THE LAW REFORM COMMISSION
OF WESTERN AUSTRALIA

Project No 28

Official Attestation of Forms and Documents

Part A: Statutory Declarations
Part B: Signing of Affidavits

REPORT

NOVEMBER 1978
The Law Reform Commission of Western Australia was established by the *Law Reform Commission Act 1972*.

The Commissioners are -

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PART A : STATUTORY DECLARATIONS

GENERAL

Terms of reference

1.1 The Commission was asked to consider and report on the law relating to oaths, statutory declarations, acknowledgements and the like (except notarial acts), with a view to the development of uniform provisions which could be adopted as a model for the Commonwealth and the States.

Comment on terms of reference

1.2 Although the terms of reference are expressed widely the Commission in this report (Part A) has confined its attention to a consideration of the formalities required in making statutory declarations. This course of action has been taken because the law relating to statutory declarations conveniently lends itself to separate treatment. The reform of the law in this area can proceed independently of a consideration of the other aspects raised by the terms of reference. The Commission will consider the formalities required in the attestation of forms and documents other than statutory declarations at a later stage.

Uniformity

1.3 Prior to the Commission being given these terms of reference it already had a project dealing with the official attestation of forms and documents. However, at the second conference of the Australian Law Reform Agencies in April 1975, it was recommended that the Law Reform Commission of Queensland and the Law Reform Commission of Western Australia should work together on the project which now forms the terms of reference set out in paragraph 1.1 above.

1.4 At the third conference of Australian Law Reform Agencies in May 1976 the representatives of the Commissions involved confirmed that they would propose to their respective Attorneys General that the project be undertaken with a view to reform on a uniform basis. The proposal subsequently received the consent of the Attorneys General of
Queensland and Western Australia and references were forwarded to the respective Commissions accordingly.

1.5 The Commission's draft report and the question of uniformity generally was discussed with the Queensland Law Reform Commission. In view of the reservations expressed by the Queensland Law Reform Commission, this report reflects only the views of the Western Australian Law Reform Commission as to the desirability of the development of uniform State and Commonwealth legislation to apply throughout Australia.

**Working papers**

1.6 In February 1973 the Commission issued a preliminary working paper to many Western Australian Government departments and instrumentalities dealing with the methods of attestation of forms and documents, the formalities required in those methods and in particular the requirement for information to be provided by a statutory declaration. In April 1977 the Commission, having considered the comments on the preliminary working paper, issued a further working paper seeking public comment on the use of statutory declarations for the supply of information. The working paper also discussed the practice in Western Australia of affixing signatures to affidavits by means of a rubber stamp.

1.7 The working paper, which contains a copy of the preliminary working paper, is reproduced as Appendix II. The names of those who commented on the working paper are set out in Appendix I.

**LAW AND PRACTICE IN WESTERN AUSTRALIA**

**Survey**

1.8 Prior to the issue of the preliminary working paper in February 1973, the Commission, with the assistance of the Public Service Board of Western Australia, obtained copies of forms and documents in use by many State Government departments and instrumentalities. This

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1 See paragraphs 1.39 and 1.40 below.
2 See paragraphs 1.36 to 1.42 below.
3 Appendix III of the working paper contains a summary of the views of the commentators.
4 The Commission’s recommendations on this matter are made in Part B of this report: see paragraphs 2.1 to 2.11 below.
survey revealed that there were at least 242 forms and documents in use which required information to be supplied. Four methods were used in those forms and documents: affidavits,\(^5\) statutory declarations,\(^6\) witnessed statements,\(^7\) and unwitnessed statements.\(^8\)

1.9 The survey showed that approximately three-quarters of the forms and documents required information to be provided by means of an attested\(^9\) statutory declaration under s.106 of the Evidence Act 1906.\(^10\) In some cases this is a statutory requirement but in others it is merely a matter of departmental practice.\(^11\) In some cases an attested statutory declaration, other than one under s.106 of the Evidence Act 1906, is prescribed.\(^12\)

**Declarations made outside Western Australia**

1.10 Where a Western Australian statute requires that a statutory declaration be made in certain circumstances, and such a declaration is made in another jurisdiction in Australia, it would appear that it must be made in accordance with the law in force in that jurisdiction. Sometimes the statute expressly provides for this. For example, under s.16(2) of the Companies Act 1961 a statutory declaration may be required as evidence of compliance with the requirements of the Act relating to the formation of a company. Under the Companies Regulations 1976, if such a declaration were made in Victoria, it must be made in accordance with the law in Victoria.\(^13\) Where the maker of such a declaration knowingly makes a false statement therein he can be prosecuted in Victoria for wilful and corrupt perjury.\(^14\)

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5 See paragraphs 2.23 and 2.11 to 2.13 of the working paper.
6 See paragraphs 2.14 to 2.21, and 2.24 and 2.25 of the working paper.
7 See paragraph 2.26 of the working paper.
8 See paragraph 2.27 of the working paper.
9 That is, a statutory declaration which must be made before a prescribed person who must attest to this fact in the document.
10 Section 106 provides:
   It shall be lawful for any justice of the peace or other person by law authorised to administer an oath to take and receive the declaration of any person voluntarily making same before him in the following form, namely -
   I, A.B., [insert place of abode and occupation], do solemnly and sincerely declare that [here state the facts], and I make this solemn declaration by virtue of section one hundred and six of the Evidence Act, 1906. Declared at this day of , before me, C.D., Justice of the Peace [or as the case may be].
11 See paragraph 2.24 of the working paper.
12 See paragraph 2.25 of the working paper.
13 Companies Regulations 1976 (WA) Second Schedule, form 4 and note thereto. See also regulation 7.
14 See Evidence Act 1958 (Vic), s.141.
1.11 Sometimes, however, a Western Australian enactment requires that information given for the purposes of the enactment must be verified by statutory declaration, but does not itself prescribe the manner in which the declaration must be made. It would appear that, in such a case, s.4 of the Interpretation Act 1918 (WA) applies. That section provides a definition of "statutory declaration" wherever those words appear in Western Australian legislation (unless the contrary intention appears) and seems to require that the declaration must be made in accordance with the law in the State or Territory in which it was made.\(^\text{15}\)

1.12 Statutory declarations are not always required by or for the purpose of a statutory provision. For example, an insurance company in Western Australia may, as a matter of practice, require a claimant to support his claim by a statutory declaration. If the declaration is made in Western Australia it must be made in accordance with s.106 of the Evidence Act 1906. If the declaration were to be made in Victoria in support of an insurance claim made in Western Australia, would it be necessary for the declaration to be made in accordance with the law in force in Western Australia or that in force in Victoria? The answer to this is not altogether clear. However, it would seem that, on general principles, the formal validity of a declaration depends on the law of the jurisdiction in which it was made and therefore that the declaration should be made in accordance with Victorian law.\(^\text{16}\) Whether this is so or not, it does appear to be clear that if a statutory declaration is made in Victoria in accordance with the law there, containing a statement which is knowingly false, the maker commits an offence under Victorian law.\(^\text{17}\) If, on the other hand, the declaration were made in Victoria in accordance with s.106 of the Evidence Act 1906 (WA) it would be a defence to a charge there

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\(^{15}\) See (b) of the definition of "Statutory declaration " in s .4 of the Interpretation Act 1918. That definition provides:

\text{‘Statutory declaration,’ if made -}

\begin{enumerate}
\item in Western Australia, means a declaration made under the Evidence Act, 1906, or the Declarations and Attestations Act, 1913;
\item in the United Kingdom or any British possession other than Western Australia, means a declaration made before a justice of the peace, notary public, or other person having authority therein under any law for the time being in force to take or receive a declaration;
\item in any other place, means a declaration made before a British Consul or Vice-Consul, or before any person having authority under any Act of the Parliament of the United Kingdom, or any Act of the Parliament of Western Australia, for the time being in force, to take or receive a declaration.
\end{enumerate}

\(^{16}\) Whether a statutory declaration made in Victoria in accordance with s.106 of the Evidence Act 1906 (WA) need be accepted in Western Australia may depend on whether that provision was intended to have extra-territorial effect. A legislature is presumed to intend that its legislation shall be restricted in its application to persons, property and events in the territory over which it has territorial jurisdiction, unless a contrary intention appears: see Attorney-General v Australian Agricultural Company (1934) 34 SR (NSW) 571 at 576 and Ex parte Iskra [1963] NSWR 1593 at 1605.

\(^{17}\) Evidence Act 1958 (Vic), s.141.
that the form used was a substantial variation from that prescribed in Victoria.\(^\text{18}\) In neither case could the maker be prosecuted under s.170 of the *Criminal Code* (WA) because the act which constitutes the offence was not done in Western Australia, as is required by s.12 of the *Criminal Code*.\(^\text{19}\)

1.13 In view of the position outlined in the previous paragraph it would seem to be desirable for any person in Western Australia accepting a statutory declaration made in another jurisdiction in Australia to ensure that it was made in accordance with law in the jurisdiction in which it was made. This may be difficult because the law relating to the making of statutory declarations varies from jurisdiction to jurisdiction.\(^\text{20}\) If the law relating to making statutory declarations were made uniform this difficulty would disappear.

**THE POSITION IN OTHER JURISDICTIONS**

1.14 The position in other jurisdictions was discussed in paragraphs 2.39 and 2.40 of the working paper. In essence, all other Australian jurisdictions\(^\text{21}\) and New Zealand\(^\text{22}\) have provisions for statutory declarations similar to those in force in Western Australia. Attestation is required in all jurisdictions.\(^\text{23}\) There are, however, variations from jurisdiction to jurisdiction, particularly in the form prescribed.\(^\text{24}\)

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\(^{18}\) See paragraphs 2.18 and 2.19 of the working paper.

\(^{19}\) Section 12 of the *Criminal Code* provides:

> This Code applies to every person who is in Western Australia at the time of his doing any act or making any omission which constitutes an offence.

There is also the possible defence that a declaration made in accordance with the law of another jurisdiction is not a “declaration” to which s.170 of the Code applies.

\(^{20}\) See paragraph 1.14 below.

\(^{21}\) Commonwealth: *Statutory Declarations Act 1959*, s.8.

New South Wales: *Oaths Act 1900*, ss.21 and 24.

Queensland: *Oaths Act 1867*, ss.13 and 14.

South Australia: *Oaths Act 1936*, s.25.

Tasmania: *Evidence Act 1910*, s.132.


\(^{22}\) *Oaths and Declarations Act 1957*, ss.7 to 9 and 11.

\(^{23}\) The witness required varies from jurisdiction to jurisdiction. For example, in Western Australia a comparatively wide range of people may witness a statutory declaration including a justice of the peace, or other person authorised to administer an oath, a commissioner for declarations, a classified officer of the State or Commonwealth Public Service, a State school teacher and a police officer: see paragraphs 2.20 and 2.21 of the working paper. In Queensland, however, the range of persons who may witness a statutory declaration is restricted to a justice of the peace, notary public, persons authorised to administer an oath, or any barrister, solicitor or conveyancer of the Supreme Court: *Oaths Act 1867*, s.13.

\(^{24}\) The form prescribed in Victoria (*Evidence Act 1958*, s. 107 and Fourth Schedule) is as follows:

> I A.B.of do solemnly and sincerely declare that &c. and I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of an Act of the Parliament of Victoria rendering persons making a false declaration punishable for wilful and corrupt perjury.

(Signed) A.B.
RECOMMENDATIONS

An unattested statutory declaration

1.15  In the working paper the Commission suggested that in many cases the use of attested statutory declarations is unnecessary and that provision should be made for an unattested statutory declaration as an alternative to the existing attested form contemplated by s.106 of the Evidence Act.\textsuperscript{25} There was an overwhelming response by the commentators, who represented a broad spectrum, in favour of the introduction of an unattested statutory declaration. \textsuperscript{26}

1.16  The requirement of attestation may be said to serve four purposes -

1. A declarant is less likely to make untruthful statements because of the formality involved in making the statutory declaration.

