



THE LAW SOCIETY  
OF NEW SOUTH WALES

Our ref: EEas1789476

25 October 2019

The Hon. Mark Speakman SC MP  
Attorney General  
Parliament of NSW  
GPO Box 5341  
SYDNEY NSW 2001

Dear Attorney,

**Ability of Federal Judicial Officers to witness statutory declarations under the Oaths Act 1900 (NSW)**

I am writing on behalf of the Law Society regarding the witnessing of statutory declarations under the *Oaths Act 1900* (NSW) ("Oaths Act"). It has been brought to our attention that Federal Judicial Officers are not included in the list of persons permitted to witness a statutory declaration made under the Oaths Act.

Section 21(1) of the Oaths Act provides a list of persons who may take and receive statutory declarations. This includes the Registrar-General, a Deputy Registrar-General or any justice of the peace, a notary public, a commissioner of the court for taking affidavits, an Australian legal practitioner, or any other person by law authorised to administer an oath. With regard to the last category, s 3(2) of the Oaths Act authorises a number of persons to administer an oath, including a Justice of the High Court of Australia, a Justice of the Supreme Court, any member of the Industrial Commission of New South Wales, any District Court Judge, and an authorised justice of the peace. Other Judicial Officers appointed under Commonwealth law are not included in the list.

Unlike the position under the Oaths Act, the relevant Queensland, Victoria, and Commonwealth Acts allow for both Federal and State Judicial Officers to witness a statutory declaration.

Section 13(1)(a) of the *Oaths Acts 1867* (Qld) provides that "a person's declaration may be taken by a justice, commissioner for declarations or notary public under the law of the State, the Commonwealth or another State". Section 30(2)(a) of the *Oaths and Affirmations Act 2018* (Vic) provides that a "statutory declaration must be declared in the presence of an authorised affidavit taker". Pursuant to s 19(1)(a) a Judicial Officer under a Commonwealth Act is an authorised affidavit taker. Similarly, clause 7(c) and Sch 2, item 19 of the Commonwealth *Statutory Declarations Regulations 2018* (Cth) provide that a "judge" is a prescribed person for the making of a statutory declaration.

The Law Society recommends that the Oaths Act be amended to allow Federal Judicial Officers to witness statutory declarations in New South Wales, in line with the positions in Queensland, Victoria, and the Commonwealth.

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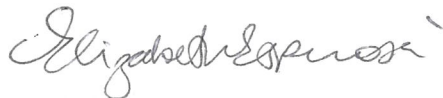
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If it is of assistance, the Law Society would be glad to discuss this issue further with you or your representative. Our Director of Policy and Practice, Mr Mark Johnstone, can be contacted on [mark.johnstone@lawsociety.com.au](mailto:mark.johnstone@lawsociety.com.au).

Yours sincerely,

A handwritten signature in cursive script that reads "Elizabeth Espinosa".

Elizabeth Espinosa  
**President**