



Queensland

Justice Legislation (COVID-19 Emergency Response—Wills and Enduring Documents) Regulation 2020

Subordinate Legislation 2020 No. 72

made under the

COVID-19 Emergency Response Act 2020

Powers of Attorney Act 1998

Succession Act 1981

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Part 1 Preliminary

1 Short title

This regulation may be cited as the *Justice Legislation (COVID-19 Emergency Response—Wills and Enduring Documents) Regulation 2020*.

2 Declaration that regulation is made under COVID-19 Emergency Response Act 2020, s 9

This regulation is made under the *COVID-19 Emergency Response Act 2020*, section 9.

3 Dictionary

The dictionary in schedule 1 defines particular words used in this regulation.

4 References to witnesses, signatories and substitute signatories

In this regulation—

- (a) a reference to a witness in relation to a document is a reference to a person witnessing the making of the document; and
- (b) a reference to a signatory in relation to a document is a reference to the person for whom the document is made, whether signed by the person or by a substitute signatory at the direction of the person; and
- (c) a reference to a substitute signatory in relation to a document is a reference to a person signing the document at the direction of the signatory.

5 Special witnesses

- (1) A *special witness*, for a document, is a person who is—

- (a) an Australian legal practitioner; or
- (b) a justice or commissioner for declarations approved by the chief executive under subsection (2); or
- (c) a justice or commissioner for declarations—
 - (i) employed by the law practice that prepared the document; and
 - (ii) who witnesses documents in the course of that employment; or
- (d) a notary public; or
- (e) a person mentioned in subsection (3) for the document.

Note—

See sections 14 and 16 for further provision about special witnesses.

- (2) The chief executive may approve a justice or commissioner for declarations to be a special witness for this regulation if the chief executive is satisfied the justice or commissioner for declarations is an appropriate person for witnessing documents under this regulation.
- (3) For subsection (1)(e), a person is also a special witness for a document if—
 - (a) for a will or a document altering, revoking or reviving a will—the will or document is prepared by the public trustee and the person is an employee of the public trustee; or
 - (b) for an enduring document or a document revoking all or part of an enduring document—the enduring document or document is prepared by the public trustee and the person is a justice or commissioner for declarations who is an employee of the public trustee.
- (4) In this section—

commissioner for declarations see the *Justices of the Peace and Commissioners for Declarations Act 1991*, section 3.

law practice see the *Legal Profession Act 2007*, schedule 2.

Part 2 Wills

6 Application of part

- (1) This part provides for modified requirements or arrangements for making, signing and witnessing wills, or documents that alter, revoke or revive a will, under the *Succession Act 1981* or another law.
- (2) A reference in this part to a will is taken to include a reference to a document altering, revoking or reviving a will.

7 Presence by audio visual link

A requirement under the *Succession Act 1981* or another law for the presence of a witness, signatory, substitute signatory or other person in relation to the making, signing or witnessing of a will is taken to be satisfied if—

- (a) the witness, signatory, substitute signatory or other person is present by audio visual link; and
- (b) the making, signing or witnessing of the will is carried out in accordance with part 4.

8 Dis-application of Succession Act 1981, s 10(5)

The *Succession Act 1981*, section 10(5) does not apply in relation to a will made, signed or witnessed under this regulation.

Part 3 Enduring documents

9 Application of part

- (1) This part provides for modified requirements or arrangements for making, signing and witnessing enduring documents, or documents that revoke all or part of an enduring document, under the *Powers of Attorney Act 1998* or another law.

(2) In this part—

- (a) a reference to an enduring document is taken to include a reference to a document revoking all or part of an enduring document; and
- (b) a reference to making, signing or witnessing an enduring document is taken to include a reference to making, signing or witnessing of a certificate forming part of the enduring document.

10 Presence by audio visual link

- (1) A requirement under the *Powers of Attorney Act 1998* or another law for the presence of a witness, signatory, substitute signatory or other person in relation to the making, signing or witnessing of an enduring document is taken to be satisfied if—
 - (a) the witness, signatory, substitute signatory or other person is present by audio visual link; and
 - (b) the making, signing or witnessing of the enduring document is carried out in accordance with part 4.
- (2) A certificate under the *Powers of Attorney Act 1998*, section 44 or 49 stating that a person appeared to have capacity necessary to make an enduring document may be made on the basis of the person making the certificate observing the person by audio visual link.

11 Advance health directive certificate may be signed by particular nurses

- (1) The *Powers of Attorney Act 1998*, section 44(6) and (7) apply as if a reference to a doctor included a reference to a nurse practitioner.
- (2) In this section—

nurse practitioner means a person registered under the Health Practitioner Regulation National Law to practise in the nursing profession, other than as a student, whose registration

is endorsed as being qualified to practise as a nurse practitioner.

12 Protection for persons unaware of invalidity

A reference in the *Powers of Attorney Act 1998*, section 99(1) to a certificate of a witness includes a reference to a certificate of a witness made under the *Powers of Attorney Act 1998*, section 44(4) or (5) in relation to an enduring document made in accordance with this regulation.