2. In some cases it may be desirable to have a person who can satisfy himself as to the identity of the declarant.

3. It may be desirable to have a witness who can show that the declarant was not under undue influence or coercion at the time the declaration was made.

4. It may be desirable to have a person who can ensure that the declarant understands the contents of the declaration.

1.17  The formality referred to in purpose one above arises from the form of declaration prescribed and the fact that the declaration must be made before one of a number of prescribed persons. However, because of the wide range of persons authorised to attest declarations\textsuperscript{27} a person may not be impressed by the formality of the occasion. Moreover in many cases, it would seem that the formality which is expected to stimulate truth is missing.

\begin{center}
\begin{tabular}{llll}
Declared at & this & day of & 19 \\
before me, & & C.D., & \\
A justice of the peace for Victoria [or as the case may be]. & & & \\
\end{tabular}
\end{center}

\textsuperscript{25}See paragraphs 2.44, 2.45 and 2.48 of the working paper.

\textsuperscript{26}The Law Society was divided on the question.

\textsuperscript{27}See paragraphs 2.20 and 2.21 of the working paper.
and the declaration itself may even be invalid.\(^{28}\) In fact, one commentator suggested that the excessive use of statutory declarations had debased the meaning and solemnity with which attestation was once regarded. Moreover, mere formality may not stimulate truth. If a person intends to lie in order to gain a benefit it may be doubted whether formal attestation will affect that intention. As the Commissioner of Titles, Mr. N.J. Smyth, said in commenting on the working paper:

I do not think that any practical formality can be devised which will dissuade the person who is determined to mislead us from so doing. The statutory declaration is a useful sword in dealing with the business of the vast majority of bona fide transactions, it is not an infallible shield against the fraudulent minority.

The essential element is that the declarant should be aware that if he makes a false declaration he can be punished. If that requirement can be fulfilled without recourse to an attest ing witness, then I think an attesting witness is not necessary.

The threat of a criminal sanction may well be a greater deterrent than the formality, such as it is, involved in making an attested statutory declaration.

1.18 As to the third purpose, the circumstances in which it would be desirable to produce such a person are not likely to occur frequently. In any event the witness may not be able to give evidence of any probative value on the matter. If the declarant disowns the document or its contents or claims undue influence he may be subject to cross-examination and witnesses may be available on these matters.

1.19 The principal arguments against the requirement that information in forms and documents be provided by an attested statutory declaration are those of delay and inconvenience. This may be particularly so in remote areas where a person may not have ready access to one of the persons before whom a statutory declaration may be made.

1.20 The Commission has concluded that in most cases attestation is unnecessary and that the inconvenience caused by a requirement for it cannot be justified by any of the purposes referred to in paragraph 1.16 above. The Commission notes that a form of unattested declaration is used on the Commonwealth income tax return. This is a very important form and one on which a significant number of charges for making false statements are based. The

\(^{28}\) See paragraph 10(c) and (d) of the preliminary working paper.
Commission understands that this form has been used over a considerable period of time and has not presented difficulties during prosecutions for making false statements in it. For these reasons, the Commission recommends that provision should be made for an unattested statutory declaration.\(^{29}\) It would appear that the most convenient place to provide for such a declaration would be in the *Declarations and Attestations Act 1913*, rather than in the *Evidence Act 1906*.

1.21 In the working paper, the Commission suggested that s.106 of the *Evidence Act 1906* should not be repealed as attested statutory declarations may be required for some purposes.\(^{30}\) However, the Commission is now of the view that the existence of both the proposed unattested statutory declaration and the attested statutory declaration provided for by s.106 of the *Evidence Act 1906* could cause confusion because the public may be unsure whether they are required to make an attested or unattested statutory declaration in a particular case. It is also of the view that the attested statutory declaration is unnecessary in most cases. For these reasons, it recommends that s.106 of the *Evidence Act 1906* be repealed.\(^{31}\)

1.22 The Commission is aware of at least two Acts in which provision is made for an attested statutory declaration\(^{32}\) other than that provided for by s.106 of the *Evidence Act* and which would not be affected by the repeal of that section. It is the Commission's view that these provisions should be reviewed to determine whether attestation is necessary, and if not, whether the proposed unattested statutory declaration could be adopted.

1.23 If provision is made for the proposed unattested statutory declaration, it is the Commission's view that any forms subsequently included in statutes or regulations should not

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\(^{29}\) The Law Reform Commission of British Columbia has also examined the requirement for statutory declarations required by or provided for in Statutes of British Columbia to be witnessed. It concluded that:

…what we have called the ‘formalities of verification’ are, where their sole purpose is to reinforce the honesty and accuracy of written or oral statements in out-of-court settings, *unnecessary, time-consuming, and complicated*. We are therefore of the opinion that they should be abolished and replaced with a more simple and straightforward means of securing veracity.

…our proposal...briefly stated...is that where statements are required by statute, their accuracy and honesty should be reinforced by the imposition of criminal liability for false statements, without the interposing of any particular formality in the making of the statement: Law Reform Commission of British Columbia, Report on *Extra Judicial Use of Sworn Statements* (1976), at 26.

\(^{30}\) See paragraph 2.48 of the working paper.

\(^{31}\) One consequence of the repeal of s.106 would be that it would be necessary to amend the definition of "Statutory declaration" in s.4 of the *Interpretation Act 1918* so that it refers to the proposed unattested statutory declaration and not to s.106

\(^{32}\) *Registration of Births, Deaths and Marriages Act 1961*, s.63, Sixth Schedule.

*Electoral Act 1907, Electoral Act Regulations 1949*. See, for example, forms 7A, 26B, 26D and 48.
provide for an attested statutory declaration, but should adopt the form of the unattested statutory declaration.

1.24 Although the Commission is of the view that attested statutory declarations should not be used in future, it does recognise that in special circumstances a Government department or instrumentality may require an attested statutory declaration. This might arise where the need to fulfil one of the purposes of attestation referred to in paragraph 1.16 above outweighs the inconvenience caused by a requirement for attestation. In these circumstances, provision could be made in the relevant Act or regulation for an attested statutory declaration.

**Criminal sanction**

1.25 Under s.170 of the *Criminal Code* it is an offence to make a statement in an attested statutory declaration which is knowingly false in a material particular. However, this provision would not apply to a person who makes a false statement in an unattested statutory declaration. It is the Commission's view that the threat of a criminal sanction is necessary to deter persons from making false statements in declarations. The Commission therefore recommends that it should be an offence to make a statement in an unattested statutory declaration which is knowingly false in a material particular.

1.26 It appears that it is a defence to a charge of making a false statement in a declaration that the declaration was not duly made or was not in the form prescribed. A person may therefore escape conviction on what may appear to be a legal technicality. It is important that any form prescribed makes clear to the declarant -

(a) that he is required to declare that the contents are true; and

(b) that it is an offence to make a statement which is knowingly false in material particular.

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33 See paragraph 2.17 of the working paper.
34 In *R. v Davies* (1974) 7 SASR 375 at 395 Wells J. said:
...it seems to me that a material particular is one that goes to the subject matter of the declaration in the sense that it is of such significance and importance that, if stated incorrectly to the degree proved by the evidence in the case under consideration, it directly alters the essential meaning and character, if not of, the whole declaration, then at least, of the portion of the declaration of which that particular forms a part.
35 There is a paucity of cases, in this area, see paragraphs 2.16, 2.18 and 2.19 of the working paper.
1.27 If a person were permitted to shelter behind a formal defect it would place an onus on bodies, such as the Titles Office, which rely heavily on statutory declarations, to enquire in every case whether a declaration had been duly made. This would reduce greatly the convenience of statutory declarations as a means of obtaining proof of matters. The majority of commentators agreed that the present law was unsatisfactory in this respect and should be amended.

1.28 It is the Commission’s view that the essential element in the making of a declaration is that the declarant knew he was required to declare his belief in the truth of the declaration. It follows that a declarant who makes a knowingly false statement should not be able to shelter behind some formal defect. Consequently, the Commission recommends that s.27(2) of the Oaths Act 1936 (SA) should be adopted in Western Australia. That section provides that it is not a defence to a charge of knowingly making a declaration untrue in any material particular that the declaration was not duly made or in the form prescribed, so long as the court is satisfied that the declarant knew that he was required to declare his belief in the truth of the declaration.

Corroboration

1.29 Under s.171 of the Criminal Code a person cannot be convicted of an offence under ss.169 and 170 of the Code upon the uncorroborated testimony of one witness. It appears that this provision is an historical anomaly arising from the requirement in ecclesiastical law that there could be no conviction for perjury if the testimony of only one witness was offered as proof of his guilt as there would only be one oath against another. A modern rationale for corroborative evidence, namely, that it is directed at protecting witnesses from false charges at the hands of those against whom their testimony is directed, does not appear to be applicable to offences under ss.169 and 170 because statements sworn or made involving offences under ss.169 and 170 are not usually sworn or made in judicial proceedings. Corroborative evidence is also considered to belong to those areas where false accusations are likely to occur. This, too, would not apply to offences under ss.169 and 170 of the Criminal Code. As

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36 This section provides for the offence of making false statements which are required to be verified under oath, or by affirmation or solemn declaration.
37 See paragraph 2.32 of the working paper.
38 Ibid.
39 For example in a rape trial.
the Commission can see no justification for requiring corroboration in case of charges of offences under ss.169 and 170 it recommends that s.171 of the *Criminal Code* be repealed.

**Form of unattested statutory declaration**

1.30 A shortcoming of the form of the declaration required by s.106 of the *Evidence Act 1906* is that it makes no reference to the fact that a person commits an offence if he makes a statement in a declaration which is knowingly false. Although it may be argued that a person who makes a statement in a statutory declaration is aware that he should not make a false statement and that the statements are true this is not expressed in the form prescribed. A number of those who commented on the working paper said that it was essential that a declarant should be aware he is committing an offence if he makes a false statement in a declaration. The Commission agrees with these views and recommends that the form of unattested statutory declaration prescribed should state that the contents of the declaration are true and that it is an offence to make a statement which is knowingly false in a material particular. It is also the Commission's view that the form of the declaration should be as simple as possible. After reviewing the comments received the Commission recommends that the following form, which is a simplified version of the form suggested in the working paper, should be provided:

I, A.B. [insert address and occupation] make this declaration under the [statutory provision authorising unattested statutory declaration to be inserted]. I declare that the statements herein are true in every material particular.

I am aware that it is a criminal offence to make a declaration which is knowingly false in a material particular.

Declared at …………. this ……….. day of ………………………..19...

______________________________
Signature of person making declaration.

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40 See paragraph 2.46 of the working paper.
1.31 The Commission’s view is that the declaration should be signed by means of a handwritten signature and not by means of a rubber stamp or other facsimile.\footnote{The use of a rubber stamp or other facsimile by a person swearing an affidavit and the person taking the affidavit is discussed in Part B of this report.}

**Scope of use of unattested statutory declaration**

1.32 At present, the use of the attested statutory declaration provided by s.106 of the *Evidence Act 1906* is not restricted to those circumstances where its use is required by law. For example, insurance companies frequently require that policy holders use this method for providing information in support of a claim. Most commentators favoured the view that there should be no restriction on the range of circumstances in which the unattested statutory declaration could be made. The Commission agrees with this view.

