

Justice Legislation (COVID-19 Emergency Response—Permanency) Amendment Bill 2021

Explanatory Notes

Short title

The short title of the Bill is the *Justice Legislation (COVID-19 Emergency Response—Permanency) Amendment Bill 2021*.

Policy objectives and the reasons for them

Background

On 29 January 2020, a public health emergency was declared under section 319 of the *Public Health Act 2005* (Public Health Act) in relation to the COVID-19 public health emergency. The COVID-19 public health emergency was declared for all of Queensland.

The Queensland Government has put in place a range of temporary measures for the purpose of protecting the health, safety and welfare of persons affected by the COVID-19 emergency and to assist Queensland businesses and individuals suffering financial and operational stress caused by the public health emergency.

On 22 April 2020, the Legislative Assembly passed the *COVID-19 Emergency Response Act 2020* (COVID-19 ER Act) which, among other things, implemented amendments to:

- establish a power to make emergency regulations for the residential tenancy and rooming accommodation sectors to address the impacts of the COVID-19 emergency;
- facilitate implementation of the National Cabinet decision in relation to good faith leasing principles for relevant non-residential leases in Queensland;
- provide for the establishment of a temporary Queensland Small Business Commissioner (QSBC) to deliver expanded advocacy functions for Queensland small business and administer mediation services in relation to small business tenancy disputes; and
- establish a legislative modification framework of general application across the statute book (the modification framework) allowing legislative requirements to be modified in the following areas, should that be required:
 - attendance at places or meetings, making and associated use of documents and physical presence requirements;

- statutory timeframes for the doing or expiry of a thing; and
- proceedings of courts and tribunals.

The modification framework enables regulations (or, in limited situations, a statutory instrument) to be made which may be inconsistent with the affected Act, and any other Act (except the *Human Rights Act 2019*), to the extent necessary to achieve a purpose of the COVID-19 ER Act.

To date, a number of regulations have been made under or pursuant to the COVID-19 ER Act.

On 22 May 2020, the Legislative Assembly passed the *Justice and Other Legislation (COVID-19 Emergency Response) Amendment Act 2020* (COVID-19 ER Amendment Act) which, within the Justice portfolio, inserted new Part 10A into the *Liquor Act 1992* (Liquor Act) which allows takeaway liquor authorities to be provided to support operators of licensed venues whose ordinary operations have been disrupted due to the public health directions. These authorities allow venues to temporarily sell takeaway liquor, in the amounts and ways specified in the authority, regardless of the limitations of their licence or permit.

The COVID-19 ER Act and all secondary instruments (including regulations) made pursuant to the COVID-19 ER Act are set to expire on the COVID-19 legislation expiry day (as defined in section 4A of the COVID-19 ER Act), currently 30 April 2022.

Summary of the Bill

The objectives of the Bill are to make amendments to legislation in the Justice portfolio to make permanent particular parts of the following temporary measures introduced during the COVID-19 emergency:

- the *Justice Legislation (COVID-19 Emergency Response—Documents and Oaths) Regulation 2020* (DO Regulation) – referred to as the “Documents Reforms”; and
- the *Domestic and Family Violence Protection (COVID-19 Emergency Response) Regulation 2020* (DFV COVID Regulation) – referred to as the “Domestic and Family Violence Reforms”.

The Bill will also amend the Liquor Act to allow licensed restaurant operators to apply for a permanent condition of licence authorising the sale 1.5 litres of wine (i.e. two bottles) with a takeaway meal up to 10pm.

The Bill also extends the expiry of the *Retail Shop Leases and Other Commercial Leases (COVID-19 Emergency Response) Regulation 2020* (Leases Regulation).

