



Australian Government
Australian Public Service Commission

[REDACTED]

Email: statdec.review@ag.gov.au

Friday 28 April 2017

Dear [REDACTED]

Thank you for this opportunity to make a submission on behalf of the Australian Public Service Commission (the APSC) to the *Statutory Declarations Regulations 1993* Review. We note that as part of this review that you are reviewing the list of authorised witnesses contained in Schedule 2 of the Regulations, which sets out the categories of persons before whom a statutory declaration may be made, and that you have particularly sought comment from the APSC in relation to Items 212, 230 and 234 listed under Part 2 of this Schedule. Our comments on these items are as follows:

(1) Item 212

Employee of the Commonwealth who is: (a) in a country or place outside Australia; and (b) authorised under paragraph 3 (c) of the *Consular Fees Act 1955*; and (c) exercising his or her function in that place.

APSC Comment: We are of the view that this item can remain as it is currently drafted.

(2) Item 230

Permanent employee of: (a) the Commonwealth or a Commonwealth authority; or (b) a State or Territory or a State or Territory authority; or (c) a local government authority; with 5 or more years of continuous service who is not specified in another item in this Part.

APSC Comment: We are of the view that this definition should be amended to remove the reference to 'permanent employee' and replace this with a reference to 'APS employee' as defined under Section 7 of the *Public Service Act 1999*. We also recommend that as the concepts of 'permanent' and 'ongoing' employment seem to be used differently in other State and Territory jurisdictions, that APS employees with 5 or more years' experience should be listed under an individual item separate from State or Territory or local government employees.

(3) Item 234

Senior Executive Service employee of: (a) the Commonwealth or a Commonwealth authority; or (b) a State or Territory or a State or Territory authority.

APSC Comment: We are of the view that this definition should be amended to remove the reference to 'Senior Executive Service employee' and replaced with a reference to a person who is employed as an 'SES employee' as defined under Section 7 the *Public Service Act 1999*.

We also recommend this category of Commonwealth SES employee should be listed under an individual item separately from State or Territory or local government equivalent employees.

We also draw your attention to the fact that there are Non-Corporate Commonwealth Entities, Corporate Commonwealth Entities and Commonwealth Companies which do not employ staff under the *Public Service Act 1999*.

Possible additional amendments

The other suggested amendments that we recommend for further consideration concern the definition of 'address' that is provided under the *Statutory Declarations Regulations 1993*.

Under Regulation 2 'address' is defined as meaning "*the place at which, or through which, a person may be contacted, and includes a postal address, but does not include the person's email address.*" It is our view that this definition could be amended to reflect two key contemporary concepts.

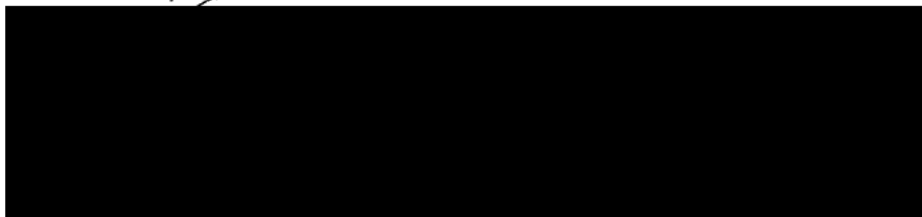
Firstly, that it could be mandatory to provide a contact email address and phone number in order that it is easier to contact the person making the declaration and before whom the signature is made. This would make it easier to verify the Statutory Declaration, especially keeping in mind that the Statutory Declaration may need to be verified many years in the future for important official purposes.

Secondly, we suggest that the address provided by the person witnessing the declaration should normally be the person's regular place of work and not their personal address, unless the two addresses are the same. It is our view that APS employees may be placed in situations, in an entirely professional capacity, where they are having to witness a statutory declaration of a person that they may have never met before they witness the declaration and who they may prefer not to disclose their home address to under these circumstances. We therefore suggest that from a general privacy and safety perspective, it should be made clear that the address provided, including a contact work email address and phone number, should be either a physical or postal work address for the Commonwealth entity that the employee at that point in time, and not a home or personal address. It may even be necessary to give consideration to splitting the definition of 'address' into two parts: one definition for the 'address' of the person making the declaration (where a permanent residential address may be appropriate) and then a separate definition of the 'address' that is used for the person witnessing the declaration in their professional capacity.

Finally, as a matter of practicality and also to minimise any privacy issues that could relate to contacting the person who has witnessed the Statutory Declaration, we also recommend adding a 'Note 3' to the bottom of the Statutory Declaration Form which specifies that the person witnessing the declaration acknowledges that that they are willing to be contacted to verify that they did, in fact, witness the Statutory Declaration.

Thank you again for this opportunity to provide a submission to this review and please do not hesitate to contact the APSC should you to seek further clarification on any of the comments we have made.

Yours sincerely

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