**Reliance on statutory declarations**

1.33 In the working paper the Commission raised the question whether statutory protection ought to be given to a person who acts in reliance on a statutory declaration.\footnote{See paragraphs 2.36 to 2.38 of the working paper.} Under the present law a person who acts in reliance on a statutory declaration containing a false statement to the detriment of a third person could be sued by that person for the loss suffered. Such a suit could be founded on either contract or tort depending on the relationship between the parties.\footnote{The third person may also have an action against the declarant in deceit for injurious falsehood. This action “...consists in the publication of false statements, whether oral or in writing, concerning the plaintiff or his property, calculated to induce others not to deal with him”: Fleming, *The Law of Torts* (5th ed. 1977) at 697.} For example, a person may have an action in defamation against a newspaper which published a news item of a defamatory nature relying on a statutory declaration made by some other person. Liability for defamation is strict. Honest belief in the truth of an allegation is not a defence.\footnote{See Fleming, *The Law of Torts* (5th ed. 1977) at 540.} A further example is where A, who owes money to B, pays the money to C in reliance on a statutory declaration by C in which C represents that he is B's agent. The fact that A relied on the statutory declaration of C would not relieve him of his liability to pay that money to B. In neither contract nor tort is there a specific defence of reliance on a statutory declaration to a claim for loss suffered.
1.34 The object of providing a simple unattested statutory declaration is to afford persons a convenient and practical means of verifying information in a statement in a document. To go further and accord special protection to persons acting in reliance on a statutory declaration would be undesirable since it would obviate the need for them to make further enquiries even if the circumstances indicated that it would be prudent to do so.

1.35 It is the Commission's view that there is no justification for providing such protection to persons who rely on statements contained in a statutory declaration. The common law remedies should continue to be available to any person injured as the result of action taken by a person relying on a statutory declaration.

Uniformity

1.36 At present, if a statutory declaration required by a Western Australian statute is made outside the State, it seems that it must be made in accordance with the law of the State or Territory in which it was declared.\(^{45}\) Thus if made in Victoria it would appear that it must be declared in the form and in the manner prescribed in Victoria. The Commission understands that this requirement has caused difficulty since declarants are often unaware of it. In commenting on the working paper the Commissioner for Corporate Affairs, Mr. R.K. Warren, said:

...failure to appreciate this can cause considerable difficulties for them at a later stage (eg where the original declaration is inadequate and a time limit has expired before they can be made aware of that fact and given an opportunity to make a fresh declaration).

In the example given above, even if the time had not expired, a person would be inconvenienced because it would be necessary to make a further declaration and forward it to Western Australia. Doubtless similar problems are encountered in other jurisdictions. The Commissioner of Titles also considered that uniformity was desirable because the Titles Office frequently has to consider statutory declarations made in other jurisdictions.

1.37 Uniformity is desirable from the point of view of the operation of Government departments and instrumentalities and those who deal with them as well as for those engaged

\(^{45}\) See paragraphs 1.10 to 1.12 above.
in business and commerce. The need for uniformity has been supported by the Insurance Council of Australia and Perpetual Trustees WA Ltd (formerly the Perpetual Executors, Trustees and Agency Company (W.A.) Limited). In commenting on the working paper the manager of the latter company, Mr. Butcher said:

….since our activities, as with those of a large number of commercial concerns, extend to the other States we would regard it as most desirable that there should be uniform legislation on the subject.

1.38 If uniformity were achieved,\textsuperscript{46} three readily apparent advantages would follow -

1. it would be easier for a declarant to make a declaration in accordance with the law in force in the jurisdiction in which the declaration was made;\textsuperscript{47}

2. it would also be easier for a person or body intending to act on a statutory declaration, such as the Titles Office or an insurance company, to check that it had been so made;\textsuperscript{48} and

3. a company or other body operating in more than one State could use a single form of declaration, rather than be required to print a separate form of declaration for each jurisdiction.

1.39 Many of the commentators, including government departments and instrumentalities, trustee companies and the Insurance Council of Australia, had dealings with persons in other States and believed that uniformity was desirable. The Commission agrees that uniformity is desirable in this area. This question was discussed with the Queensland Law Reform Commission who had reservations about the desirability of a recommendation for the use of

\textsuperscript{46} The Commission is aware that some companies do, at present, use a uniform form of statutory declaration. For example, one insurance company uses the following form of declaration:

...I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of an Act of Parliament of ...rendering persons making a false declaration punishable for wilful and corrupt perjury.

This form of declaration appears to be based on the form prescribed in s.107 and the Fourth Schedule of the Victorian \textit{Evidence Act 1958}, and would be valid if made in Victoria: see footnote 24 above. However, if it were made in Western Australia, whether for use in Western Australia or in Victoria, the maker would have a defence to a charge under s.170 of the \textit{Criminal Code} of knowingly making a false statement in a statutory declaration that the form used was a substantial variation from the form prescribed in Western Australia: see paragraph 2.18 of the working paper.

\textsuperscript{47} See paragraphs 1.10 to 1.12 above.

\textsuperscript{48} See paragraph 1.13 above.
unattested statutory declarations in Queensland - especially if attested declarations were still to be required in some cases - since the public would be likely to be confused. The Law Reform Commission of Western Australia considers, however, that confusion would be minimal if attested statutory declarations could be made only where they were specifically required by a statute, the unattested statutory declaration being available in all other circumstances.

1.40 The Queensland Law Reform Commission also noted that if attested statutory declarations remained there could be some conflictual problem between one State and another concerning the recognition of such declarations. For example, assume that States A and B have abolished statutory declarations, generally, in favour of unattested statutory declarations, except for particular cases provided for by statute. In State A a statute may require an attested statutory declaration in circumstances in which it is not provided for in State B. In such a case, if a statutory declaration were made in State B, for use in State A, an unattested statutory declaration would have to be made in State B and this would not be acceptable in State A. However, the Law Reform Commission of Western Australia considers that this problem could be overcome if State B authorised the making of an attested statutory declaration where that was required by a statute of another State. Alternatively, State A could authorise the making of an unattested statutory declaration in other States in which such an attested statutory declaration was not provided for. The Commission favours the latter approach.

1.41 The reservations of the Queensland Law Reform Commission indicate that it may be difficult to achieve a uniform law to apply throughout Australia in respect of the use of unattested statutory declarations. The Western Australian Law Reform Commission considers, however, that there would be much to be achieved by the adoption of a uniform law which authorised a form of unattested statutory declaration for general use. If individual States wished to retain the use of an attested statutory declaration in a particular case, it would then be necessary to deal with the conflictual problem referred to in the preceding paragraph. If an unattested statutory declaration were first introduced in Western Australia, the question of uniformity could be considered at a later date in the light of the experience gained from its use in Western Australia.
Initially, as a step towards uniformity, it may be desirable to have the Commonwealth and State Governments agree to the use of unattested statutory declarations in any "national" companies legislation that may be implemented in the future.

SUMMARY OF RECOMMENDATIONS

The Commission recommends that -

(a) Provision be made for an unattested statutory declaration.

(b) The form of unattested statutory declaration be as follows –

I, A.B. [insert address and occupation] make this declaration under the [statutory provision authorising unattested statutory declaration to be inserted]. I declare that the statements herein are true in every material particular.

I am aware that it is a criminal offence to make a declaration which is knowingly false in a material particular.

Declared at …………. this ………... day of ……………………….19...

______________________________
Signature of person making declaration.

(c) There should be no restriction on the range of circumstances in which an unattested statutory declaration could be made.

(d) Provision be made for an offence of making a statement in an unattested statutory declaration which is knowingly false in a material particular.

(e) Section 106 of the Evidence Act 1906 be repealed.

(f) Section 27(2) of the Oaths Act 1936 (SA) be adopted in Western Australia.

(g) Section 171 of the Criminal Code be repealed.
(paragraph 1.29)

(h) The declaration should be signed by means of a handwritten signature and not by means of a rubber stamp or other facsimile.

(paragraph 1.31)

(i) The unattested statutory declaration should be provided for in the Declarations and Attestations Act 1913.

(paragraph 1.20)

(j) Uniform legislation permitting the general use throughout Australia of an unattested statutory declaration be enacted.

(paragraphs 1.36 to 1.42)
PART B : SIGNING OF AFFIDAVITS BY AFFIXING A RUBBER STAMP

TERMS OF REFERENCE

2.1 The Commission was asked to consider and report on whether the signatures of the deponent and the person before whom an affidavit is taken should be in handwriting.

PRESENT LAW AND PRACTICE

General

2.2 Although it had been held in a number of cases that, where a statute requires a signature, it is sufficient if the person signs by affixing a facsimile of his signature,\(^1\) the Commission is not aware of any similar decision with respect to affidavits.

Supreme Court and District Court

2.3 In the Supreme Court and the District Court affidavits must be signed on each page by the deponent and by the person before whom an affidavit is sworn, and that person must also complete and sign the jurat.\(^2\) Where the deponent is blind or illiterate, he may make a signature or mark.\(^3\) The Commission is advised that it is not the practice to present to the Supreme Court or District Court affidavits signed by means of a rubber stamp.\(^4\)

Local Courts

2.4 There is no express provision in the rules made pursuant to the Local Courts Act 1904 similar to that applicable to the Supreme Court and the District Court referred to above. It is not clear whether the rule applicable to the Supreme Court and the District Court referred to above applies to Local Courts. The Commission understands that the practice of Local Courts

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\(^1\) For example, an order of a judge or a summons: see paragraph 3.5 of the working paper.

\(^2\) Supreme Court Rules 1971, Order 37 rule 2(5). The Supreme Court Rules 1971 apply to the District Court: District Court of Western Australia Act 1969, s. 87.

\(^3\) Ibid., Order 37 rule 4(1(c).

\(^4\) See paragraph 3.3 of the working paper.
is to require a person making an affidavit to sign the affidavit personally, but to allow the use of a rubber stamp of the signature of the person before whom the affidavit was taken. 5

RECOMMENDATIONS

2.5 The main argument for allowing either a deponent or the person before whom an affidavit is taken to sign an affidavit by means of a rubber stamp or other facsimile is that it is a convenient practice. However, this argument appears to have little weight in the case of a deponent as it is unlikely that any person will find himself having to swear many affidavits. The requirement for a handwritten signature causes little inconvenience. Further, to allow a deponent to use a rubber stamp may lead to abuse. A rubber stamp or other facsimile, if stolen, lost or lent by the person whose signature is reproduced to another person could be affixed to an affidavit without the person whose signature is reproduced actually swearing the affidavit.

2.6 No commentator was in favour of a deponent being able to sign an affidavit by means of a rubber stamp. The then Commissioner of State Taxation, Mr. J.R. Ewing did, however, suggest that there may be a need for a rubber stamp where a person has a physical handicap.

2.7 Express provision exists for the signing of affidavits by a deponent who is either blind or illiterate. This provision, which does not extend to persons who are physically handicapped, could be extended to such persons so that they would be able to sign the affidavit by making a mark.

2.8 As the convenience argument does not carry a great deal of weight in the case of a deponent and because the use of a rubber stamp or other facsimile could be open to abuse, the Commission recommends that a deponent should be required to sign an affidavit by means of handwriting and not by means of a rubber stamp or other facsimile. If this recommendation is adopted the Commission suggests, in the interests of clarity, that the *Supreme Court Rules 1971* and the *Local Court Rules* be amended to make it clear that a handwritten signature is required.

5 See paragraph 3.3 of the working paper.
2.9 As an affidavit may only be taken by a commissioner for affidavits appointed under s.175 of the *Supreme Court Act 1935*, a justice of the peace, a judge of the Supreme Court, a District Court judge or the Master of the Supreme Court, the range of persons who may take an affidavit is narrow.