Achievement of policy objectives

The Bill achieves these objectives by amending:

- the *Oaths Act 1867* to permanently retain certain modified arrangements for the making of affidavits, statutory declarations and oaths as provided for under the DO Regulation, and extend some of those reforms to affidavits, declarations and oaths made in person to provide equal treatment for paper-based and computer-based documentation for transactional economy and efficiency (the Documents Reforms – affidavits, statutory declarations and oaths);
- the *Powers of Attorney Act 1998* to permanently retain certain modified arrangements for the making of general powers of attorney for corporations, and extend some of those reforms to general powers of attorney for partnerships and unincorporated associations, and permanently retain the modified arrangement that allows nurse practitioners, in addition to doctors, to sign a certificate which forms part of an advance health directive (AHD) stating that the person making the document appears to have capacity to make the document (the Documents Reforms – general powers of attorney and AHDs);
- the *Property Law Act 1974* to permanently retain certain modified arrangements for the making of deeds and extend some of those reforms to deeds for partnerships and unincorporated associations, whilst ensuring that deeds used for land and water allocation dealings continue to be executed in accordance with the *Land Title Act 1994* and *Land Act 1994*, and ensuring that particular types of deeds that contain powers of attorney continue to be executed on paper and witnessed in person (the Documents Reforms – deeds);
- the *Domestic and Family Violence Protection Act 2012* (DFVP Act) and the *Domestic and Family Violence Protection Rules 2014* (DFVP Rules) to permanently retain the option to use the alternative arrangements provided under the DFV COVID Regulation in particular circumstances (the Domestic and Family Violence Reforms);
- the Liquor Act to permanently retain aspects of the current temporary arrangements under Part 10A by allowing holders of a subsidiary on-premises licence (meals), to which section 67A applies (licensed restaurants), to sell up to 1.5 litres of takeaway wine with a takeaway meal (the Liquor Reforms); and
- the *COVID-19 Emergency Response Act 2020* to allow a regulation made under section 23 before the COVID-19 expiry day to remain on foot until up to 2 years after that date (the Leases Reforms).

Documents Reforms

As a result of the COVID-19 emergency and the advent of lockdowns and restrictions on meeting in person, individuals, businesses and government have been required to adapt and engage with digital technology to find new ways of working without being physically present. The DO Regulation introduced temporary measures to allow certain documents to be signed electronically or witnessed over audio visual (AV) link. The Bill permanently implements certain aspects of the temporary arrangements to allow

individuals, businesses and government to continue to use digital technology to meet their needs.

The purpose of the reforms is to modernise the way in which important legal documents are created, in line with contemporary business practice, and to improve accessibility. The Bill embraces digital technology to provide new and alternative pathways for document execution, in addition to the ordinary physical approach, which will allow individuals to choose their preferred method of document execution. The reforms will make it easier for individuals to make and sign important legal documents without the need to be physically present.

The reforms will therefore improve access to justice, reduce transaction costs, and increase the efficiency of conducting private and commercial transactions.

Affidavits, Statutory Declarations and Oaths

Affidavits, statutory declarations and oaths normally need to be taken in the physical presence of a lawyer, justice of the peace (JP), commissioner for declarations (Cdec), notary public, conveyancer or another person authorised to administer an oath under the law of the State, the Commonwealth or another state or territory.

The Bill allows affidavits, statutory declarations and oaths (except for oaths of office and oaths of allegiance) to be witnessed over AV link by a narrower cohort of special witnesses or prescribed persons. The Bill provides that a special witness is an Australian legal practitioner, a government legal officer who is an Australian lawyer and who witnesses documents in the course of the government work engaged in by the officer, a JP or Cdec approved by the Director-General of the Department of Justice and Attorney-General (DJAG), a notary public, a JP or Cdec employed by a law practice that prepared the document, or a JP or Cdec employed by the public trustee, if the public trustee prepared the document.

For affidavits and statutory declarations that are witnessed in person, the Bill allows them to be signed electronically and made in counterparts if they are witnessed by a special witness or a prescribed person (however, counterparts cannot be used where they are physically signed).

