

Official Attestation of Forms and Documents

Terms of Reference

In 1972, the Committee was given a general reference to report on the law relating to the formality of oaths, declarations and the attestation of documents.

Background of Reference

The reference originated as a result of several long-standing concerns:

- (a) the vast number of minor and unimportant documents that required formal witnessing by persons of special status;
- (b) the lack of qualified witnesses available in Western Australia to witness such documents; and
- (c) the large number of applications received from persons seeking to be appointed as Commissioners for Declarations for the purpose of witnessing such documents.

In 1973, the Commission took over the reference as an incomplete project from the previously existing Committee.¹ By this stage a great deal of research toward a preliminary working paper had been performed.

During a national conference of law reform agencies in 1975, the area of law covered by this reference was designated as being a suitable subject for uniform law reform across all Australian jurisdictions. The Conference resolved that the Commission, and its counterpart in Queensland should work together to recommend uniform legislation and prepare draft legislation.² The Commission revised its terms of reference to reflect the resolution of the Conference. As a result of the work already done, the Commission considered it convenient to divide the revised reference into two parts; Part I dealing with the official attestation of forms and documents and Part II addressing the formalities of oaths. The Commission released two working papers on the subject, the first in February 1973 addressing the original terms of reference and another in April 1977 which dealt with the revised terms of reference.

Nature and Extent of Consultation

Given the nature of the reference, consultation focused almost exclusively on government departments, institutions and professional associations. The preliminary working paper was forwarded for comment to 45 government departments and instrumentalities. The majority of submissions received in response to the paper supported the proposal for the creation of an unattested declaration.³ The second working paper had a slightly larger consultation base and was forwarded to a number of government departments, professional associations, judicial officers and academics.

Although the terms of reference provided for a joint project, only limited consultation with the Queensland Law Reform Commission (QLRC) occurred. In 1977 the QLRC announced that, due to priorities and resource shortages, its parallel project would be delayed indefinitely.⁴ The Commission delivered its final report in November 1978.⁵

¹ The Law Reform Committee of Western Australia was formally reconstituted as a Commission on 19 January 1973.

² *Minutes of the Second Conference of the Australian Law Reform Agencies*, (Second Conference of the Australian Law Reform Agencies, Sydney 2–4 April 1975) 7.

³ Law Reform Commission of Western Australia, *Official Attestation of Forms and Documents*, Working Paper, Project 28(I) (1977) app III.

⁴ *Record of the Fourth Conference of the Australian Law Reform Agencies*, (Fourth Conference of the Australian Law Reform Agencies, Sydney, 1 July 1977) 34.

⁵ Law Reform Commission of Western Australia, *Official Attestation of Forms and Documents* Project No 28(I) (1978).

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Recommendations

The Commission divided its recommendations into two categories. In respect of the first category, pertaining to statutory declarations, the Commission made the following recommendations:

- That provision be made for an unattested statutory declaration.
- That a recommended form be prescribed.
- That there should be no restriction on the range of circumstances in which an unattested statutory declaration could be made.
- That provision be made for an offence of making a statement in an unattested statutory declaration which is knowingly false in a material matter.
- That s 106 of the *Evidence Act 1906* (WA) be repealed.
- That s 27(2) of the *Oaths Act* (SA) be adopted in Western Australia.
- That s 171 of the *Criminal Code 1913* (WA) be repealed.
- That a declaration be valid only if signed by means of a handwritten signature and not by means of a rubber stamp or a facsimile.
- That an unattested statutory declaration be provided for in the *Declarations and Attestations Act 1913* (WA).
- That uniform legislation permitting the general use throughout Australia of an unattested statutory declaration be enacted.

The second category dealt with the signing of affidavits by the affixation of a rubber stamp. The Commission considered that both deponents of affidavits and Commissioners before whom an affidavit may be taken, should be required to affix a handwritten signature to the document. The affixation of a rubber stamp or facsimile in place of a handwritten signature was considered inappropriate.

Legislative or Other Action Undertaken

There has been no legislative action to date to implement the Commission's recommendations regarding changing the law to allow unattested statutory declarations. However, in 1987, the range of qualified witnesses under the *Declarations and Attestations Act 1913* (WA) was increased by amendment to allow certain individuals such as town clerks, police officers, university academics, pharmacists and legal practitioners to automatically qualify to witness documents without prior registration. This addressed some of the problems that motivated the original reference such as the lack of sufficient qualified witnesses and the backlog of applications for appointment of Commissioners for Declarations.⁶

Currency of Recommendations

Although the Commission's recommendations to provide for unattested declarations remain current, the necessity of such change has been questioned. In March 1983, the Standing Committee of Attorneys-General decided not to proceed with the Commission's proposals to allow unattested statutory declarations as a basis for a national uniform law. The Standing Committee was of the view that 'the benefits that flow from attestation outweigh the occasional practical inconvenience that sometimes results from a person having to find an attesting witness'.⁷ The proposals were also considered by the Western Australian Parliament in 1987 but were defeated on the basis that the requirement for attestation by designated

⁶ Western Australia, *Parliamentary Debates*, Legislative Assembly, 3 June 1987, 1795 (Mr Mensaros, Member for Floreat).

⁷ Law Reform Commission of Queensland, *A Bill to Replace the Oaths Act 1867-1981*, Working Paper No 31 (1988) 54.

witnesses reinforced the importance of declaratory documents.⁸ This conclusion was repeated by the QLRC which, in its 1988 working paper on the subject, recommended that current practices requiring attestation of statutory declarations be retained.⁹

Action Required

The Commission's recommendations may be substantially implemented in Western Australia by amendment to the *Declarations and Attestation Act 1913 (WA)* to provide for unattested statutory declarations.

Priority – Low

The 1987 amendments to the *Declarations and Attestation Act 1913 (WA)* to allow for an increased range of automatically qualified witnesses, appear to have resolved many of the problems that initially prompted the reference. Except for the Northern Territory, no other Australian jurisdiction has passed amendments to allow for unattested statutory declarations.

⁸ Western Australia, *Parliamentary Debates*, Legislative Council, 1 April 1987, 65 (Mr J M Berinson, Attorney-General).

⁹ Law Reform Commission of Queensland, above n 7.