2.10 Such persons may find themselves having to take affidavits on a regular basis, and consequently the convenience argument carries greater weight than in the case of a deponent. These persons also hold responsible positions in the community and it may be expected that they would not abuse the privilege of being able to sign an affidavit by means of a rubber stamp or other facsimile. However, there is always the possibility that some other person could obtain possession of the stamp so that the use of a rubber stamp could be open to abuse. For this reason the Commission recommends that the person before whom an affidavit may be taken should also be required to sign an affidavit by means of handwriting and that the use of a rubber stamp or other facsimile should not be permitted. The Commission suggests that consideration be given to amending the *Supreme Court Rules 1971* and the *Local Court Rules* to clarify the matter.

**SUMMARY OF RECOMMENDATIONS**

2.11 The Commission recommends that -

(a) A deponent to an affidavit should be required to sign an affidavit by means of handwriting and not by means of a rubber stamp or other facsimile.  

  (paragraph 2.8)

(b) The persons before whom an affidavit may be taken should be required to sign an affidavit by means of handwriting and not by means of a rubber stamp or other facsimile.  

  (paragraph 2.10)

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6 The *Supreme Court Act 1935*, s.176 and Order 37 rule (1) of the *Supreme Court Rules 1971*. 


(Signed) Neville H. Crago

Chairman

Eric Freeman

Member

David K. Malcolm

Member

28 November 1978
APPENDIX I

List of those who commented on the working paper

Aboriginal Affairs Planning Authority
Associated Banks in Western Australia
Commissioner for Corporate Affairs
Commissioner of Police
Commissioner of State Taxation
Commissioner of Titles
Department for Community Welfare
Department of Agriculture
Department of Mines
Iddison R., S.M.
Insurance Council of Australia
Khan, A.N.
Perpetual Trustees WA Ltd
Road Traffic Authority
The Institute of Chartered Accountants in Australia, Western Australian Branch
The Law Society of Western Australia
The Royal Australian Institute of Architects, Western Australian Chapter
The Treasury
The West Australian Trustee Executor and Agency Company Limited
Western Australian Government Railways
Western Australian Institute of Technology
APPENDIX II

THE LAW REFORM COMMISSION
OF WESTERN AUSTRALIA

Project No 28 – Part I

Official Attestation of Forms and Documents

WORKING PAPER

APRIL 1977
The Law Reform Commission of Western Australia was established by the *Law Reform Commission Act 1972*.

The Commissioners are -

Mr. E.G. Freeman, *Chairman*
Mr. N.H. Crago
Mr. D.K. Malcolm.

The Executive Officer of the Commission is Mr. C.W. Ogilvie, and the Commission's offices are on the 11th floor, R. & I. Bank Building, 593 Hay Street, Perth, Western Australia, 6000 (Telephone: 25 6022).
PREFACE

Reform of the law in Western Australia

The Law Reform Commission has been asked to consider the tendency towards unnecessary formality in the methods of attesting forms and documents and the practice of affixing signatures to affidavits by means of a rubber stamp in Western Australia.

In February 1973 the Commission issued a preliminary working paper to many State Government departments and instrumentalities dealing with the methods of attestation of forms and documents, the formalities required by those methods and in particular the requirement for information to be provided by a statutory declaration. The Commission having considered the comments on the preliminary working paper and having completed its first consideration of the practice of affixing signatures to affidavits by means of a rubber stamp now issues this working paper. The Commission will in due course submit a report to the Attorney General.

Uniform law

At the second conference of Law Reform Agencies in April, 1975 it was recommended that the Law Reform Commission of Queensland and the Law Reform Commission of Western Australia should work together on a project to study proposals for the reform of the law relating to oaths and statutory declarations, acknowledgements and the like with a view to preparing uniform provisions which could be adopted as a model for the Commonwealth and the States.

This recommendation was again discussed at the third conference of Law Reform Agencies in May 1976. The representatives of the Commissions involved confirmed that they would refer the matter to their Attorneys General.

The proposal has since received the consent of the respective Attorneys General. It is envisaged that an agreed report will in due course be submitted to the respective Attorneys General for consideration by the Standing Committee of Attorneys General.
Accordingly, comments received in response to this working paper will be examined not only with a view to reforming the law in Western Australia, but also in connection with the development of uniform law to apply throughout Australia.

The paper does not necessarily represent the final views of the Commission.

Comments and criticisms (with reasons where appropriate) on individual issues raised in the working paper, on the paper as a whole or any other aspect coming within the terms of reference, and on the question of uniformity, are invited. The Commission requests that they be submitted by 17 June 1977.

Copies of the paper are being sent to the -

Associated Banks in Western Australia
Australian Insurance Association
Australian Society of Accountants (WA)
Chief Justice and Judges of the Supreme Court
Citizens Advice Bureau
Commissioner for Corporate Affairs
Commonwealth Banking Corporation
Country Shire Councils' Association of Western Australia
Institute of Chartered Accountants in Australia (WA)
Institute of Chartered Secretaries and Administrators
Institute of Legal Executives
Insurance Council of Australia
Insurance Institute of Western Australia
Judges of the District Court
Judges of the Family Court
Law Reform Commission of Queensland
Law School of the University of Western Australia
Law Society of Western Australia
Local Government Association of Western Australia
Magistrates' Institute
Mortgage Brokers Association of Western Australia
Parliamentary Commissioner for Administrative Investigations
Parliamentary Counsel
Perpetual Executors, Trustees and Agency Co. (WA) Ltd.
Rural & Industries Bank of Western Australia
Solicitor General
State Government Departments and Instrumentalities, including those listed in Appendix III
Under Secretary for Law
West Australian Trustee Executor and Agency Co. Ltd.
Western Australian Permanent Building Societies Association
Other Law Reform Commissions and Committees with which this Commission is in correspondence.
The Commission may add to this list.

A notice has been placed in *The West Australian* inviting anyone interested to obtain a copy of the paper and submit comments.

The research material on which the paper is based is at the offices of the Commission and will be made available there on request.
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APPENDIX III  (Views of Government departments and instrumentalities on the proposal in paragraph 12 of the preliminary working paper for a form of simple unattended declaration)

APPENDIX IV  Preliminary working paper
TERMS OF REFERENCE

1.1 The Commission has been asked to consider and report on -

(a) the methods of attestation of forms and documents and the tendency towards unnecessary formality required in those methods, and

(b) whether the signatures of the deponent and the person before whom an affidavit is taken should be in handwriting.

1.2 Part (a) of the project was given to the Commission as the result of some concern at -

(i) the large number of applications received from persons seeking appointment as Commissioners for Declarations; and

(ii) the requirement that signatures to some "minor and unimportant" documents had to be witnessed by persons of special status.

1.3 Part (b) of the project was given to the Commission after it had been suggested by a magistrate that the Local Court Rules should be amended to provide that signatures on affidavits must be in the handwriting of the deponent and the person before whom an affidavit is taken and not by affixing a rubber stamp which he considered was open to abuse.
A. ATTESTATION OF FORMS AND DOCUMENTS

Comment on terms of reference

2.1 The range of forms and documents in common usage in Western Australia includes -

(a) Forms and documents evidencing or acknowledging transactions (e.g. deeds, agreements and transfers of land), and documents evidencing or acknowledging the granting of powers, rights or benefits, whether testamentary or non-testamentary (e.g. powers of attorney, settlements and wills). In the case of a number of these forms and documents the manner of execution, including the manner of attestation (where necessary), is prescribed by statute.\(^1\)

(b) Forms and documents which entail the supply of information to Government departments and instrumentalities, private trading concerns, and individuals, including those forms and documents which may result in, or be incorporated in a contract (e.g. an insurance proposal form), or in the granting of some right or benefit such as a driver's licence, legal aid, or registration as a builder.

(c) Documents used in court proceedings.

2.2 The terms of reference are expressed widely and would appear to include a consideration of the formalities required in the case of all the forms and documents referred to in paragraph 2.1 above. In particular the terms of reference appear to involve a consideration of the formalities required for documents used in court proceedings and the formalities for attesting forms and documents such as bills of sale and wills where provision is made by statute for the manner of their execution and attestation. The Commission has interpreted the terms of reference as excluding any consideration of documents used in court proceedings. The Commission may consider the formalities required in the attestation of forms and documents where specific provision is made by statute for the manner of their execution and attestation at a later date. At present, the Commission has confined its attention to a consideration of the formalities required in forms and documents which entail the supply of

\(^{1}\) For example, deeds - Property Law Act 1969, s.9, and wills – Wills Act 1970, ss.8-10.
information to State Government departments and instrumentalities in particular. However, the consideration of the use of statutory declarations and the proposal for an unattested statutory declaration, \(^2\) will have relevance to private trading concerns and individuals who at times use statutory declarations.

**Historical background**

2.3 The practice of attesting documents finds its historical origins in the rules and practice surrounding the admission of documents in evidence at trials. Until the *Perjury Act of 1562-1563*, \(^3\) which created the offence of perjury and provided for the service of process on people to compel their attendance as witnesses, attesting witnesses were in a special position as only they could be compelled to attend as witnesses. The fact that they had allowed themselves to be called in and set down as attesting witnesses was understood to be an assent in advance to a compulsory summons. As part of this system attesting witnesses formally allowed their names to be written on deeds and other documents. The power to summon the attesting witness was important as they could prove the genuineness of the document where that was in doubt. \(^4\)

2.4 After the *Perjury Act* was enacted, although attestation was no longer important as a means of summoning the attesting witnesses, attestation remained important as a means of proving a deed or other document where that was in question. At common law a rule developed, namely, that one of the attesting witnesses must be called. \(^5\) If they were not called the document could not be proved. There were, however, exceptions where the document could be proved, notwithstanding that the attesting witnesses were not called. Two excuses for not calling an attesting witness were his death or his absence from the jurisdiction of the court. \(^6\) That rule was later modified so that, in the case of a document not required by law to be attested, the document could be proved by secondary evidence, whether or not attendance

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\(^2\) See paragraphs 2.44 to 2.49 below.
\(^3\) 5 Elizabeth 1 c.9.
\(^4\) See Wigmore, *Evidence* (3rd ed. 1940) Vol. 4 at 573-574. In fact, in the twelfth century, it was not uncommon for the attesting witnesses to sit with the jury when the genuineness of a document was in question: ibid., at 574.
\(^5\) See *Abbot v Plumbe* (1779) 1 Doug1. 216, 99 ER 141, and *R. v Harringworth* 4 M & S 350, 105 ER 863.
of the attesting witness was possible.\textsuperscript{7} In the case of a document which is required by law to be attested the common law rule was modified in England in 1938.\textsuperscript{8}

2.5 Those sections have been enacted as ss.30 and 79A, respectively, of the Western Australian \textit{Evidence Act 1906}. In Western Australia, s.30 of the \textit{Evidence Act 1906} provides that where attestation is not requisite to the validity of a document, the document need not be proved by the attesting witness, but may be proved as if there had been no attesting witness. Section 79A of the \textit{Evidence Act 1906} provides that where attestation is requisite to the validity of a document (other than a will or other testamentary document) the document may be proved as if no witness to the document is alive.

2.6 Where an attesting witness is called as a witness his role appears to be merely to swear that he saw someone sign in a particular name.\textsuperscript{9} The attesting witness need not give evidence as to the actual identity of the signatory.

2.7 Historically, the use of oaths was associated with the development of attestation as a means of proving the genuineness of a document. As an attesting witness could play an important role in the proof of a document, it became common practice to require attestation of many forms and documents by oaths.