For affidavits and statutory declarations that are witnessed over AV link, the Bill allows these documents to be physically signed or electronically signed, and/or made using counterparts, if witnessed by a special witness or prescribed person, with procedural requirements to apply.

However electronic signatures on statutory declarations can only be used for a land or water dealing where electronic conveyancing (or eConveyancing) is used. If a statutory declaration is lodged or deposited in the land registry or register of water allocations, it must be physically signed and must otherwise be made, signed and witnessed in accordance with the *Oaths Act 1867*.

Powers of attorney

A power of attorney (other than an enduring power of attorney) can be made either as a general power of attorney under the *Powers of Attorney Act 1998* or by deed.

Powers of attorney are required to be witnessed. For example, a power of attorney for an individual that is used for a land transaction is required to be executed and witnessed in accordance with the *Land Title Act 1994* and *Land Act 1994*. A general power of attorney under the *Powers of Attorney Act 1998* must be witnessed by an adult. A power of attorney for an individual in a deed must be executed in accordance with the *Property Law Act 1974*, and therefore must be sealed or witnessed.

The Bill allows powers of attorney for businesses (corporations, partnerships and unincorporated associations, but not sole traders) to be signed electronically, in counterparts and by split execution¹ and without a witness.

The Bill also provides that a general power of attorney for an individual under the *Powers of Attorney Act 1998* or a power of attorney for an individual given under a deed must be a physical document that is signed in the presence of a witness, unless:

- the document containing the power of attorney given by an individual under a deed is part of a commercial or other arms-length transaction; and
- the power of attorney is given for the purpose of the commercial or other arms-length transaction.

However, if a general power of attorney under the *Powers of Attorney Act 1998* or a power of attorney under a deed is used for a land or water dealing, it must continue to be executed in accordance with the *Land Title Act 1994* and *Land Act 1994*.

Deeds

The Bill removes the common law requirement for a deed to be executed on paper, parchment or vellum and provides that deeds can be made in the form of an electronic document and electronically signed when using an “accepted method”. An “accepted method” for electronically signing is a method which identifies the signatory and the signatory’s intention in relation to the contents of the document, is as reliable as appropriate for the purposes of the document and is consented to by all the signatories to the document.

The Bill allows deeds to be made in counterparts and by split execution. This means that each signatory can sign an identical copy of the deed that need not contain a signature of any other person who is to sign the document. It also means that company officers are no longer required to sign the same physical document.

The Bill removes the requirement for deeds to be sealed or stated to be sealed, but instead requires the deed to contain a clear statement that it is executed as a deed.

The Bill simplifies the execution requirements for corporations and removes the requirement for corporations to use their common seal. If the corporation chooses to use its common seal, the application of the seal may be witnessed in person or by AV link. This approach mirrors the execution requirements for corporations under section 127 of the *Corporations Act 2001* (Cth).

¹ This removes requirements for directors to physically sign the same physical document, reversing the effect of the court’s decision in *Adelaide Bank v Pickard* [2019] SASC 13.

The Bill clarifies the way a corporation can execute a deed, aiming for consistency with execution requirements in the *Corporations Act 2001* (Cth).

The Bill also allows an individual to sign a deed on behalf of a partnership or unincorporated association without a witness.

The Bill removes the need for witnessing of an individual's signature on a deed. However, as stated above, a power of attorney for an individual given under a deed must be a physical document that is signed in the presence of a witness, unless:

- the document containing the power of attorney given by an individual under a deed is part of a commercial or other arms-length transaction; and
- the power of attorney is given for the purpose of the commercial or other arms-length transaction.

However, the Bill ensures that deeds lodged or deposited in relation to land and water dealings must continue to be executed in accordance with the *Land Title Act 1994* and *Land Act 1994*.

