



Queensland

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

Subordinate Legislation 2020 No. 78

made under the

COVID-19 Emergency Response Act 2020

Oaths Act 1867

Powers of Attorney Act 1998

Property Law Act 1974

Succession Act 1981

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1 Short title

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

2 Regulation amended

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

3 Amendment of s 1 (Short title)

Section 1, ‘*Wills and Enduring Documents*’—
omit, insert—

Documents and Oaths

4 Amendment of s 2 (Declaration that regulation is made under COVID-19 Emergency Response Act 2020, s 9)

(1) Section 2, heading, ‘s 9’—

omit, insert—

ss 8 and 9

(2) Section 2, ‘section 9’—

omit, insert—

sections 8 and 9

5 Amendment of s 4 (References to witnesses, signatories and substitute signatories)

Section 4—

insert—

(2) Also, for an affidavit or declaration—

(a) the witness is the person who administers an oath or affirmation to the person making the

affidavit or declaration before the affidavit or declaration is made; and

- (b) the signatory is the person who makes or gives an oath or affirmation for the person's affidavit or declaration before the affidavit or declaration is made.

6 Amendment of s 5 (Special witnesses)

- (1) Section 5(3)(b), from 'for an' to 'the enduring document or'—

omit, insert—

for another document—the

- (2) Section 5(4), definition *commissioner for declarations*—

omit.

7 Amendment of s 6 (Application of part)

Section 6(1)—

omit, insert—

- (1) This part provides for modified requirements or arrangements, under the *Succession Act 1981* or another law, for making, signing and witnessing wills, or documents that alter, revoke or revive a will.

8 Amendment of s 9 (Application of part)

Section 9(1)—

omit, insert—

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

9 Insertion of new pts 3A–3F

After part 3—

insert—

Part 3A Affidavits

12A Application of part

This part provides for modified requirements or arrangements for making, signing and witnessing affidavits under the *Oaths Act 1867* or another law.

12B Presence by audio visual link

A requirement under the *Oaths Act 1867* 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 affidavit is taken to be satisfied if—

- (a) the witness, signatory, substitute signatory or other person is present by audio visual link; and
- (b) the signatory's oath or affirmation for the affidavit is administered by a special witness; and
- (c) the making, signing or witnessing of the affidavit is carried out in accordance with part 4.

12C Affidavit may be made in form of electronic document and electronically signed

- (1) An affidavit may be made in the form of an electronic document, and may be electronically signed, if it is made, signed and witnessed in accordance with part 4.
- (2) An affidavit may be made in the form of an

electronic document by or for a person even without consent to the making of it in that form from a witness or any other person.

- (3) An affidavit may be electronically signed by a person even without consent to the signing in that way from any other person who is to sign the affidavit.

12D Dis-application of Oaths Act 1867, s 33

The *Oaths Act 1867*, section 33 does not apply in relation to an affidavit made, signed or witnessed in accordance with this regulation.

12E Admission of affidavit not complying with requirements

- (1) This section applies in relation to a purported affidavit that does not comply with the requirements under the *Oaths Act 1867* or another law, as modified by this regulation, if—
 - (a) a court is satisfied compliance with the requirements in relation to the purported affidavit was not reasonably practicable; and
 - (b) the purported affidavit states the reasons why compliance with the requirements was not reasonably practicable.
- (2) The court may admit the purported affidavit in evidence in a proceeding if the court considers it is desirable in the interests of justice.

Part 3B Declarations

12F Application of part

This part provides for modified requirements or arrangements for making, signing and witnessing

declarations under the *Oaths Act 1867* or another law.

12G Presence by audio visual link

A requirement under the *Oaths Act 1867* 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 declaration is taken to be satisfied if—

- (a) the witness, signatory, substitute signatory or other person is present by audio visual link; and
- (b) the signatory's oath or affirmation for the declaration is administered by a special witness; and
- (c) the making, signing or witnessing of the declaration is carried out in accordance with part 4.

12H Declaration may be made in form of electronic document and electronically signed

- (1) A declaration may be made in the form of an electronic document, and may be electronically signed, if it is made, signed and witnessed in accordance with part 4.
- (2) A declaration may be made in the form of an electronic document by or for a person even without consent to the making of it in that form from a witness or any other person.
- (3) A declaration may be electronically signed by a person even without consent to the signing in that way from any other person who is to sign the declaration.

12I Dis-application of Oaths Act 1867, s 33

The *Oaths Act 1867*, section 33 does not apply in relation to a declaration made, signed or witnessed in accordance with this regulation.