2.8 Prior to the \textit{Statutory Declarations Act 1835}\textsuperscript{10} it had become increasingly obvious that the oath was, because of its frequent use, not only becoming lightly regarded but causing serious and unnecessary inconvenience in trade and commerce. The Act created a voluntary statutory declaration,\textsuperscript{11} and substituted the declaration in a number of statutes where oaths were required. That Act also made it unlawful for a justice of the peace or other person to administer any oath, affidavit or solemn affirmation unless it was authorised by statute.\textsuperscript{12}

\begin{footnotes}
\item[7] Common Law Procedure Act 1854 (17 & 18 Vict. c.125), s.26, which was subsequently repealed and reenacted by The Criminal Procedure Act 1865 (28 & 29 Vict. c.18), s.7.
\item[8] Evidence Act 1938 (1 & 2 Geo. 6 c.28), s.3.
\item[9] See Cock v Small (1871) 5 SASR 44.
\item[10] 5 & 6 Will. 4 c.62 (UK).
\item[11] Ibid., s.18.
\item[12] Ibid., s.13.
\end{footnotes}
2.9 Sections 13 and 18 of the United Kingdom *Statutory Declarations Act 1835* were enacted in Western Australia in 1855\(^\text{13}\) and later re-enacted as ss.105 and 106 of the *Evidence Act 1906*.\(^\text{14}\)

**Preliminary working paper**

2.10 With the assistance of the Public Service Board of Western Australia the Commission obtained copies of forms and documents in use by many State Government departments and instrumentalities. In February 1973 the Commission issued to those departments and instrumentalities a preliminary working paper dealing with the terms of reference in paragraph 1.1(a) above. A copy of the preliminary working paper is contained in Appendix IV. Appendix III of this working paper contains a list of those State Government departments and instrumentalities who replied to the preliminary working paper, together with their views on the proposal contained in paragraph 12 of the preliminary working paper.

**Law and practice in Western Australia**

*Affidavits*

(a) Formalities for taking affidavits

2.11 Section 98A of the *Evidence Act 1906* provides for the manner in which an affidavit may be administered, and includes an oath which may be administered. Instead of an oath, an affirmation may be administered.\(^\text{15}\) A person who makes any false statement on affirmation that would amount to perjury if made on the oath commits perjury.\(^\text{16}\)

(b) Persons who may take affidavits

2.12 The *Supreme Court Act 1935* empowers the Chief Justice to appoint commissioners to take affidavits.\(^\text{17}\) An affidavit may be taken by a commissioner appointed under s.175 (there

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\(^{13}\) An Ordinance for the abolition of unnecessary oaths, and to substitute declarations in lieu thereof: 18 Vict. No.12.

\(^{14}\) See Appendix I.

\(^{15}\) *Evidence Act 1906*, s.99.

\(^{16}\) *Criminal Code*, s.124.

\(^{17}\) *The Supreme Court Act 1935*, s.175.
are approximately 426 Commissioners for Affidavits), or by a justice of the peace or such other persons as may be prescribed by the *Supreme Court Rules*.\(^\text{18}\) Other persons prescribed by the Rules are a judge of the Supreme Court, a District Court judge and the Master of the Supreme Court.\(^\text{19}\) The Act also makes provision for the taking of affidavits outside Western Australia.\(^\text{20}\)

(c) Section 169 of the *Criminal Code*

2.13 A person who makes a statement verified by oath or affirmation touching any matter required by law to be on oath which to his knowledge is false in any material particular commits an offence and is liable to imprisonment with hard labour for seven years.\(^\text{21}\) The Commission understands that prosecutions under this section are rare.

*Statutory declarations*

(a) Formalities for taking statutory declarations under s.106 of *Evidence Act 1906*

2.14 Section 106 of the *Evidence Act 1906* prescribes a form to be used when a voluntary statutory declaration is being made, by virtue of the section. The term "voluntary" distinguishes such declarations from oaths, affirmations and affidavits, which by virtue of s.105 of the *Evidence Act 1906*, may only be administered by a justice or other person where it is authorised by law.\(^\text{22}\) The form prescribed by s.106 is:

"I, A.B., [insert place of abode and occupation], do solemnly and sincerely declare that [here state the facts], and I make this solemn declaration by virtue of section one hundred and six of the *Evidence Act, 1906*.  

Declared at this day of 19 , before me, C.D., Justice of the Peace [or as the case may be]."

\(^{18}\) Ibid., s.176.  
\(^{19}\) *Supreme Court Rules 1971*, Order 37 rule 10(1).  
\(^{20}\) The *Supreme Court Act 1935*, s.177(1), and see also *Supreme Court Rules 1971*, Order 37 rule 11.  
\(^{21}\) *Criminal Code*, s.169, see Appendix II.  
\(^{22}\) See paragraphs 2.8 and 2.9 above.
Although the section prescribes a form to be used, it does not provide a procedure to be followed by the witness and the maker of the statement when a declaration is being made.

2.15 There is therefore, some doubt as to the manner in which a statutory declaration must be made. A document executed in circumstances where the declarant does not attend before the witness does not contain valid statutory declaration. It would appear that there must be some communication between the declarant and the witness, other than the mere submission of the document itself to the witness for witnessing. It appears that the whole of the document, including the statutory form at the end, must be read to the declarant by the witness, unless the declarant advises the witness that he has read it and that he solemnly declares that the matters set forth in the document are true. It may be sufficient if the declarant reads over to the witness the form as given in s.106 of the Evidence Act 1906, or if the witness reads over that form to the declarant and the witness satisfies himself that the declarant understands the content of the statutory declaration and that the declarant believes the contents to be true.

2.16 The Commission understands that on occasions statutory declarations are taken without formal communication between the declarant and the witness with no more than the witnessing of a signature. In such cases it appears that the declaration is invalid. In 1970 Court of Petty Sessions case in Western Australia, the defendant had gone to the local post-master and asked him to witness his signature, which he duly did. The defendant had not declared the contents to be true, nor had the witness asked him if he declared the contents to be true. The Stipendiary Magistrate, R. Iddison, held that a document executed in those circumstances did not contain a valid statutory declaration.

(b) Section 170 of the Criminal Code

2.17 In Western Australia, s.170 of the Criminal Code provides that a person commits an offence where he, being:

“...permitted or required by law to make a statement or declaration before any person authorised by law to permit it to be made before him, makes a statement or declaration before that person which, in any material particular, is to his knowledge false”.

23 See R. v Schultz (1922) 69 DLR 267.
26 Myers v Slater and Slater, Northam Court of Petty Sessions Nos. 1573/70 and 1574/70.
27 See Appendix II.
The Commission understands that prosecutions under this section are rare. Provisions similar to s.170 have received consideration in a number of other jurisdictions. It would appear that the taking of a statutory declaration must be authorised by some statute, regulation or by-law in order to support a prosecution. In this respect, it appears that s.106 of the Evidence Act 1906 permits the taking of a voluntary statutory declaration on any occasion, notwithstanding that it is not authorised or required by some specific enactment. It is probable that a statutory declaration made under s.106 which was false in any material particular would involve an offence under s.170 of the Criminal Code. If a statutory declaration is required by a regulation or by-law it appears that the regulation or by-law cannot compel a person to make a statutory declaration under pain of fine or imprisonment without the grant of clear authority by Parliament. Invalidity of the authorising regulation or by-law might be held to defeat a prosecution for an offence under s.170 of the Criminal Code, notwithstanding that the statutory declaration was expressed to be made pursuant to s.106 of the Evidence Act 1906.

(c) Variation from prescribed form

2.18 A substantial variation from the form prescribed by s.106 of the Evidence Act 1906 appears to render the statutory declaration invalid. If the declaration is invalid there is in law no statutory declaration. Such invalidity is therefore a defence to a charge of making a false declaration.

In R. v Haynes and Haynes the form prescribed by the statute was:

“And I make this solemn declaration conscientiously believing the same to be true, and by virtue of ‘The Justices of the Peace Act, 1908’.”

The form of the statutory declaration made, was:

“And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of an Act of Parliament rendering persons making a false declaration punishable for wilful and corrupt perjury”.

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28 R. v Mungovan (1869) 6 WW & A’B (L) 157 (Vic. Sup. Ct. F. Ct.).
30 Grech v Bird (1936) 56 CLR 228.
31 However, a form to the same effect as that provided by s.106 will be sufficient and not vitiate the statutory declaration: Interpretation Act, 1918, s.25.
Consequently the statutory declaration was held to be invalidly made.

In *R. v Smith* the words “…by virtue of ‘The Justices of the Peace Act, 1908’ ” in the first form referred to above were omitted. It was held that these words were essential to a valid statutory declaration, and so a conviction for making a false declaration was quashed.

2.19 The rationale for these decisions appears to be that the use of the prescribed form helps “…not merely to warn the declarant of the consequences to which he may expose himself, but also to point out to the person asked to take the declaration the authority which justifies him in doing so”. 33

(d) Persons before whom a statutory declaration may be made

2.20 Section 2 of the *Declarations and Attestations Act 1913* provides that where an enactment provides for the making of a statutory declaration before a justice of the peace, or for the witnessing of an instrument by him that function may also be performed by:

“(i) a town clerk, shire clerk, electoral registrar, postmaster, classified officer in the State or Commonwealth public service, classified State school teacher, or member of the police force; or

(ii) a commissioner for declarations appointed under this Act; or

(iii) a member of either House of Parliament of the State or of the Commonwealth; or

(iv) a commissioner for declarations appointed under the provisions of the *Statutory Declarations Act, 1911-1944*, of the Commonwealth of Australia; or

(v) a justice of the peace appointed for any part of The Commonwealth that is outside The State”.

The reference to “classified officer in the State or Commonwealth public service, classified State school teacher” in s.2(i) appears to refer to persons appointed under the *State Public Service Act 1904*, the *Commonwealth Public Service Act 1922*, and persons appointed as teachers under the *State Education Act 1928*.

2.21 Section 3 of the *Declarations and Attestations Act 1913* authorises the Attorney General to appoint and revoke the appointment of Commissioners for Declarations. Although precise details of the number of Commissioners are not available, it is estimated that there are approximately ten thousand Commissioners. Under a General Commission of the Peace, which superseded all previous commissions, notified in the *Government Gazette* on 21 July 1975, 2,071 persons were appointed justices of the peace.\(^{34}\) In addition, s.9 and 12 of the *Justices Act 1902* provide that every mayor, or chairman of a road board, every member of the Executive Council, every magistrate or coroner shall be ex officio a justice of the peace.

*Forms and documents in use by Government departments and instrumentalities.*

2.22 The Commission's enquiries of many State Government departments and instrumentalities\(^{35}\) revealed that there are at least 242 forms and documents in use which require information to be provided. Several methods are prescribed or used for the supply of such information, including oaths and statutory declarations, and are dealt with below.

(a) **Affidavits**

2.23 Other than in court proceedings affidavits are used in few instances. One such case is the *Associations Incorporation Act 1895*. Under s.5(1) of the Act a memorial in a prescribed form must be filed after incorporation. This memorial must be verified by an affidavit of the person or persons authorised to use the common seal of the corporation. There are also requirements for affidavits of verification in other sections of the Act. In the report of the Western Australian Law Reform Committee (the predecessor of the Law Reform Commission) on the *Associations Incorporation Act 1895*\(^{36}\) it was recommended that verification of documents under the Act be by statutory declaration rather than by affidavit.\(^{37}\) However the Committee, having received this project, indicated that it would consider as part of this project whether statutory declarations are necessary and whether an alternative procedure would be adequate.\(^{38}\)

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\(^{34}\) There have, however, been further appointments since the General Commission of the Peace.

\(^{35}\) See paragraph 2.10 above.

\(^{36}\) Law Reform Committee (WA), Project No.21, *Report on the Associations Incorporation Act 1895-1969*.

\(^{37}\) Ibid., at 8-9.