Mortgages

Electronic conveyancing (or eConveyancing) allows instruments and documents needed for property transactions to be digitally prepared, signed, settled and lodged. The participation rules under the Electronic Conveyancing National Law (ECNL) provide that when a mortgage is lodged through eConveyancing, the mortgagee must obtain and hold a duplicate of the mortgage on the same terms as the lodged mortgage signed by the mortgagor. The Bill clarifies that the duplicate same terms mortgage can be made as an electronic document and signed electronically by the mortgagor or mortgagee, without the need for any witnessing, as long as it complies with section 11 of the *Property Law Act 1974*.

AHDs

The Bill permanently implements the arrangement under the DO Regulation which allows nurse practitioners, in addition to doctors, to sign a certificate which forms part of an AHD stating that the person making the document appears to have capacity to make the document.

This amendment has the effect of broadening the level of qualification, skills and training required for a person who undertakes a capacity assessment and signs a certificate to verify capacity for the purpose of an AHD. This makes AHDs more accessible and enhances access to advance care planning support.

Domestic and Family Violence Reforms

The DFVP Act sets out the legislative framework for providing civil protection from domestic and family violence (DFV) through domestic violence orders (DVOs) and police protection notices. Applications for DVOs are made to a Magistrates Court and can be made by the aggrieved, a police officer or an authorised person or another person acting for an aggrieved.

Ordinarily, private applicants (an applicant who is not a police officer) must verify an application for a DVO by way of a signed and witnessed statutory declaration before a

lawyer, JP, Cdec or other persons authorised by the *Oaths Act 1867*. A private applicant may then file the application with the court by delivering the application personally, or by post, to the registry. A party to a proceeding under the DFVP Act (DFV proceeding) may appear before a Magistrate in person or be represented by a lawyer.

The DFV COVID Regulation put in place modified arrangements to reduce physical contact between persons to support social distancing, self-quarantine and self-isolation requirements under the Queensland Chief Health Officer's public health directions.

The Bill amends the DFVP Act and DFVP Rules to:

- increase the accessibility of the court for applicants in urgent situations by providing the option for private applications for protection orders and variations of DVOs to be verified between an applicant and a Magistrate, as an alternative to verifying the application by statutory declaration, for the purpose of the court making a temporary protection order before the respondent is served the application;
- clarify the accessibility to DFV proceedings, by giving Magistrates discretion to conduct all or part of proceedings by AV link or audio link; and
- provide the ability for greater flexibility and accessibility to parties by extending the option of electronic filing of documents to private parties in DFV proceedings, with the approval of the Principal Registrar of the court.

While the new processes are largely based on the DFV COVID Regulation, the process for alternative verification of an application for a protection order or variation of a DVO is narrower in scope than the modified arrangements under the DFV COVID Regulation, as it is limited to urgent situations only, for the purpose of seeking a temporary protection order, where an applicant is unable to access a JP, Cdec or a solicitor and before the respondent is served the application. The option for electronic filing is also only with the approval of the Principal Registrar of the court.

The new processes provide alternatives in certain circumstances to the traditional methods of verifying and filing applications and appearance in proceedings.

Liquor Reforms

The Bill amends the Liquor Act to provide a permanent ability for licensees holding a subsidiary on-premises licence (meals) (i.e. restaurant licensees) to be authorised to sell a limited amount of wine for takeaway or delivery with a takeaway meal. The reforms differ from the current COVID-19 temporary takeaway liquor authorities. However, the changes resulting from stakeholder consultation will reduce the potential for harm and provide greater regulatory control.

The liquor reforms proposed by the Bill aim to reduce regulatory barriers for restaurants and support the recovery of small business from the economic impacts of the pandemic. The amendments are also anticipated to deliver a tangible public benefit by reflecting contemporary food service standards and changing customer expectations.