12J Who may witness declarations other than by audio visual link

- (1) This section applies in relation to a declaration that is not witnessed by audio visual link.
- (2) Despite the *Oaths Act 1867*, section 13(1), a declaration may be taken by a person prescribed under the *Statutory Declarations Regulations 2018* (Cwlth), section 7.

Part 3C Oaths and affirmations

12K Application of part

- (1) This part provides for modified requirements or arrangements for oaths or affirmations under the *Oaths Act 1867* or another law.
- (2) This part applies to an oath or affirmation, however described, administered or made anywhere, including, for example, in open court.
- (3) However, this part does not apply to—
 - (a) an oath or affirmation administered or made in relation to an affidavit under part 3A or a declaration under part 3B; or
 - (b) an oath of allegiance or oath of office under the *Oaths Act 1867*, part 2.

12L Presence by audio visual link

- (1) A requirement under the *Oaths Act 1867* or another law for the presence of an authorised

person in relation to a person's oath or affirmation is taken to be satisfied if the authorised person is present by audio visual link.

(2) In this section—

authorised person, in relation to a person's oath or affirmation, means a person who is authorised by law to administer the person's oath or affirmation.

Part 3D Deeds

Division 1 General

12M Application of part

- (1) This part provides for modified requirements or arrangements for making a deed, or an instrument having effect as a deed, under the *Property Law Act 1974* or a common law rule.
- (2) This part does not apply to enduring documents or general powers of attorney.

12N How deed is made generally

- (1) An instrument takes effect as a deed if the instrument—
 - (a) is in writing; and
 - (b) contains a conspicuous statement that the instrument is a deed; and
 - (c) is signed in accordance with this part; and
 - (d) is delivered in accordance with the *Property Law Act 1974*, section 47.
- (2) An instrument takes effect as a deed under subsection (1) even if—

- (a) it is not written on paper or parchment; or
- (b) it is not an indenture or stated to be an indenture; or
- (c) it is not sealed or stated to be sealed.

12O Deed may be made in form of electronic document and electronically signed

- (1) An instrument that is to have effect as a deed may be made in the form of an electronic document and may be electronically signed.
- (2) An instrument that is to have effect as a deed may be made in the form of an electronic document by or for a person even without consent to the making of it in that form from another signatory or any other person.
- (3) An instrument that is to have effect as a deed may be electronically signed by a person even without consent to the signing in that way from any other person who is to sign the deed.

Division 2 Signing of instrument to have effect as a deed

12P Signing by individual generally

An instrument that is to have effect as a deed for an individual may be signed by the individual personally or by the individual's agent, whether or not the agent is appointed under seal.

12Q Signing by corporation generally

- (1) An instrument that is to have effect as a deed for a corporation may be signed by—
 - (a) 2 directors of the corporation; or

- (b) 1 director and 1 secretary of the corporation;
or
 - (c) for a corporation that has only 1 director who is also the only secretary of the corporation—that director; or
 - (d) a lawfully authorised agent or attorney of the corporation, whether or not the agent or attorney is appointed under seal.
- (2) Also, for a statutory corporation, the instrument may be signed by a person, or in a way, authorised by the Act under which the corporation is established, incorporated or registered.
 - (3) Further, for a corporation that is not incorporated under an Australian law, the instrument may be signed by a person, or in a way, authorised by the law of the place in which the corporation is incorporated.
 - (4) An instrument that is to have effect as a deed for a corporation may be signed in accordance with this section whether or not the seal of the corporation is used.
 - (5) An instrument signed for a corporation by an agent or attorney under subsection (1)(d) has the same effect as an instrument signed for a corporation under subsection (1)(a), (b) or (c).
 - (6) This section does not limit the ways in which an instrument that is to have effect as a deed for a corporation may be signed for the corporation.
 - (7) In this section—
attorney, for a corporation, means an attorney for the corporation under—
 - (a) a deed; or
 - (b) a general power of attorney.

12R Signing counterpart or true copy

- (1) An instrument that is to have effect as a deed for an individual or a corporation may be signed by or for the individual or corporation by signing a counterpart or true copy of the instrument.
- (2) For subsection (1), the counterpart or true copy signed by a person need not include the signature of any other person who is to sign the instrument.

Example—

If an instrument is signed for a corporation by 1 director and 1 secretary, the director may sign 1 counterpart and the secretary may sign another counterpart. The counterpart signed by each person does not need to include the signature of the other person.

- (3) Also, for subsection (1), if the counterpart or true copy is electronically signed by a person, the counterpart or true copy need not include any material included in the instrument about the method used for electronically signing the instrument.

12S No witness required

An instrument that is to have effect as a deed may be signed in accordance with this division whether or not in the presence of a witness.