\(^{38}\) Ibid., at 9.
(b) Statutory declarations

2.24 In a large number of forms and documents information, such as personal and financial details, is required to be provided by a statutory declaration under s.106 of the *Evidence Act 1906*. This may be as the result of a specific statutory provision,\(^{39}\) or by regulation or rule,\(^{40}\) or as a matter of departmental practice, although there is no such requirement in the relevant enactment.\(^{41}\)

2.25 Some enactments\(^{42}\) prescribe their own form of declaration and not that provided by s.106 of the *Evidence Act 1906*. If a person makes a statement which is false in any material particular in such a declaration he commits an offence.\(^{43}\) In at least one case provision is made for the witness, not only to satisfy himself as to the identity of the declarant, but also, not to witness the declaration unless he knows the statements contained in the declaration are true, or has satisfied himself, by inquiry from the declarant or otherwise that the statements contained in the declaration are true.\(^{44}\)

(c) Attested statements

2.26 In some cases all that is required is that the signature of the person providing the information be witnessed.\(^{45}\) In such attested documents there is no general provision providing a penalty for making a statement which is false in any material particular. In some cases, however, there is a specific penalty if a person makes a statement which is false in any material particular.\(^{46}\)

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\(^{39}\) See *Local Government Act 1960*, s.111(3) (a).

\(^{40}\) See *Physiotherapists Regulations 1951*, Regulation 2 - Form No. 2.

\(^{41}\) Metropolitan (Perth) Passenger Transport Trust, declaration relating to lost cheques.

\(^{42}\) See *Registration of Births, Deaths and Marriages Act 1961*, s.63.

\(^{43}\) *Criminal Code*, s.170.

\(^{44}\) *Electoral Act 1907*, s.92(5) (d) (i) and (iii).

\(^{45}\) See Forests Department Form FD 601 - return showing the quantity of seed obtained under a Forest Produce Licence and “Application for Vehicle Dealer's Licence by Individual” under *Motor Vehicle Dealers Act 1973*, s.15 (1).

\(^{46}\) See *Forests Act 1918*, s.50(j).
(d) Unattested statements

2.27 In some cases all that is required is the unattested signature of the person providing the information.\textsuperscript{47}

\textit{Other forms and documents}

(a) \textit{Transfer of Land Act 1893}

2.28 Section 145 of the \textit{Transfer of Land Act 1893}, which provides for the attestation of documents under the Act, was repealed and re-enacted in 1969\textsuperscript{48} to provide a simplified procedure for the execution of those documents. That section provides that any such document, executed in Australia, may be witnessed before any adult person if the address and occupation of the witness appears on the document.\textsuperscript{49} In the case of documents executed outside Australia, certain restricted qualifications still apply to witnesses.\textsuperscript{50} The Registrar of Titles has power to accept documents for registration or filing, even if the document is not attested or authenticated as provided by the Act, or if the address or occupation of the witness is not added, where the genuineness of the signature of the party thereto is proved to his satisfaction by the statutory declaration of some person well acquainted with the party and with his signature and handwriting.\textsuperscript{51}

2.29 Prior to the 1969 amendment to the Act, the persons who could witness documents under the Act were restricted to certain classes of persons. For example, a document executed within the limits of Western Australia could only be witnessed by persons such as a practitioner of the Supreme Court, justice of the peace, notary public, commissioner for taking affidavits, commissioner for declarations, a classified officer of the State or Commonwealth, bank manager, clerk of a local court, clerk of petty sessions.

\textsuperscript{47} See Wheat Quota Committee of Western Australia, “1975-76 Season - Application for Registration to Deliver Wheat”.
\textsuperscript{48} \textit{Transfer of Land Act Amendment Act (No.3) 1969}, s.2.
\textsuperscript{49} \textit{Transfer of Land Act 1893}, s.145(1) (a).
\textsuperscript{50} Ibid., s.145 (1) (b) and (c).
\textsuperscript{51} Ibid., s.145 (7)
(b) **Wills Act 1970**

2.30 The *Wills Act 1970* requires that a will must be made or acknowledged before at least two witnesses, who must be present at the same time and who must attest and subscribe the will in the presence of the testator.  

(c) **Property Law Act 1969**

2.31 Section 9 of the *Property Law Act 1969* provides that every deed is to be attested by at least one independent person, but no particular form of words is required. Sealing (except by corporations), formal delivery, and indenting are not necessary.

**Corroborative evidence**

2.32 Section 171 of the *Criminal Code* provides that a person cannot be convicted under ss.169 or 170 of the Code upon the uncorroborated testimony of one witness. It appears that the requirement for corroboration in respect of these offences is an historical anomaly. In ecclesiastical law there could be no conviction for the offence of perjury if the testimony of only one witness was offered as proof of his guilt as there would only be one oath against another. The report of the Law Reform Commission of British Columbia refers to a modern rationale for requiring corroborative evidence, that is, that corroborative evidence is directed at protecting witnesses from false charges at the hands of those against whom their testimony is directed. However, as the Law Reform Commission of British Columbia points out, statements such as those dealt with by ss.169 and 170 of the Code are not sworn or made by a person in judicial proceedings. Consequently, the Commission recommended that corroboration should not be required to sustain a conviction under a penalty provision proposed by the Commission for “extra-judicial” false statements.

2.33 The Commission would appreciate comments on whether or not s.171 of the *Criminal Code* should be repealed.

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52 *Wills Act 1970*, s.8(c) and (d).
53 See Appendix II.
55 Ibid., at 31.
56 Ibid., at 31.
57 Ibid., at 32.
Civil liability of attending witness

2.34 It appears that an attending witness will only incur personal liability if his actions in witnessing a signature are such as to amount to deceit, that is, of knowingly making a false statement of fact.\footnote{See Fleming, *The Law of Torts*, (4th ed. 1971) at 553-563.}

2.35 As an attending witness is merely the instrument for the proof of a fact, namely that he saw someone sign in a particular name,\footnote{See *Cock v Small* (1871) 5 SASR 44.} an attending witness may only be personally liable where he attests a signature which was not made or acknowledged before him. However, even in that circumstance, the facts may not be sufficient to amount to deceit, as a fraudulent misrepresentation is actionable only if it was made with the intention that the plaintiff would rely on the representation, and that the plaintiff did in fact rely on it.

Civil remedy for injury due to a fraudulent misrepresentation

2.36 It appears that a party who acts in reliance on a fraudulent statement in a statutory declaration may have an action in deceit or contract against the declarant. A third party may have an action in negligence or contract against a person who acts in reliance on a fraudulent statement, or in deceit for injurious falsehood, against the declarant.

2.37 The State Electricity Commission, now the State Energy Commission, in its comments on the preliminary working paper pointed out that it uses statutory declarations to obtain instructions and to identify the declarant and his capacity (e.g. attorney or personal representative) in the case of transfers or transmissions of Inscribed Stock or Debentures. The Commission considered that it was of little relevance that criminal proceedings could be brought against a person for falsely declaring his identity or capacity because, if the Commission, acting in good faith, gave effect to the instructions and caused loss to the persons entitled to such Inscribed Stock or Debentures, it would be open to an action for negligence.\footnote{It may well be that this problem could be overcome if an appropriate provision was contained in the conditions of issue of Inscribed Stock or Debentures.} It suggested that some consideration be given to the protection of persons acting in reliance on declarations, and that in particular some provision be enacted to allow for the
“…voiding of transactions made in reliance of fraudulent declarations to some degree so as to allow restitution so long as innocent holders in due course are not involved”.

2.38 The Commission would appreciate comments on whether some protection ought to be given to persons acting in reliance on statutory declarations.

The position in other jurisdictions

2.39 All other Australian jurisdictions and New Zealand have provisions for statutory declarations similar to that in force in Western Australia. However, the form prescribed varies from jurisdiction to jurisdiction. The law governing the making of a statutory declaration is the law in force at the place in which the declaration is made. It is quite common for departments in Western Australia to accept statutory declarations made in other jurisdictions. If a statutory declaration using the form prescribed in Western Australia is made in another jurisdiction, the declaration may be invalid. Even the use of general wording such as the form used in the statutory declaration involved in the case of *R. v Haynes and Haynes* 61 may result in the statutory declaration being invalid.

2.40 In Western Australia the fact that a declaration is not duly made or is not in a form prescribed may provide a defence to a charge of making a false statement in a declaration. 62 However, in South Australia it is not a defence to a charge of making a false statement in a declaration that the declaration was not duly made or in the form prescribed, so long as the court is satisfied that the declarant knew that he was required to declare his belief in the truth of the declaration. 63 No other State has this provision. The Commission would appreciate comments on whether or not this provision should be adopted in Western Australia.

Proposal for reform

2.41 In its preliminary working paper the Commission discussed the cases for and against requiring information to be provided by statutory declaration. 64 The Commission expressed the tentative opinion that in a substantial number of forms and documents used by

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61 See paragraph 2.18 above.
62 See paragraphs 2.15 to 2.18 above.
63 *Oaths Act 1936* (SA), s.27(2).
64 Preliminary working paper, paragraphs 8-10.
Government departments and instrumentalities, the requirement that information be provided by attested declaration, whether under s.106 of the *Evidence Act 1906* or any other statute, was unnecessary. The Commission suggested, in the interest of convenience and uniformity, that a simple unattested declaration would suffice. The form suggested was:

“I make this statement knowing that I am liable in case of falsehood in it, to [whatever the punishment prescribed by statute may be]”.

However, it was not intended that s.106 of the *Evidence Act 1906* should be repealed.

**Summary of commentators’ views on proposed law reform**

2.42 The majority of Government departments and instrumentalities who commented were in favour of the proposal for reform. However, some commentators were opposed to the proposal or expressed reservations about the proposal for the following reasons -

(a) In many cases forms were prescribed by statute or regulation, and consequently it would be necessary to amend the statute or regulation to change the form.

(b) The solemnity accompanying the sworn declaration tends to increase the likelihood of truthfulness, and this was particularly desirable for certain types of forms, for example where there was a claim for monetary payment.

(c) Some statutes or regulations already require declarations to be made in a prescribed form before specified witnesses and with a specific penalty for any false statement therein. The departments concerned did not wish any change in these declarations.

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65 Ibid., paragraph 11.
66 Ibid., paragraph 12.
67 Ibid., paragraph 14.
68 For example, declarations pursuant to the *Electoral Act 1907*, and the *Registration of Births, Deaths and Marriages Act 1961*.
(d) In some cases it was said to be desirable to have a witness who could satisfy himself as to the identity of the declarant and that the declarant understood the contents of the declaration.

(e) In a few cases, a common attested form was in use throughout Australia. 69

2.43 Some commentators were not in favour of any extension of the range of persons who could attest declarations. The Taxi Control Board expressed the view that their declarations should only be attested by a justice of the peace in accordance with the Justices’ Manual.70

Commission's tentative views

2.44 Having considered the comments received to date the Commission still holds the tentative view that in many cases the use of attested declarations, whether under s.106 of the Evidence Act 1906 or any other statute, is unnecessary.

2.45 The Commission considers that, in the interests of convenience and uniformity, provision should be made for an unattested statutory declaration. This would be achieved by the implementation of a general provision similar to that of s.106 of the Evidence Act 1906 providing a form to be used when such a declaration was being made. Such an approach would also require the implementation of a provision similar to ss.169 and 170 of the Criminal Code providing a penalty for making a false statement with regard to any material particular in an unattested statutory declaration. The Commission understands that the form of unattested declaration on the Commonwealth income tax return has been used over a considerable period of time and has not presented difficulty during prosecutions for making false statements in returns. That declaration reads:

“I, the person making this return, declare that -
...
(b) the facts shown therein are true and correct in every detail and disclose a full and complete statement of the total income derived by me from all sources both in and out of Australia during the year [1 July 1975 to 30 June 1976]”.