The Bill amends the Liquor Act to provide:

- that licensees of a subsidiary on-premises licence (meals) may apply to the Commissioner for Liquor and Gaming (the Commissioner) for a variation of licence to be permanently authorised for the sale of takeaway liquor. The authority is to be endorsed as a condition of licence and is able to be amended or revoked;
- the sale of takeaway liquor is limited to transactions that include a takeaway meal made between the hours of 10am to 10pm;
- the type and amount liquor able to be sold is limited to wine, with a maximum volume of 1.5 litres (i.e. two bottles);
- that in order to be granted an approval, licensees will need to establish adequate systems for the responsible service of takeaway alcohol (e.g. systems requiring the identification of online customers to prevent liquor service to minors); and
- approvals may be subject to conditions the Commissioner determines necessary to ensure the responsible service of takeaway alcohol (e.g. keeping records about proof of age).

To reduce financial burden and assist restaurant operators transition from the temporary arrangements, the Bill proposes to waive the application fee for eligible licensees who apply for the permanent takeaway liquor condition on or before 30 June 2022. The fee waiver will only apply if the licensee was subject to a COVID-19 takeaway liquor authority under Part 10A of the Liquor Act before commencement of the provisions.

Alternative ways of achieving policy objectives

There is no other reasonable way of achieving these policy objectives other than by legislation.

Estimated cost for government implementation

Documents Reforms

While the documents reforms will require most State Government departments and agencies to adapt their policies, practices and procedures, it is expected that agencies will be able to accommodate the changes within existing budgets. The reforms may also enable agencies to achieve efficiencies and reduce costs.

Domestic and Family Violence Reforms

While Queensland Courts are currently not resourced to receive private applications electronically through appropriate technology, the reforms will provide Queensland Courts with sufficient discretion to allow for electronic filing when resourcing permits. The reforms will also provide Queensland Courts with discretion to allow for electronic filing of private applications via email in limited circumstances, such as a pandemic lockdown.

Liquor Reforms

The Bill provides that eligible restaurant operators will be required to apply for the permanent takeaway liquor condition under the Liquor Act by a variation of licence under section 105 of the Liquor Act. Section 105(1)(d) of the Liquor Act requires that applications must be accompanied by the prescribed fee, which is currently \$221.30. The transitional provisions contained under the Bill will waive the application fee for eligible licensees who make an application on or before 30 June 2022.

It is uncertain how many eligible restaurant operators will apply for the new permanent takeaway liquor condition. However, a recent survey of over 4,000 holders of the subsidiary on-premises licence (meals) conducted by the Liquor and Gaming and Fair Trading Division (LGFT) of DJAG found that 331 of 415 respondents had used the takeaway liquor authority. It is estimated that costs to Government totalling \$73,250 in revenue will be foregone if all 331 licensees apply for the new permanent licence condition.

Leases Reforms

The amendment to the COVID-19 ER Act to extend the expiry of the Leases Regulation may raise additional costs for the State in facilitating dispute resolution through the QSBC, the Queensland Civil and Administrative Tribunal (QCAT) and the courts. However, the Queensland Government has committed funding to support continuation of the QSBC as a permanent statutory office. Any other additional costs will be addressed through ordinary budget processes

Consistency with fundamental legislative principles

The Bill has been drafted with regard to the fundamental legislative principles in the *Legislative Standards Act 1992* (LSA). Potential breaches of fundamental legislative principles are addressed below.

Documents Reforms

Affidavits, Statutory Declarations and Oaths

The Bill modernises the way that affidavits and statutory declarations are made, signed and witnessed by amending the *Oaths Act 1867* to allow these documents to be made in the form of an electronic document, electronically signed and witnessed over AV link by “special witnesses” or prescribed persons. The Bill also provides for oaths and affirmations to be administered over AV link by persons who are authorised by law.

These amendments represent a significant change to long-standing legal practice and may infringe upon the fundamental legislative principle provided for in section 4(3)(b) of the LSA that legislation is consistent with the principles of natural justice and the fundamental legislative principle in section 4(2)(a) of the LSA that legislation has sufficient regard to the rights and liberties of individuals.

Making a document electronically, and by application of an electronic signature, may increase the risk of fraud. For example, a person’s electronic signature could be taken and used without their consent. In addition, given the broad meaning of electronic

signature, a person could fraudulently sign a document on behalf of a person without their authority. As the Bill does not prescribe methods of electronic signature, there is greater potential for electronic signatures to be used improperly.

