

Questionnaire for Contracting Parties to the 1961 Apostille Convention



Australia

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Questionnaire for Contracting Parties to the 1961 Apostille Convention

Please note that not all questions require a response from all Contracting Parties; some are directed only at Contracting Parties that have not implemented one or both components of the e-APP. Likewise, other questions are addressed solely to those who have implemented and operate the e-APP.

I. Implementation of the e-APP

The questions below are intended to identify all Contracting Parties that have implemented one or both components of the e-APP (*i.e.*, those that issue e-Apostilles and/or operate an e-Register). Likewise, for Contracting Parties that have implemented neither component, the questions seek to clarify the stage they have reached in considering the e-APP, as well as the challenges that may be preventing its implementation.

A. First component: e-Apostille

1 Does your State issue e-Apostilles?

- Yes, e-Apostilles have been issued since N/A
- No, e-Apostilles have not been implemented yet.
- If not, please specify:
- We are studying the use of e-Apostilles and plan to implement the e-Apostille component.
Please specify, if relevant: *Australia is in the initial stages of scoping an e-Apostille service.*
- We are not currently planning to implement the e-Apostille component.

For Parties that answered “No, e-Apostilles have not been implemented yet”, please answer question 1.1

1.1 What challenges is your State facing that may prevent it from implementing e-Apostilles?

More than one answer is possible.

- Internal law limitations.
- Judicial or administrative structure.
- Implementation challenges (e.g., lack of resources, lack of infrastructure).
- Cost.
- System interoperability / compatibility.
- Security concerns.
- Other – please specify: N/A

If relevant, please explain any of the options above: *Australia has a federated system for issuing public documents, with responsibility split between federal, state and territory agencies. This results in different formats and service models (paper, electronic issuance) that need to be efficiently and securely managed in Australia's future e-Apostille solution.*

2 Regardless of whether your State currently issues e-Apostilles, are your receiving agencies equipped or able to accept and process incoming e-Apostilles (*i.e.*, e-Apostilles issued by other Contracting Parties)?

- Yes, all e-Apostilles can be processed.
- Yes, but on certain conditions – please specify:
In general, electronic and paper documents are able to be accepted and processed by many recipients throughout Australia. However, the Australian National Organ and Apostille Competent Authority do not have oversight of the diverse range of potential Australian recipients of foreign

Apostilles and foreign public documents. As such, we encourage individuals to confirm any requirements with the specific authority or entity to which they plan to present their documents, including e-Apostilles.

No – please explain why not: N/A

Unknown.

Please explain further any of the items above, if relevant: N/A

B. Second component: e-Register

3 Does your State maintain an e-Register?

Yes, an e-Register has been implemented on *14 December 2015*

If yes, please indicate any specific features of your e-Register (e.g., whether your State maintains multiple e-Registers, different types of e-Registers for various Competent Authorities, or separate registers for paper and e-Apostilles, etc.): *Australia has a single e-Register which can verify Apostilles issued on or after 14 December 2015*

No, an e-Register has not been implemented yet.

If not, please specify:

We are studying the use of an e-Register and plan to implement the e-Register component.

Please specify, if relevant: N/A

We are not currently planning to implement the e-Register component.

For Parties that answered “No, an e-Register has not been implemented yet”, please answer question 3.1:

3.1 What challenges is your State facing that may prevent it from implementing an e-Register?

More than one answer is possible.

Internal law limitations.

Judicial or administrative structure.

Implementation challenges (e.g., lack of resources, lack of infrastructure).

Cost.

System interoperability / compatibility.

Security concerns.

Other – please specify: N/A

If relevant, please explain any of the options above: N/A

II. Technology and the e-APP (including the use of digital signatures)

The questions below are intended to further understand how Contracting Parties recognise and use electronic or digital signatures, and how electronic public documents interact with the Apostille process, particularly in cases where the e-Apostille component has not yet been implemented.

For the purposes of this questionnaire, an **electronic signature** is a name, initial, mark or symbol that is affixed to, or logically associated with, a document or other record in electronic form, to evidence the signing of that document or record. A **digital signature** is a special type of electronic signature which works with encryption technology and can be authenticated using a digital certificate.

4 Under your internal law, for your own domestic public documents, do you recognise electronic / digital signatures as functionally equivalent to handwritten (wet) signatures (i.e., allowing your public documents to be signed electronically)?

Yes, please specify (including whether there are any requirements or technical standards for using electronic / digital signatures): N/A

No.

Other – for example, electronic signatures are only permissible for certain categories of documents. Please specify: *Under Australian domestic law, electronic signatures are generally recognised as functionally equivalent to handwritten (wet ink) signatures for public documents. The Electronic Transactions Act 1999 (Cth) at the federal level and corresponding legislation at the State and Territory level provide the relevant framework for functional equivalence, which is also complemented by the common law. The default rules of functional equivalence may be subject to exceptions in some circumstances, such as for specific documents or processes, or where the consent of the recipient is required.*

Unknown.