69 For example, State Shipping Service - "Application for Payment of Sick Leave" - which is prescribed by The Waterside Workers' Award 1960, clause 51(ii).
70 See preliminary working paper, paragraph 10(b).
The following warning is contained in the return alongside the above declaration: "The income tax law provides severe penalties for false statements in returns".

2.46 The Commission having reviewed the form suggested in the preliminary working paper and the comments received now considers that a more suitable form of unattested statutory declaration may be as follows:

“I, A.B. [insert; address and occupation] make this declaration by virtue of the [statutory provision authorising unattested statutory declaration to be inserted]. I conscientiously believe and declare that the statements contained therein are true and correct in every material particular.

I acknowledge that it is an offence under the [statutory provision creating offence to be inserted] to make a statement in this declaration which is false in any material particular.

Declared at… this… day of… 19…

Signature of person making declaration”.

The Commission considers that such a form would assist in bringing to the attention of persons making such declarations that they are not merely signing their names to a statement, but that they are laying themselves open to a criminal charge, if any material statement in their declaration is untrue.

2.47 It is the Commission's tentative view that the use of an unattested statutory declaration of the sort suggested should not be restricted to circumstances where it is authorised or required by law and, as with s.106 of the Evidence Act 1906, it should be open to use by private individuals and trading concerns, for example, in support of an insurance claim.

2.48 The Commission still holds the tentative view that s.106 of the Evidence Act 1906 should not be repealed, as some Government departments and instrumentalities, private individuals or trading concerns could require an attested statutory declaration for some purposes. However, in order to achieve uniformity between Government departments and instrumentalities a Government direction could be sent to each department and instrumentality requiring the department or instrumentality to adopt the simple unattested statutory declaration in place of an attested statutory declaration or affidavit, unless there was some compelling reason for not doing so.
2.49 It is also the Commission's tentative view that ss.105 and 106 of the *Evidence Act 1906* and the *Declarations and Attestations Act 1913* should be consolidated and, if provision is made for an unattested voluntary statutory declaration, that such a provision should be incorporated in the same Act.
B. SIGNING OF AFFIDAVITS BY FIXING A RUBBER STAMP

Present law and practice

3.1 In the Supreme Court of Western Australia and in the District Court of Western Australia affidavit must be signed on each page by the deponent and by the person before whom the affidavit is sworn and that person must also complete and sign the jurat. Where the deponent is blind or illiterate, he may make a signature or mark.

3.2 There is no express provision in the rules made pursuant to the Local Courts Act 1904 similar to Order 37 rule 2(5) of the Supreme Court Rules 1971. However, Order 37 rule 2(5) may apply to local courts as s.35 of the Local Courts Act 1904 provides:

"The several rules of law enacted and declared by the Supreme Court Act, 1935-1950, shall be in force and receive effect in Local Courts, so far as the matters to which such rules relate shall be respectively cognisable by such courts".

3.3 The Commission understands that affidavits signed by means of a rubber stamp by the person before whom an affidavit is taken are accepted in local courts, but not affidavits signed by the deponent by means of a rubber stamp. The Master of the Supreme Court has advised the Commission that in his experience no affidavit signed by means of a rubber stamp, either by the deponent or the person before whom an affidavit has been sworn, has been presented to the Supreme Court. If an affidavit so signed was presented, the question whether or not it was in the form prescribed by Order 37 would then have to be determined by the Court. The Commission also understands that the matter has not arisen for consideration in the District Court.

3.4 The Supreme Court requires, by a practice direction, that the signature of the person before whom an affidavit is taken be elucidated by means of a rubber stamp or by the name of the person being printed below the signature, unless the signature of that person is plainly legible. The Commission understands that the District Court has adopted this practice direction.

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71 The Supreme Court Rules 1971 apply to the District Court: District Court of Western Australia Act 1969, s.87.
72 Supreme Court Rules 1971, Order 37 rule 2(5).
73 Ibid., Order 37 rule 4(1) (c).
74 Supreme Court practice direction, 5 July 1971.
3.5 It has been held in the following cases that, where a statute requires a signature, it is sufficient if the person signs by affixing a facsimile of his signature -

(i) an electoral notice;\textsuperscript{75}
(ii) an order of a judge;\textsuperscript{76}
(iii) postal vote endorsement;\textsuperscript{77}
(iv) a solicitor’s account;\textsuperscript{78}
(v) a will;\textsuperscript{79} and
(vi) a summons.\textsuperscript{80}

The Commission is not aware of any similar decision with respect to affidavits.

Discussion

3.6 The person before whom an affidavit is sworn appears to have a number of functions apart from providing proof of the identity of the person swearing the affidavit. As only certain appointed and authorised persons may take affidavits, formality and solemnity are added to the occasion of the swearing of an affidavit. Although there is no express obligation, another function appears to be to ensure that the deponent understands the contents of the document, and appreciates the nature and consequences of swearing an affidavit. A further function appears to be to ensure that the deponent is acting freely and voluntarily and is not under undue influence or coercion.

3.7 Although an affidavit is an important document it may be argued that the practice of "signing" affidavits by means of a rubber stamp or other facsimile should be permitted as it is a convenient practice for the deponent and for the person before whom an affidavit is taken; there being no special significance in a handwritten signature so long as it is possible to prove who affixed the rubber stamp. On the other hand, to allow the use of a rubber stamp or other facsimile may increase the possibility of abuse. A rubber stamp or other facsimile, if stolen,

\begin{footnotesize}
\begin{itemize}
\item Bennett v Brumfitt (1867) 3 LRCP 28.
\item Blades v Lawrence (1874) 9 LRQB 374.
\item Taplin v Hegney (1947) 50 WALR 4.
\item Goodman v J. Eban Ltd. [1954] 1 All ER 763.
\item Jenkins v Gaisford and Thring 3 Sw & Tr 93; 164 ER 1208.
\item Hinton Demolitions Pty. Ltd. v Young (1973) 6 SASR 129.
\end{itemize}
\end{footnotesize}
lost, or lent by the person whose signature is reproduced to another person could be affixed to
an affidavit without the person whose signature is reproduced actually swearing the affidavit,
or taking the affidavit of a deponent, as the case may be.

3.8 The Commission would appreciate comments on whether or not the deponent or the
person before whom an affidavit is taken should be permitted to sign the affidavit by means of
a rubber stamp. Whichever view is taken, the Commission would also welcome comments on
whether or not the rules of the Supreme Court and the rules made pursuant to the Local Courts
Act require amendment in order to give effect to that view.
QUESTIONS FOR DISCUSSION

4.1 The Commission would welcome comments (with reasons where appropriate) on any matter arising out of this paper, and in particular on the following -

(a) Should provision be made for an unattested statutory declaration?  
   (paragraphs 2.44 to 2.46)

(b) If so, should a general penalty provision similar to ss.169 and 170 of the *Criminal Code* be implemented?  
   (paragraph 2.45)

(c) Should the use of an unattested declaration be restricted to occasions on which its use is authorised or required, or should its use be open to private individuals and trading concerns?  
   (paragraph 2.47)

(d) If provision should be made for an unattested declaration what form should it take?  
   (paragraphs 2.45 and 2.46)

(e) Should s.27(2) of the *Oaths Act 1936* (SA) be adopted in Western Australia?  
   (paragraph 2.40)

(f) Should protection be given to persons acting in reliance on statutory declarations?  
   (paragraphs 2.36 to 2.38)

(g) Should s.171 of the *Criminal Code* be repealed?  
   (paragraphs 2.32 and 2.33)

(h) Should the "signing" of affidavits for use in court by means of a rubber stamp or other facsimile be permitted in the case of -
   (a) a deponent;  
   (b) a person before whom an affidavit is taken?  
   (paragraphs 3.6 and 3.7)
(i) Do the rules of the Supreme Court and the rules made pursuant to the *Local Courts Act* require amendment in order to give effect to the view taken with regard to paragraph 4.1(h) above?

(paragraph 3.8)

(j) Should the proposals referred to in this paper be the subject of uniform legislation to be adopted by the Commonwealth and States?
APPENDIX I

Sections 105 and 106 of the Western Australian Evidence Act 1906.

105. Subject to the provisions of section one hundred and six A, it is unlawful for any justice of the peace or other person to administer, or cause or allow to be administered or to receive or cause or allow to be received, any oath, affirmation in lieu of oath, or affidavit touching any matter or thing whereof such justice or other person has not jurisdiction or cognisance by some law in force for the time being:

But nothing herein contained shall be construed to extend to any oath, affirmation, or affidavit before any justice of the peace or other person in any matter or thing touching any legal proceeding, or any proceeding before either House of the Parliament, or any committee thereof, nor to any oath, affirmation, or affidavit which may be required by any Act of the Parliament of the Commonwealth, or of any State, nor to any oath, affirmation, or affidavit which may be required by the laws of any part of her Majesty's dominions or any foreign country to give validity to instruments in writing designed to be used there.

106. It shall be lawful for any justice of the peace or other person by law authorised to administer an oath to take and receive the declaration of any person voluntarily making the same before him in the following form, namely -

I, A.B., [insert place of abode and occupation], do solemnly and sincerely declare that [here state the facts], and I make this solemn declaration by virtue of section one hundred and six of the Evidence Act, 1906.

Declared at this day of 19 ,
before me, C.D., Justice of the Peace [or as the case may be].
APPENDIX II

Sections 169, 170 and 171 of the Western Australian *Criminal Code*.

169. Any person who, on any occasion on which a person making a statement touching any matter is required by law to make it on oath or under some sanction which may by law be substituted for an oath, or is required to verify it by solemn declaration or affirmation, makes a statement touching such matter which, in any material particular, is to his knowledge false, and verifies it on oath or under such other sanction or by solemn declaration or affirmation, is guilty of a crime, and is liable to imprisonment with hard labour for seven years.

The offender cannot be arrested without warrant.

170. Any person who, on any occasion on which he is permitted or required by law to make a statement or declaration before any person authorised by law to permit it to be made before him, makes a statement or declaration before that person which, in any material particular, is to his knowledge false, is guilty of a misdemeanour, and is liable to imprisonment with hard labour for three years.

171. A person cannot be convicted of any of the offences defined in the two last preceding sections upon the uncorroborated testimony of one witness.
APPENDIX III

VIEWS OF GOVERNMENT DEPARTMENTS AND INSTRUMENTALITIES ON THE PROPOSAL IN PARAGRAPH 12 OF THE PRELIMINARY WORKING PAPER FOR A FORM OF SIMPLE UNATTTESTED DECLARATION

“I make this statement knowing that I am liable in case of falsehood in it, to [whatever the punishment prescribed by the statute may be].”

<table>
<thead>
<tr>
<th>Department or Instrumentality</th>
<th>Agree/Disagree</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Builders Registration Board of Western Australia</td>
<td>Agree</td>
<td></td>
</tr>
<tr>
<td>Coal Mine Workers’ Pensions Tribunal</td>
<td>Agree</td>
<td>Except for an “Application for Pension” form which is the only document of proof of acquittance for future monetary benefits.</td>
</tr>
<tr>
<td>Corporate Affairs Office</td>
<td></td>
<td>Provision is made in the <em>Companies Act</em> for some unattested declarations but in other cases statutory declarations are necessary. If amendment is to be made in this area, the Act would need to be changed and it would be desirable to refer it to the other State participating in the Interstate Corporate Affairs Agreement. There is no objection to easing the formality in signing of documents under the <em>Associations Incorporation Act</em>.</td>
</tr>
<tr>
<td>Department of Agriculture</td>
<td>Agree</td>
<td>Except for Phylloxera Declaration form under <em>Plant Diseases Act</em>. This needs to be witnessed as people could make the declaration without being aware of what disease this is or whether it exists in the area.</td>
</tr>
<tr>
<td>Department for Community Welfare</td>
<td>Disagree</td>
<td>Although agree in principle with aim of simplifying procedures for attesting documents, the department’s forms should be signed in the presence of an educated person as most people who come to the department are illiterate or find</td>
</tr>
</tbody>
</table>
difficulty in reading, others are foreigners. It is desirable that the form should be signed in the presence of someone who can ensure that the person signing the form has read it, or at least has understood its contents. Forms could be witnessed by a wider range of persons than presently authorised. Would like to see a duty imposed on the witness to ensure that the person signing understands the contents of the form.