Division 3 Other provision

12T Deposit of deed in land registry

- (1) This section applies to a deed made under this part that is proposed to be deposited in the land registry for either of the following purposes—
 - (a) in support of another instrument lodged or deposited in the land registry;

- (b) for registration, enrolment or recording under the *Property Law Act 1974*, section 241(1).
- (2) If the deed is made in counterparts, each counterpart must be deposited in the land registry for the purpose.
- (3) If the deed or a counterpart of the deed is in the form of an electronic document, a printed copy of the deed or counterpart certified in accordance with subsection (4) must be deposited in the land registry for the purpose.
- (4) For subsection (3), the printed copy must be certified as a true copy of the original deed or counterpart—
 - (a) on the last page of the printed copy; and
 - (b) by 1 of the following persons—
 - (i) 1 of the signatories;
 - (ii) a lawyer;
 - (iii) a justice;
 - (iv) a commissioner for declarations;
 - (v) a notary public;
 - (vi) a trustee company under the *Trustee Companies Act 1968*;
 - (vii) a stockbroker.

Part 3E General powers of attorney

12U Application of part

- (1) This part provides for modified requirements or arrangements, under the *Powers of Attorney Act 1998* or another law, for making a general power

of attorney, or a document revoking a general power of attorney.

- (2) A reference in this part to a general power of attorney is taken to include a reference to a document revoking a general power of attorney.

12V No witness required for corporations

A general power of attorney for a corporation may be made whether or not in the presence of a witness.

12W Presence by audio visual link for individuals

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 a general power of attorney for an individual 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 is carried out in accordance with part 4.

12X No sealing required

A general power of attorney may be made even if it is not sealed or stated to be sealed.

12Y General power of attorney may be made in form of electronic document and electronically signed

- (1) A general power of attorney may be made in the form of an electronic document and may be electronically signed.

- (2) A general power of attorney may be made in the form of an electronic document by or for a person even without consent to the making of it in that form from a witness or any other person.
- (3) A general power of attorney may be electronically signed by a person even without consent to the signing in that way from any other person who is to sign the general power of attorney.

12Z Signing by corporation generally

- (1) A general power of attorney for a corporation may be signed by—
 - (a) 2 directors of the corporation; or
 - (b) 1 director and 1 secretary of the corporation; or
 - (c) for a corporation that has only 1 director who is also the only secretary of the corporation—that director; or
 - (d) a lawfully authorised agent of the corporation, whether or not the agent is appointed under seal.
- (2) Also, for a statutory corporation, the general power of attorney may be signed by a person, or in a way, authorised by the Act under which the corporation is established, incorporated or registered.
- (3) Further, for a corporation that is not incorporated under an Australian law, the general power of attorney may be signed by a person, or in a way, authorised by the law of the place in which the corporation is incorporated.
- (4) A general power of attorney may be signed in accordance with this section whether or not the seal of the corporation is used.
- (5) An instrument signed for a corporation by an

agent under subsection (1)(d) has the same effect as an instrument signed for a corporation under subsection (1)(a), (b) or (c).

- (6) This section does not limit the ways in which a general power of attorney for a corporation may be signed for the corporation.

12ZA Signing counterpart or true copy

- (1) This section applies if 2 or more persons are to sign a general power of attorney for a corporation.
- (2) A person signing the general power of attorney for the corporation may sign a counterpart or true copy of the general power of attorney.
- (3) For subsection (2), the counterpart or true copy signed by a person need not include the signature of any other person who is to sign the general power of attorney.
- (4) Also, for subsection (2), if the counterpart or true copy is electronically signed by a person, the counterpart or true copy need not include any material included in the general power of attorney about the method used for electronically signing the general power of attorney.

12ZB Lodgement or deposit of general power of attorney in land registry

- (1) This section applies to a general power of attorney made under this part that is proposed to be lodged or deposited in the land registry for a purpose.
- (2) If the general power of attorney is made in counterparts, each counterpart must be lodged or deposited in the land registry for the purpose.
- (3) If the general power of attorney or a counterpart of the general power of attorney is in the form of an electronic document, a printed copy of the general power of attorney or counterpart certified

- in accordance with subsection (4) must be lodged or deposited in the land registry for the purpose.
- (4) For subsection (3), the printed copy must be certified as a true copy of the original general power of attorney or counterpart—
- (a) on the last page of the printed copy; and
 - (b) by 1 of the following persons—
 - (i) 1 of the signatories;
 - (ii) a lawyer;
 - (iii) a justice;
 - (iv) a commissioner for declarations;
 - (v) a notary public;
 - (vi) a trustee company under the *Trustee Companies Act 1968*;
 - (vii) a stockbroker.
- (5) Subsection (6) applies if—
- (a) a printed copy of the general power of attorney or counterpart is lodged or deposited under subsection (3); and
 - (b) the principal signed the general power of attorney in paper form (the *principal's original document*).
- (6) The registrar of titles may require the principal's original document to be given to the registrar for lodgement or depositing with the printed copy lodged or deposited under subsection (3).