Allowing an oath, affirmation or declaration to be administered over AV link may impact the perceived solemnity of the occasion, leading some individuals to not fully appreciate the gravity of making a declaration or statement under oath or affirmation or the consequences of making a false statement.

The use of AV technology may also impact effective communication, including through the diminished ability to use non-verbal cues and gestures. The use of AV link to administer an oath or affirmation and witness a document may also disadvantage vulnerable groups in the community, including those for whom language and communication barriers are exacerbated by electronic communication. This may impact a person's capacity to adequately prepare documents to support their case in a proceeding.

These factors may in turn impact on the quality of evidence, including evidence relied on in civil and criminal proceedings, impacting the fairness of those proceedings.

The use of technology may also act as a barrier for groups such as seniors, persons with a disability, or persons in regional and remote areas where there may be inequitable access to technology or limited skills and supports to utilise the technology.

The removal of physical presence requirements and the introduction of electronic signatures and the use of AV technology may increase the risk of breach of privacy and confidentiality.

The amendments are considered justified because allowing persons to make documents or give evidence under oath from the comfort of their home or workplace using technology will provide for significant efficiencies. It will also greatly improve access to justice and will also have a positive impact for persons who are unable or unwilling to travel for health and safety reasons. The changes will be particularly beneficial for some vulnerable groups and people living in regional and remote areas who may find it difficult to access in person witnessing services or travel to court.

The Bill also mitigates the risks identified above by introducing several safeguards. For example, affidavits and statutory declarations:

- can only be witnessed over AV link by a narrow cohort of special witnesses;
- can only be signed electronically if witnessed by a special witness (either in person or by AV link);
- must include particular statements that the contents of the document are true, or true to the best of the person's knowledge, and that the person signing the document understands that knowingly making a false statement is an offence; and
- must include details of the witness's name, the type of witness (e.g. legal practitioner, JP, etc) and place of employment.

To protect against the increased risk of abuse of vulnerable persons, the Bill also limits who can act as a substitute signatory in certain circumstances and excludes persons

such as spouses and other relatives from signing documents on behalf of a person when the document is witnessed over AV link or the signatory is giving the direction to sign in the physical presence of the substitute signatory. These restrictions further provide additional safeguards for protecting the rights and liberties of individuals.

The Bill also does not preclude the ability to make, sign and witness these documents on paper and/or in person. The existing requirements will continue to apply and can continue to be used by people who do not have access to technology.

Affidavits, Statutory Declarations and Oaths – special witnesses

The Bill restricts who can witness statutory declarations and affidavits over AV link to a narrow class of witnesses (special witnesses) or prescribed persons and also restricts the use of electronic signatures to circumstances where a special witness or prescribed person has witnessed the document (whether in person or by AV link).

These amendments may infringe upon the fundamental legislative principle provided for in section 4(3)(b) of the LSA that legislation is consistent with the principles of natural justice.

A special witness must be an Australian legal practitioner, a government legal officer who is an Australian lawyer and who witnesses documents in the course of the government work engaged in by the officer, a JP or Cdec approved by the chief executive of DJAG for this purpose, a JP or Cdec for declarations employed by a law practice that prepared the document, a notary public or, for a document prepared by the public trustee, a JP or Cdec for declarations who is an employee of the public trustee.

The introduction of special witnesses for affidavits and statutory declarations made in certain circumstances may reduce access to available witnesses (compared to the wider cohort of eligible witnesses who can witness documents in person). However, the limitation on who can witness documents over AV link or when using electronic signatures is considered justified in order to provide additional safeguards by ensuring such witnesses have the appropriate training or experience to assure themselves that the document they witness is the same as the document that the signatory signs, and that the signatory is making the document freely and voluntarily.

