuSignDiplomacyPwC NewLawSecured SigningLodgeXDigital Service Providers Australia NZAustralian Information Industry Association |
| **Business associations roundtable**1 October 2021 | Australian Chamber of Commerce and IndustryAustralian Industry GroupAustralian Small Business and Family Enterprise OmbudsmanCouncil of Small Business Organisations AustraliaSmall Business Association of AustraliaBusiness Council of Australia  |
| **Consumer associations roundtable**6 October 2021 | Aged and Disability Advocacy AustraliaDisability Advocacy Network AustraliaCentre for Inclusive DesignConsumer Action Law Centre |
| **Public administration roundtable**7 October 2021 | Australian Charities and Not-for-profits CommissionAustralian Securities and Investment CommissionAustralian Tax OfficeIndustry Grants HubFair Work CommissionAustralian Criminal Intelligence CommissionAustralia PostDepartment of Defence |

### Roundtable format

1. Virtual roundtable sessions were held which enabled participants from all over the country to participate. Each session was 2 hours long with the discussion split into 2 sections:

**Section 1: Understanding the current-state**

* When and why do you, your business/members use statutory declarations or deeds?
* What benefits or barriers have you experienced?
* What challenges exist that could prevent a wide adoption of a digitised document execution process?

**Section 2: Future possibilities**

* What might an end-to-end future solution look like in your industry?
* What platform or technology could enable this future outcome?
* What is the next thing that should be at the top of the agenda to be changed at either a Commonwealth or State/Territory level?
1. **Discussion guides**

Detailed discussion guides issued to participants were tailored to the groups and circulated prior to the roundtables. The basic template used to develop the discussion guides is on the following page.

**Synthesis & Reporting**

The insights and findings from all round tables has been synthesised and are documented in this report

Template roundtable discussion guide

Prime Minister and Cabinet - Deregulation taskforce

Public consultations on modernising document execution

Template discussion guide

Agenda

|  |  |
| --- | --- |
| Welcome and introduction | 5 min |
| Introduction of all participants | 10 min |
| Clarifying questions about consultation paper | 5 min |
| Section 1: Understanding the current state experiences | 45 min |
| Break | 5 min |
| Section 2: Future possibilities | 30 min |
| Final Q&A | 5 min |
| Wrap up | 5 min |

Discussion Guide

Understanding the current state experiences

Duration: 45 minutes

1. When and why do you, your business or your members use statutory declarations or deeds?
2. What changes have been made to the way you execute statutory declarations and deeds during COVID-19?
	1. How is that different to before COVID-19?
3. What benefits have you experienced as a result of this?
	1. From an economic perspective?
	2. What about time?
	3. And a risk perspective?
4. What barriers or challenges have you experienced as a result of this?
	1. Do you have examples relating to paper requirements?
	2. Witnessing requirements?
5. What challenges have you encountered by jurisdictional inconsistencies, including international experience and considerations?

Future possibilities

Duration: 30 minutes

1. As a result of COVID-19 we now live in a time where the old ways of working are no longer relevant. What might an end-to-end future solution look like in your industry?
	1. With regards to physical paper requirements
	2. Physical witnessing requirements?
	3. Across jurisdictions?
2. What platform or technology could enable this future outcome?
3. What type of risks should be considered in the implementation of an end-to-end digital solution?
4. In the year 2023, what is the likelihood of your organisation 100% adopting a new digitised solution to document execution? On a scale of 1 to 5, with 5 being very high likelihood of adopting and 1 not likely at all.
	1. If you scored 2 or below, what is preventing your score from being higher?
5. In the year 2026, what is the likelihood of your organisation 100% adopting a new digitised solution to document execution? On a scale of 1 to 5, with 5 being very high likelihood of adopting and 1 not likely at all.
	1. If you scored 2 or below, what is preventing your score from being higher?
6. Once the Deregulation has been finished. What is the next thing that should be at the top of the agenda to be changed and transformed?
	1. Which of these reforms do you think will provide the greatest economic benefit?
	2. Which of these do you think could be implemented with greatest ease?