

Dear Sirs,

### Background

- (a) The Institute is a company limited by guarantee, incorporated in 1966. Members are primarily located in Victoria at present, although we have some representation in the other States. There is also the Institute of Legal Executives (Australia) Limited, incorporated in 1994 in anticipation of a time when additional members of the Victoria Institute are located outside Victoria, and to preserve the status and integrity of the Institutes of Legal Executives and members across Australia.<sup>i</sup>
- (b) Fellows<sup>ii</sup> of the Institute of Legal Executives (Victoria) are authorised, pursuant to the *Evidence (Miscellaneous Provisions) Act 1958* (Vic), to witness Statutory Declarations and take Affidavits in Victoria<sup>iii</sup>, which in turn means that a Fellow is an authorised witness in Victoria in respect to Commonwealth Statutory Declarations pursuant to Schedule 2 Part 2 Item 231 of the *Statutory Declarations Regulations 1993*.
- (c) We have recently concluded a submission to the Australian Law Reform Commission (ALRC Discussion Paper 83, 2016), in the course of which we sought support from members and the legal firms by which many are employed, regarding the continuation of Fellows as authorised witnesses (in Victoria) in respect to Enduring Powers. The support communications received make it clear that Fellows of this Institute are viewed as highly responsible persons, and their ability to witness documents in addition to or in the absence of Legal Practitioners in their firms is greatly valued and of assistance to the clients those firms serve and/or others needing a qualified witness. We would add here that many of the support communications received originated from regional areas where members of the community have less access to qualified witnesses than in suburban or CBD areas.
- (d) We note Commonwealth legislation such as the *High Court of Australia Rules 2004*, *Federal Circuit Court of Australia Act 1999*, and *Family Court Act 1975* which provide that an Affidavit for use in a (respective) proceeding in those Courts may be sworn or affirmed in Australia (in our case, currently within Victoria) before a person who is authorised to administer oaths or affirmations for the purposes of the Supreme Court of a State or Territory<sup>iv</sup>.
- (e) There is also an Institute of Legal Executives in Western Australia, although we understand this is not substantially active at present. There are additionally active sister Institutes of Legal Executives in New Zealand (NZILE), the United Kingdom<sup>v</sup> (CILEx), and Ireland (IILEX). Members of NZILE and CILEx in particular have statutory recognition in their jurisdictions in respect to certain rights and responsibilities.

Our submission, as to “whether the Regulations are still fit for purpose and continue to meet the needs of the community ... (and) the list of authorised witnesses contained in Schedule 2 of the Regulations ...”

1. We believe the form of Statutory Declaration included in Schedule 1 remains appropriate.
2. We would suggest that persons included in some occupational categories listed in Schedule 2 Part 1 may be unfamiliar with Statutory Declaration processes; and should all categories remain it would be useful for a circular to be forwarded to the respective professional associations in respect to the duties incumbent upon persons witnessing a Statutory Declaration.
3. In respect to the categories listed in Schedule 2 Part 2, we would again suggest that persons in some of these categories may be unfamiliar with Statutory Declaration processes.
4. ***Persons listed in Schedule 2 Part 2 Item 231 should most definitely remain.***

Although, again, some listed in different categories pursuant to State or Territory legislation may not be fully conversant with Statutory Declaration processes, for the most part a person designated by a State or Territory as being authorised to witness a Statutory Declaration in that particular jurisdiction

will have no difficulty in ensuring that a Statutory Declaration for the purposes of the *Statutory Declarations Regulations 1993* is properly made.

We would of course like to see Fellows of this Institute, and of the Institute of Legal Executives (Australia) Limited, listed as a separate occupational category; but recognise that if Item 231 remains then there is not a demonstrable "unmet need" to justify this separate inclusion.

In the event Item 231 were to be excluded, we believe that this could reduce accessibility to qualified witnesses by members of the community.

Yours faithfully,



20 March 2017

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<sup>i</sup> The current Directors of the Australia Institute comprise some existing and former Directors of the Victoria Institute and the writer.

<sup>ii</sup> Legal Executives™, being those in the highest category of enrolment/membership

<sup>iii</sup> see, respectively, sections 107A and 123C

<sup>iv</sup> see Rule 24.01.07 of the *High Court Rules 2004*, section 59(1)(f)(v) *Federal Circuit Court of Australia Act 1999* and section 98AB(1)(f)(iv) *Family Law Act 1975*

<sup>v</sup> including additional jurisdictions