Part 4 Signing or witnessing documents by audio visual link

Division 1 Requirements about direction given to substitute signatory

13 Persons who may be directed to sign

- (1) This section applies in relation to a substitute signatory who—
 - (a) is directed by a signatory in the signatory's physical presence to sign a document for the signatory that is to be witnessed by audio visual link; or
 - (b) is directed by audio visual link to sign a document for a signatory.
- (2) The following persons are excluded from signing a document as a substitute signatory—
 - (a) a person excluded under an Act or other law from signing the document as a signatory;
 - (b) without limiting paragraph (a)—
 - (i) for a will—an executor or beneficiary of the will, or a relation of the executor or beneficiary; or

- (ii) for an enduring document—the attorney of the principal for the enduring document, or a relation of the attorney; or
 - (iii) a person witnessing the document.
- (3) Also, a person may be directed by audio visual link to sign a document for a signatory only if the person is an Australian legal practitioner or an employee of the public trustee.
- (4) In this section—
relation, of a person, see the *Powers of Attorney Act 1998*, schedule 3.

14 Signing in physical presence requires special witness

- (1) This section applies in relation to a substitute signatory directed by audio visual link to sign a document for a signatory if the substitute signatory is to sign the document in the physical presence of a witness.
- (2) The signing of the document by the substitute signatory may be witnessed by only—
 - (a) a special witness; or
 - (b) 2 or more witnesses, at least 1 of whom is a special witness.
- (3) This section does not—
 - (a) affect any requirement under an Act or other law about the number of witnesses required or permitted to witness a document; or
 - (b) authorise or permit a person who is excluded from witnessing a document under an Act or other law to witness the document.

Note—

See section 16 in relation to the signing of a document by a substitute signatory to be witnessed by audio visual link.

15 Witness must observe direction and verify particular matters

- (1) This section applies if a substitute signatory is directed by the signatory by audio visual link to sign a document.
- (2) Each witness for the signing of the document by the substitute signatory must—
 - (a) observe the signatory direct the substitute signatory to sign the document; and
 - (b) be satisfied that the substitute signatory is permitted under section 13 to be a substitute signatory for the document; and
 - (c) take reasonable steps to verify the identity of the signatory; and
 - (d) be satisfied that the signatory is freely and voluntarily directing the substitute signatory to sign the document.

Division 2 Requirements about witnessing documents by audio visual link

16 Witnesses must be or include special witness

- (1) A document may be witnessed by audio visual link only if—
 - (a) the witness is a special witness for the document; or
 - (b) if there are 2 or more witnesses—at least 1 of the witnesses is a special witness for the document.
- (2) This section does not—
 - (a) affect any requirement under an Act or other law about the number of witnesses required or permitted to witness a document; or
 - (b) authorise or permit a person who is excluded from witnessing a document under an Act or other law to witness the document.

17 General requirements for witnessing documents

A document may be witnessed by audio visual link only if—

- (a) if applicable, the witness observes the signatory direct the substitute signatory to sign the document; and
- (b) the audio visual link enables the witness to be satisfied, by the sounds and images made by the link, that the signatory or substitute signatory is signing the document; and
- (c) the witness observes the signatory or substitute signatory signing the document in real time; and
- (d) the signatory or substitute signatory signs each page of the document; and
- (e) the witness is satisfied that the signatory is freely and voluntarily signing the document or directing the substitute signatory to sign the document.

18 Witness must verify particular matters

A person who witnesses a document by audio visual link must take reasonable steps to verify each of the following matters—

- (a) the identity of the signatory;
- (b) that the name of the signatory matches the name of the signatory written on the document.

19 Witness may confirm only witnessed document or true copy

- (1) A person who witnesses a document by audio visual link may confirm a document as the document witnessed by the person only if the person is satisfied the document—
 - (a) is the document signed by the signatory or substitute signatory; or
 - (b) is a true copy of the document signed by the signatory or substitute signatory.

Example for paragraph (b)—

a scanned copy of the signed document sent electronically to the witness

- (2) The person must confirm the document—
 - (a) as soon as practicable after witnessing it, which may or may not be the day on which the document is witnessed; and
 - (b) by signing each page of the document.

20 Action after witness confirms document

- (1) After a witness confirms a document witnessed by the witness by audio visual link, the witness must give the document or a true copy of the document—
 - (a) if the document is to be confirmed by another witness—to the other witness; or
 - (b) otherwise—to the relevant person for the document.

Example of giving a true copy of a document to a person—

scanning the document and emailing the scanned copy to the person

- (2) If a certificate under section 21 has been signed for the document, the certificate or a true copy of the certificate must accompany the document or a true copy of the document given under subsection (1).
- (3) In this section—

give includes give by electronic means.

relevant person means—

- (a) for a will or document altering, revoking or reviving a will—the testator of the will or a person to whom the testator directs the will or document be given; or
- (b) for an enduring document or a document revoking all or part of an enduring document—the principal for the enduring document or a person to whom the principal directs the enduring document or document be given.