For Parties that answered Q.4 affirmatively, please answer question 4.1:

4.1 For incoming electronic public documents (i.e., those issued by other Contracting Parties), does your State impose specific requirements or technical standards for accepting electronic / digital signatures?

Yes – please specify the applicable requirements or technical standards: N/A

No.

Other – please specify: *Foreign documents are broadly subject to the same types of requirements as those for domestic public documents mentioned under Q4. The legal framework does not currently impose specific technical standards that are applicable to all documents, but there may be requisite standards for certain types of documents or processes.*

Unknown.

5 Under your internal law, do foreign electronic public documents have the same probative value as paper public documents?

Yes – Please specify (including whether your receiving agencies are able to accept and process incoming electronic public documents): *Consideration of the probative value of documents does not usually differ between electronic or paper documents.*

No.

It depends – please specify: N/A

Other – please specify: N/A

Unknown.

If relevant, please explain further any of the options above: N/A

6 Under your internal law, are public documents executed, or able to be executed, in electronic form (whether or not they are to be used abroad under the 1961 Apostille Convention)?

Yes, all public documents are executed or able to be executed in electronic form.

Yes, certain categories of public documents are executed or able to be executed in electronic form.

No, public documents are never executed in electronic form.

If relevant, please explain any of the options above: *Australian authorities and agencies are increasingly issuing public documents electronically.*

For Parties that answered affirmatively and execute, or are able to execute, public documents in electronic form, please answer question 6.1:

- 6.1 Can electronic public documents issued in your State be verified by foreign receiving agencies?
- Yes – please specify how they can be verified: N/A
- No.
- Other – please specify: *Whether electronic public documents issued in Australia can be verified by foreign receiving agencies is dependent on the capabilities of the issuing authority. Verification is typically done via either an online portal or a QR code.*
- Unknown.
- 6.2 If your State executes, or is able to execute, electronic public documents but has not implemented the e-Apostille component, how is an Apostille issued for such electronic documents?
- The public document must first be executed in paper format.
- A hard copy of the electronic public document is printed and a paper Apostille is issued and attached.
- Other – please specify: N/A

III. Issuance of e-Apostilles

The questions below are intended to identify any requirements or conditions that Contracting Parties may impose for issuing e-Apostilles, as well as to understand the procedures followed by the Competent Authorities and how the underlying public document is treated.

- 7 Does your State have any requirements, conditions, or limitations for issuing e-Apostilles? If so, please describe them (e.g., requirements concerning the identity of the applicant; the use of specific platforms or digital solutions for applications; the nature or the form of the underlying public document; etc.).
- Yes – please specify: N/A
- No.

Please explain further any of the items above, if relevant: see *answers to questions 1 and 1.1*

- 8 Under your internal law, which of the following formats of public documents are eligible for the issuance of e-Apostilles?
More than one answer is possible.
- Electronic public documents.
- Paper public documents that have been scanned by a public official.
- Paper public documents that have been scanned by applicants.

If relevant, please explain any of the options above: N/A

- 9 Does your State issue paper Apostilles alongside e-Apostilles?
- Yes.
- No, we only issue e-Apostilles.
- 9.1 If yes, please indicate the proportion of e-Apostilles issued in comparison to paper Apostilles. If known, provide any specific reasons that may explain the difference in proportions.
- N/A
- 9.2 If yes, what are the criteria for issuing paper Apostilles versus e-Apostilles (e.g., is the nature or the form of the underlying public document decisive, or can applicants choose between the two formats)?
- N/A

9.3 If not, how does your State issue e-Apostilles for paper-based documents?

N/A

10 When issuing e-Apostilles for electronic public documents, does your State preserve the electronic / digital signature of the underlying document?

- Yes, the electronic / digital signature is preserved. Please explain how this is done: N/A
- No, only the electronic / digital signature of the e-Apostille is preserved.

If relevant, please explain any of the options above: N/A

11 When issuing e-Apostilles, how does your Competent Authority complete the standard informational items on the Certificate? Please indicate whether there are any differences compared with issuing paper Apostilles or authenticating paper public documents.

- The Competent Authority completes all standard informational items in the same manner as when issuing paper Apostilles or authenticating paper public documents.
- The Competent Authority completes the items differently as follows:
- Items 2-4: N/A
 - Items 7 and/or 10: N/A

12 In addition to the digital signature, does your e-Apostille include any other security or technical features, such as QR codes, encryption, digital watermarks, or similar measures?

N/A

IV. Operation of an e-Register

13 What particulars are contained in your e-Register?

More than one answer is possible.