Part 3F Particular mortgages

12ZC Application of part

- (1) This part provides for modified requirements or arrangements for the making of particular

mortgages under the *Property Law Act 1974* or another law.

- (2) However, this part does not apply in relation to a mortgage that is an instrument to which part 3D applies.

12ZD Mortgages lodged electronically

- (1) This section applies in relation to a mortgage if—
 - (a) the mortgage is lodged under the Electronic Conveyancing National Law (Queensland), section 7; and
 - (b) the mortgagee holds a document that grants a mortgage by the mortgagor that—
 - (i) is on the same terms and conditions as the lodged mortgage; and
 - (ii) complies with the *Property Law Act 1974*, section 11.
- (2) If the mortgage is required to be given, produced or used for any purpose, the document mentioned in subsection (1)(b) may be—
 - (a) given, produced or used for the purpose; and
 - (b) relied on as evidence of the mortgage.
- (3) Subsection (2) applies regardless of whether the document mentioned in subsection (1)(b)—
 - (a) was signed by or for the mortgagor in the presence of a witness; or
 - (b) was electronically signed by or for the mortgagor.

10 Amendment of s 13 (Persons who may be directed to sign)

Section 13(2)(b)—

insert—

- (iv) for an affidavit or a declaration to be used in a proceeding by or for a party—a person who is another party to the proceeding or a relation of a person who is another party to the proceeding.

11 Amendment of s 17 (General requirements for witnessing documents)

- (1) Section 17(c)—

omit, insert—

- (c) the witness forms the satisfaction under paragraph (b) in real time; and

- (2) Section 17—

insert—

- (2) Subsection (1)(d) does not apply to an affidavit or a declaration.

12 Amendment of s 18 (Witness must verify particular matters)

Section 18(b), after ‘on’—

insert—

or in

13 Amendment of s 19 (Witness may confirm only witnessed document or true copy)

- (1) Section 19, heading—

omit, insert—

19 Confirmation of signed document by witness

- (2) Section 19(1)(b), example—

omit, insert—

Examples for paragraph (b)—

- a scanned copy of a signed document sent electronically to the witness
- a hard copy of a signed electronic document printed by the witness

(3) Section 19(1)—

insert—

- (c) if the document is an affidavit or a declaration made using counterparts—is a counterpart for the document signed by the signatory or substitute signatory.

Note—

Affidavits and declarations in the form of electronic documents may be electronically signed—see sections 12C (for affidavits) and 12H (for declarations).

(4) Section 19—

insert—

- (3) Subsection (2)(b) does not apply to an affidavit or a declaration.
- (4) If a justice or commissioner for declarations confirms an electronic document, the justice or commissioner for declarations is not required to insert on the document the imprint of a seal of office issued to the person under the *Justices of the Peace and Commissioners for Declarations Act 1991*.

14 Amendment of s 20 (Action after witness confirms document)

(1) Section 20(1), example—

omit, insert—

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

- scanning the document and emailing the scanned copy to the person

- giving a hard copy printout of the document to the person

(2) Section 20(3), definition *give*—

omit, insert—

give includes—

- give by electronic means; and
- give by allowing online computer access.

Example for paragraph (b)—

allowing a person to access and download a document from an online file-sharing website

(3) Section 20(3), definition *relevant person*—

insert—

- for an affidavit or declaration—the person making the affidavit or declaration or a person to whom that person directs the affidavit or declaration be given; or
- for a general power of attorney or a document revoking a general power of attorney—the principal for the general power of attorney or a person to whom the principal directs the general power of attorney be given.

15 Amendment of s 21 (Certificate by special witness)

Section 21—

insert—

- (1A) However, this section does not apply in relation to an affidavit or a declaration.

16 Insertion of new ss 21A and 21B

After section 21—

insert—

21A Jurat of affidavit

- (1) This section applies in relation to an affidavit made, signed or witnessed under the modified requirements or arrangements under this regulation.
- (2) The signatory must ensure the affidavit's jurat states the following matters—
 - (a) if applicable, that the affidavit was made in the form of an electronic document;
 - (b) if applicable, that the affidavit was electronically signed by the signatory or substitute signatory;
 - (c) that the affidavit was made, signed and witnessed in accordance with this regulation;
 - (d) that either—
 - (i) the contents of the affidavit are true; or
 - (ii) if the contents of the affidavit are stated on the basis of information and belief—those contents are true to the best of the knowledge of the person making the statement;
 - (e) that the signatory understands that a person who provides a false matter in the affidavit commits an offence.