Division 3 Other provisions

21 Certificate by special witness

- (1) This section applies to a special witness who—
 - (a) witnesses, in the special witness' physical presence, a substitute signatory sign a document after the direction to sign the document is given by audio visual link; or
 - (b) witnesses a signatory or substitute signatory sign a document by audio visual link.
- (2) The special witness must sign a certificate stating—
 - (a) that the document was signed and witnessed during the relevant period; and
 - (b) that the document was signed and witnessed in accordance with this regulation; and
 - (c) the steps the witness took to verify the identity of the signatory; and
 - (d) if a substitute signatory signed the document—
 - (i) the identity of the substitute signatory; and
 - (ii) a description of the direction given by the signatory to the substitute signatory; and
 - (e) if a substitute signatory was directed by the signatory by audio visual link to sign the document—the grounds on which the witness is satisfied the substitute signatory is permitted under section 13 to be a substitute signatory for the document; and
 - (f) the process followed for signing and witnessing the document; and
 - (g) that the special witness is a special witness; and
 - (h) whether an audio visual recording was made under section 26 of the signing or witnessing of the document; and

- (i) any other matters the special witness considers relevant to the signing or witnessing of the document.
- (3) If 2 or more special witnesses witness a document by audio visual link—
 - (a) only 1 certificate is required under subsection (2); and
 - (b) only 1 special witness is required to sign that certificate.
- (4) A certificate signed under subsection (2) must be kept with the document.
- (5) In this section—

relevant period means the period starting on the commencement and ending when the COVID-19 emergency period ends.

22 When document starts to be effective

- (1) A document made, signed and witnessed in accordance with this regulation starts to be effective when the signatory or substitute signatory signs the document.
- (2) Subsection (1) applies even if the witness confirms the document on a later day.

23 Presumptions

In a proceeding, the following must be presumed in relation to a document made, signed or witnessed in accordance with this regulation, unless a party to the proceeding, by reasonable notice, requires proof of it—

- (a) the validity of the document, to the extent it is made, signed or witnessed in accordance with this regulation;
- (b) the eligibility of a witness to witness the document;
- (c) the eligibility of a substitute signatory to sign the document at the direction of the signatory;
- (d) that a signature on the document purporting to be the signature of a witness, signatory or substitute signatory

for the document is the signature of the witness, signatory or substitute signatory;

- (e) that a matter stated in a certificate purporting to be signed by a special witness under section 21 for the document is true and correct.

24 Official and originating versions of document

- (1) This section applies to a document, or a true copy of a document, that is given to a relevant person for the document under section 20(1)(b).
- (2) If the document or true copy is given in paper form, the document or true copy is the *official version* of the document.
- (3) If the document or true copy is given electronically, a print out of the document or true copy is the *official version* of the document.
- (4) If the official version of the document is not the version of the document that was physically signed by the signatory or substitute signatory (the *originating version*), the originating version must be kept with the official version.
- (5) If a document made, signed or witnessed in accordance with this regulation is required to be given, produced or used for any purpose, the official version of the document may be—
 - (a) given, produced or used for the purpose; and
 - (b) relied on as evidence of the document.

Examples for subsection (5)—

- 1 If, under an Act, a person is required to produce a will, the official version of the will may be produced to satisfy the requirement.
 - 2 The official version of an enduring power of attorney may be given to a bank or other entity, and relied on by the bank or other entity, as evidence of the enduring power of attorney.
- (6) Subsection (5) does not limit the power of a court to require production of the originating version of the document in a proceeding.

25 Lodgement or deposit of document in land registry

- (1) This section applies if an official version of a document is lodged or deposited in the land registry.
- (2) The certificate signed under section 21 for the document must be lodged or deposited with the official version.
- (3) The registrar of titles may require the originating version of the document to be given to the registrar for lodgement or depositing with the official version.

- (4) In this section—

registrar of titles means the registrar of titles under the *Land Title Act 1994*.

26 Audio visual recording of signing or witnessing of document

- (1) An audio visual recording of the signing or witnessing of a document may only be made with the consent of the signatory, witnesses and, if applicable, the substitute signatory.
- (2) Whether an audio visual recording of the signing or witnessing of the document is or is not made under subsection (1) does not affect the validity of the document or the signing or witnessing of the document.

Part 5 Expiry of regulation

27 Expiry

This regulation expires on 31 December 2020.

Schedule 1 Dictionary

section 3

audio visual link means facilities that enable reasonably contemporaneous and continuous audio and visual communication between persons at different places and includes videoconferencing.

Australian legal practitioner see the *Legal Profession Act 2007*, section 6(1).

confirm, a document, means attest or otherwise confirm a document by signing the document.

direct, in relation to a document, includes instruct.

enduring document means an enduring document under the *Powers of Attorney Act 1998*.

make, in relation to a document, includes execute.

official version, of a document, see section 24(2) and (3).

originating version, of a document, see section 24(4).

special witness, for a document, see section 5.

will means a will under the *Succession Act 1981*.

witness, a document, includes witness the signing of the document.

ENDNOTES

- 1 Made by the Governor in Council on 14 May 2020.
- 2 Notified on the Queensland legislation website on 15 May 2020.
- 3 The administering agency is the Department of Justice and Attorney-General.

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