- Number and date of the Apostille (required).
- Name and capacity of the person signing the document and / or the name of authority whose seal or stamp is affixed (required).
- Name and / or type of underlying document.
- Description of the contents of underlying document.
- Name of the applicant.
- State of destination.
- Copy of the Apostille.
- Copy of the underlying public document.
- Other – please specify: *Issuing Officer Name; Place of Issue*

If relevant, please explain any of the options above: N/A

V. Issues with e-Apostilles

The questions below are intended to assess the practical acceptance of e-Apostilles among Contracting Parties to the 1961 Apostille Convention. They aim to identify whether e-Apostilles issued or received by a Contracting Party have ever been refused, the reasons for any such refusals, and the actions taken in response.

14 Has an e-Apostille issued by your Competent Authority ever been refused by the authorities of another Contracting Party?

- Unknown.
- No.

Yes, please provide any further information, in particular the reasons why the e-Apostille was refused, if known: N/A

15 If an e-Apostille has been rejected, what actions were taken in response?

More than one answer is possible.

- A paper Apostille was issued instead.
- Contacted the receiving authority.
- Contacted the Competent Authority of the place of destination.
- Contacted nearest diplomatic mission of the place of destination.
- Contacted own diplomatic mission accredited to the place of destination.
- Contacted the Permanent Bureau.
- No action taken.
- Other, please specify: N/A
- Unknown.

If relevant, please explain any of the options above: N/A

16 Has an e-Apostille received by your authorities ever been refused?

- Unknown.
- No.
- Yes, please provide any further information, in particular the reasons why the e-Apostille was refused, if known: N/A

If relevant, please explain any of the options above: *While we are not aware of any instances of rejection, as mentioned above in Q2, the Australian National Organ and Apostille Competent Authority do not have oversight of the diverse range of potential Australian recipients of foreign Apostilles and foreign public documents.*

VI. Education and training

17 Has your State implemented training activities or issued any guidelines on the operation of the e-APP for officers in the Competent Authority(ies)?

- No.
- Yes, please specify: N/A

18 Has your State implemented training activities or issued any guidelines on the acceptance of e-Apostilles and the operation of e-Registers for receiving authorities?

- No.
- Yes, please specify: N/A

If your State has issued guidelines or supporting documentation for receiving authorities, please indicate the format used, the type of information included, how the documents have been distributed, and how frequently they are issued, if known: N/A

19 Is / Are your Competent Authority(ies) willing and able to meet with other Competent Authorities to discuss the implementation and operation of the e-APP and to exchange experiences?

- Yes, please specify: *Australian authorities are open to discussions with other Competent Authorities to discuss the implementation and operation of the e-APP and exchange shared experiences. We note that the responsibilities for incoming and outgoing Apostilles are shared in Australia, between the Competent Authority (for the issuance of outgoing Australian Apostilles) and the Australian National Organ (for the legal frameworks for use of incoming foreign Apostilles).*
- No, please specify: N/A.
- Unknown.

VII. Miscellaneous

20 Do you have any suggestions that could assist in the promotion, implementation, and / or operation of the e-APP?

No.

Yes – please specify: *Australia appreciates the many publicly available resources the HCCH PB has published over the year, and will continue to promote these among Convention users. This being said, with the increasing number of Contracting Parties, we would also be supportive of increased information sharing, including in relation to any legal requirements and/or technical standards.*

General information-sharing on the use and acceptance of electronic public documents may also be useful. While we understand requirements for underlying public documents are generally considered to be outside of the scope of the Convention, as the use of electronic public documents increases, it is difficult to separate aspects relating to electronic public documents from those relating to electronic Apostilles.

21 Are there any specific topics or practical issues related to the e-APP that your State would like have discussed at the 14th International Forum on the e-APP?

No.

Yes – please specify: *Ongoing trust in the system requires confidence that the technology is robust to developing security threats. How are countries working to ensure the systems currently used for issuing electronic Apostilles remain secure? Or what threats are members actively seeking to protect against?*

22 Please confirm whether your responses to this questionnaire can be published on the HCCH website.

No.

Yes – please specify whether certain questions should not be published: N/A

VIII. Additional information & supporting documents

23 Please indicate any additional information or documentation to support your response. This may include resources for the general public or guidelines for Competent Authority staff, as well as any recent judicial decisions, legislative developments, books, articles, or published works relevant to the operation of the 1961 Apostille Convention.

For more information on the federal legislation mentioned above in Q4, the Electronic Transactions Act 1999 (Cth), please see: <https://www.ag.gov.au/legal-system/electronic-signatures-documents-and-transactions>. As mentioned, this legislation is only part of the domestic legal framework for the use of electronic signatures and documents in Australia.

Please attach any relevant documents when submitting the questionnaire to secretariat@hcch.net.

Thank you for taking the time to complete this questionnaire.