The suggestion should enable overall simplification of such forms.

<table>
<thead>
<tr>
<th>Department</th>
<th>Position</th>
<th>Conclusion</th>
</tr>
</thead>
<tbody>
<tr>
<td>Department of Industrial Development</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Department of Labour &amp; Industry (Factories and Shops Branch)</td>
<td>Disagree</td>
<td></td>
</tr>
<tr>
<td>Department of Labour &amp; Industry (Inspection of Machinery Branch)</td>
<td>Agree</td>
<td></td>
</tr>
<tr>
<td>Department of Lands and Surveys</td>
<td>Agree</td>
<td></td>
</tr>
<tr>
<td>Department of Local Government</td>
<td>Disagree</td>
<td></td>
</tr>
<tr>
<td>Department of Mines</td>
<td>Agree</td>
<td></td>
</tr>
<tr>
<td>Education Department</td>
<td>Agree</td>
<td></td>
</tr>
<tr>
<td>Forests Department</td>
<td>Agree</td>
<td></td>
</tr>
<tr>
<td>Fremantle Hospital</td>
<td>Agree</td>
<td></td>
</tr>
</tbody>
</table>

Except for a declaration - "Application for land to Land Board".
Witnessing is necessary to ensure that absent votes are correctly made and that fictitious applications are not made in local government elections.

With two exceptions - a "Life Declarations Benefits" form under the *Miners Phthisis Compensation Act*, and a declaration with regard to identity for monetary benefits under the *Mine Workers Relief Act*.

Except for the Teacher's Certificate of Health, the suggestion is to be adopted by the Department.
<table>
<thead>
<tr>
<th>Organisation</th>
<th>Position</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fremantle Port Authority</td>
<td>Agree</td>
<td>Considers that attestation before any adult person would suffice with regard to its only form involving a statutory declaration.</td>
</tr>
<tr>
<td>Karrakatta Cemetery Board</td>
<td>Agree</td>
<td>But, would give consideration to the Commission's recommendations.</td>
</tr>
<tr>
<td>King Edward Memorial Hospital for Women</td>
<td>Agree</td>
<td>Board is considering simplifying &quot;Application for Registration&quot; form and the statutory declaration requirement could possibly be eliminated.</td>
</tr>
<tr>
<td>Licensing Court of Western Australia</td>
<td>Agree</td>
<td>But sees no justification for changing its present forms.</td>
</tr>
<tr>
<td>Lotteries Commission</td>
<td>Disagree</td>
<td></td>
</tr>
<tr>
<td>Main Roads Department</td>
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<td></td>
</tr>
<tr>
<td>Metropolitan (Perth) Passenger Transport Trust</td>
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<td></td>
</tr>
<tr>
<td>Nurses Board of Western Australia</td>
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<td></td>
</tr>
<tr>
<td>Painters Registration Board</td>
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<td></td>
</tr>
<tr>
<td>Physiotherapists Registration Board of Western Australia</td>
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<td></td>
</tr>
<tr>
<td>Princess Margaret Hospital for Children</td>
<td>Agree</td>
<td></td>
</tr>
<tr>
<td>Public Trust Office</td>
<td>Agree</td>
<td>Endorsement should include specific reference to penalty.</td>
</tr>
<tr>
<td>Public Works Department</td>
<td>Agree</td>
<td>A form of attestation similar to that used on Income Tax Returns would suffice.</td>
</tr>
<tr>
<td>Department</td>
<td>Position</td>
<td></td>
</tr>
<tr>
<td>------------------------------------------------</td>
<td>----------</td>
<td></td>
</tr>
<tr>
<td>Registrar General’s Office</td>
<td>Disagree</td>
<td></td>
</tr>
<tr>
<td>Rural Reconstruction Authority</td>
<td>Agree</td>
<td></td>
</tr>
<tr>
<td>Sheriff’s Office Supreme Court</td>
<td>Agree</td>
<td></td>
</tr>
<tr>
<td>State Electoral Department</td>
<td>Disagree</td>
<td></td>
</tr>
<tr>
<td>State Energy Commission</td>
<td>Agree</td>
<td></td>
</tr>
<tr>
<td>State Government Insurance Office</td>
<td>Disagree</td>
<td></td>
</tr>
<tr>
<td>State Shipping Service</td>
<td>Agree</td>
<td></td>
</tr>
<tr>
<td>State Taxation Department</td>
<td>Agree</td>
<td></td>
</tr>
<tr>
<td>The Architects’ Board of Western Australia</td>
<td>Agree</td>
<td></td>
</tr>
<tr>
<td>The Optometrists Registration Board</td>
<td>Agree</td>
<td></td>
</tr>
<tr>
<td>The Superannuation Board</td>
<td>Agree</td>
<td></td>
</tr>
<tr>
<td>The Treasury</td>
<td>Agree</td>
<td></td>
</tr>
<tr>
<td>Trade Associations Registration Office</td>
<td>Agree</td>
<td></td>
</tr>
<tr>
<td>Western Australian Government Railways</td>
<td>Agree</td>
<td></td>
</tr>
</tbody>
</table>

But one form is required under a federal award and could only be amended if the federal authority saw fit.

Department is, in fact, eliminating the use of statutory declarations when the occasion arises.

Section 15 of the *Architects Act* specifies that statements made on the application must be verified by statutory declaration.

Agree in principle with the objects of the preliminary working paper.
<table>
<thead>
<tr>
<th>Organization</th>
<th>Position</th>
</tr>
</thead>
<tbody>
<tr>
<td>Western Australian Institute of Technology</td>
<td>Agree</td>
</tr>
<tr>
<td>Western Australian Taxi Control Board</td>
<td>Disagree</td>
</tr>
<tr>
<td>Wheat Quota Committee of Western Australia</td>
<td></td>
</tr>
</tbody>
</table>

In a non-quota year (as the present one is) the information supplied to the Committee is supplied by a form with an unattested signature. If quotas are reintroduced the position of attestation and the need for a statutory declaration will be reconsidered.
APPENDIX IV

WESTERN AUSTRALIA

LAW REFORM COMMISSION

PROJECT NO. 28

ATTESTATION OF FORMS AND DOCUMENTS

PRELIMINARY WORKING PAPER
TERMS OF REFERENCE

1. The Commission has been asked to consider and report on the methods of attestation of forms and documents and the tendency towards unnecessary formality required in those methods.

2. The project was given to the Commission as the result of some concern which had been expressed -

   (a) at the large number of applications received from persons seeking appointments as Commissioners for Declarations; and

   (b) at the requirement that signatures to some "minor and unimportant" documents had to be witnessed by persons of special status.

PRESENT PRACTICE

3. As a preliminary step the Commission, with the co-operation of Government departments and statutory bodies, obtained copies of the forms and documents in use by them which require attestation.

4. There are no less than 242 of these which require information to be provided by persons and several methods are prescribed by which the information has to be provided.

5. A large number of enactments require information to be provided by statutory declaration, that is by declaration made under s.106 of the *Evidence Act*. In addition several departments and bodies require statutory declarations as a matter of practice although there is no requirement in the relevant enactment.

6. Some enactments (for example, the *Registration of Births, Deaths and Marriages Act*, s.63) prescribe both their own form of declaration and the authorised persons before whom the declaration may be made.

7. In a number of cases all that is required is that the signature of the person providing the information be witnessed. Some forms require no more than an unwitnessed signature.
COMMISSION'S PROVISIONAL VIEWS

8. The case in favour of requiring information to be provided by statutory declaration presumably rests on the expectation that a declarant is less likely to lie if a statutory declaration is required because there is a degree of formality involved, that is, because he has to make the declaration formally before a person expressly authorised by statute to take it, and he cannot but be aware that if he makes a false statement in a statutory declaration he is committing an offence (and see Criminal Code, ss. 169, 170).

9. The case against requiring information in forms and documents to be provided by statutory declaration stems primarily from the inconvenience of having to find a justice of the peace or other authorised witness (see paragraph 2 above).

10. In addition it is arguable for the following reasons that the case in favour of statutory declarations is not as strong as it may at first sight appear.

   (a) A statutory declaration to be valid must be made before a justice of the peace or other authorised person. The range of authorised persons is wide and includes commissioners for affidavits, commissioners for declarations, town clerks, postmasters, classified public servants, school teachers, members of Parliament and members of the police force (see Evidence Act, s.106; Declarations and Attestations Act, s.2). In some instances persons in other classes are also specifically authorised (see e.g. Local Government Act, ss.111(3) and 113, and note paragraph 6 above). Persons making declarations are less likely to be impressed by the formality of the occasion when such a wide range of persons is authorised to attest declarations. At the same time, in spite of the wide range of authorised persons, inconvenience is apparently sometimes caused.

   (b) Regarding the making of a statutory declaration, the Handbook for the Guidance of Commissioners for Declarations (2nd ed. 1968) at p.3 states that the witness should ascertain the identity of the declarant, that the declarant understands the document, that he is of sound mind, and that he signs it voluntarily. The Justices' Manual at p.128 states that the manner of taking a
declaration is similar to that of administering an oath, except that the declarant is asked to repeat - "I solemnly and sincerely declare that this is my true name and handwriting and that the contents of my declaration are true".

(c) Enquiries made by the Commission indicate that it is a not uncommon practice for there to be no verbal communication between the declarant and the attesting witness relating to the making of the declaration. In other words, that it becomes the witnessing of a signature or even merely the signing of the document by the two persons separately, and in a 1970 Petty Sessions case (Myers v. Slater, Northam Court of Petty Sessions) the magistrate held that a document executed in such circumstances did not contain a valid statutory declaration.

(d) It would seem therefore that in many cases not only is the formality which is expected to stimulate truth missing, but the declaration itself may be invalid.

(e) Even when formal procedures are properly followed it may be doubtful whether persons who are prepared to tell lies to obtain benefits for themselves would be deterred by the minimal formality that is required.

(f) Moreover persons who tell lies to obtain material benefits will generally know that they are committing offences even though the falsehoods are not contained in statutory declarations.

11. The Commission is tentatively of opinion that in a substantial number of the forms and documents used by Government departments and statutory bodies the requirement that information be provided by attested declaration, whether under s.106 of the Evidence Act or any other statute, is unnecessary.

12. In the interests of convenience and uniformity the Commission suggests that a simple unattested declaration more or less in the following form would suffice in most cases -

“I make this statement knowing that I am liable in case of falsehood in it, to [whatever the punishment prescribed by the statute may be].”
13. The form of an unattested declaration on the Commonwealth income tax return seems to have served admirably over a considerable period of time.

14. If the tentative suggestion is to be implemented, it will of course be necessary to amend a number of statutes but it is certainly not intended to interfere with s.106 of the *Evidence Act* and the obtaining of information in the form of a statutory declaration will still be possible.

15. This preliminary working paper is being circulated only to the departments and bodies from whom copies of forms and documents were obtained. The Commission would welcome comments and criticisms. In particular the Commission would like to know of cases in which it is considered that the Commission's suggestion is inappropriate and that some other form of declaration would be necessary or desirable.