Example of offence—

perjury under the Criminal Code, section 123

21B Statement in declaration

- (1) This section applies in relation to a declaration made, signed or witnessed under the modified requirements or arrangements under this regulation.
- (2) The signatory must ensure the declaration states

the following matters—

- (a) that the declaration was made, signed and witnessed in accordance with this regulation;
- (b) that either—
 - (i) the contents of the declaration are true; or
 - (ii) if the contents of the declaration are stated on the basis of information and belief—those contents are true to the best of the knowledge of the person making the statement;
- (c) that the signatory understands that a person who provides a false matter in the declaration commits an offence.

Example of offence—

perjury under the Criminal Code, section 123

17 Amendment of s 23 (Presumptions)

Section 23(d), after ‘on’—

insert—

or in

18 Amendment of s 24 (Official and originating versions of document)

Section 24—

insert—

- (1A) However, this section does not apply to an affidavit or declaration that is made using counterparts.

19 Amendment of s 25 (Lodgement or deposit of document in land registry)

Section 25(4)—

omit.

20 Insertion of new s 25A

After section 25—

insert—

25A Affidavits or declarations made using counterparts

- (1) This section applies to an affidavit or declaration that is made using counterparts.
- (2) The counterpart confirmed by the witness for the affidavit or declaration must be kept with the counterpart signed by or for the signatory for the affidavit or declaration.
- (3) The counterparts mentioned in subsection (2) together constitute the affidavit or declaration.
- (4) If an affidavit or declaration made using counterparts is required to be given, produced or used for any purpose, the counterparts constituting the affidavit or declaration may be—
 - (a) given, produced or used for the purpose; and
 - (b) relied on as evidence of the affidavit or declaration.

21 Amendment of sch 1 (Dictionary)

- (1) Schedule 1, definition *witness*—

omit.

- (2) Schedule 1—

insert—

administer, in relation to an oath or affirmation,

includes take and receive.

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

copy, of an electronic document, means a reproduction of the document in either electronic or hard copy form.

corporation includes—

- (a) a corporation under the Corporations Act, section 57A; and
- (b) a corporation sole; and
- (c) a statutory corporation.

counterpart, for a document, means a copy of the document that—

- (a) includes the entire contents of the document; and
- (b) may be signed by a person without the signatures of the other persons who are to sign the document.

director, of a corporation, means a member of the board of directors, council or other governing body of the corporation.

document means any record of information however recorded and includes—

- (a) anything on which there is writing; and
- (b) anything on which there are marks, symbols or perforations having a meaning for persons qualified to interpret them; and
- (c) anything from which sounds, images or writings can be reproduced with or without the aid of anything else; and
- (d) any record of information that exists in digital form and is capable of being

reproduced, transmitted, stored or duplicated by electronic means.

electronically sign, a document, means sign the document using a method—

- (a) that identifies the signatory for the document and the signatory's intention in relation to the contents of the document; and
- (b) that is either—
 - (i) as reliable as appropriate for the purpose for which the document is signed, having regard to all the circumstances, including any relevant agreement; or
 - (ii) proven in fact to have fulfilled the functions described in paragraph (a), by itself or together with further evidence.

electronic document means—

- (a) a record of information reproduced from a thing mentioned in definition *document*, paragraph (c); or
- (b) a document of a type mentioned in definition *document*, paragraph (d).

general power of attorney means a general power of attorney under the *Powers of Attorney Act 1998* or another law.

information includes information in the form of data, text or images.

mortgage means a mortgage under the *Property Law Act 1974* or another law.

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

seal, of a corporation, includes a common seal of the corporation.

[s 21]

secretary, of a corporation, means the clerk, secretary or other permanent officer of the corporation.

sign, in relation to an electronic document, includes electronically sign.

statutory corporation means an entity established, incorporated or registered under an Act of the Commonwealth or a State, that is not a corporation registered under the Corporations Act.

witness, a document, includes—

- (a) witness the signing of the document; and
- (b) for an affidavit or a declaration—administer the affidavit or declaration.

ENDNOTES

- 1 Made by the Governor in Council on 21 May 2020.
- 2 Notified on the Queensland legislation website on 22 May 2020.
- 3 The administering agency is the Department of Justice and Attorney-General.

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