It is also considered that these types of special witnesses are more likely to:

- be astute to the risks of fraud and undue influence;
- be able to assess the capacity of the person making the document;
- have an ongoing client relationship with the person making the document and therefore be more aware of the individual's circumstances; or
- have prepared the document on the client's instructions and provided advice to the client about the contents of the document.

Special witnesses must comply with certain procedural requirements, including that they must observe the signatory signing the document in real time over the AV link and be satisfied the person is freely and voluntarily signing the document. The special witness must also verify the identity of the signatory and confirm the document witnessed (these latter requirements are also extended to affidavits and statutory declarations witnessed in person).

Regulation-making power

The Bill provides that a regulation may be made about the acceptable methods of electronic signature that can be used for signing affidavits and statutory declarations. If made, this regulation would allow requirements to be imposed on the use of electronic signatures. The Bill also allows courts and tribunals to make rules of court or practice directions about acceptable methods of electronic signature that can be used in affidavits or statutory declarations that are filed or admitted into evidence in proceedings.

This delegation of legislative power may engage the fundamental legislative principle that legislation should have sufficient regard to the institution of Parliament as expressed in section 4(2)(b) of the LSA. It is considered consistent with this principle however because the power is consistent with the policy objectives of the Bill and contains only matters that are appropriate for subordinate legislation. It is also important that the legislation is sufficiently flexible to keep pace with technology and be responsive to emerging issues, including developments in other jurisdictions.

General powers of attorney (GPAs) for businesses

The Bill inserts a new framework into the *Powers of Attorney Act 1998* for GPAs made for businesses. Businesses are defined to include corporations, partnerships and unincorporated associations (but not sole traders).

The amendments allow GPAs for businesses to be made in the form of an electronic document, electronically signed, in counterparts and by split execution. The Bill also simplifies the execution requirements for corporations and removes the requirement for signatures to be witnessed (other than for GPAs that are lodged with the land registry office in relation to land or water allocations dealings).

These amendments could infringe upon the fundamental legislative principle provided for in section 4(3)(b) of the LSA that legislation is consistent with the principles of natural justice and the fundamental legislative principle contained in section 4(2)(a) of the LSA that legislation has sufficient regard to the rights and liberties of individuals.

The modified arrangements may, for example, increase the risk of fraud. As discussed above (in relation to statutory declarations and affidavits), making a document electronically, and by application of an electronic signature, may increase the risk of fraud and increase the risk of breach of privacy or confidentiality.

These amendments are considered justified as they will deliver significant efficiencies for businesses by reducing costs and providing for the efficient conduct of transactions.

Further, in contrast to the reforms for statutory declarations and affidavits, the modified arrangements for GPAs are restricted to businesses who make GPAs.

It is considered that businesses are better able to appreciate and knowingly adopt any risks associated with making these documents in this way. The Bill does not make any changes to the law with respect to GPAs for individuals.

Advance Health Directives (AHDs)

The Bill further amends the *Powers of Attorney Act 1998* to allow nurse practitioners, in addition to doctors, to sign a certificate which forms part of an AHD stating that the person making the document appears to have capacity to make the document.

This amendment has the effect of broadening the level of qualification, skills and training required for a person who undertakes a capacity assessment and signs a certificate to verify capacity for the purpose of an AHD. This makes AHDs more accessible and enhances access to advance care planning support by ensuring that the ability to make an AHD is not constrained by the availability of an appropriate doctor who can assess and attest to capacity for the certificate required.

The amendment is consistent with the fundamental legislative principle contained in section 4(2)(a) of the LSA that legislation has sufficient regard to the rights and liberties of individuals. It gives individuals more freedom (because they are not constrained by the availability of a doctor) to make informed choices in relation to their future health care (including in respect of life sustaining treatments or the withdrawal of life sustaining treatments) and enables them to record those decisions in a formal, binding way.

Deeds

The Bill amends the *Property Law Act 1974* to modernise the way that deeds are made, signed and witnessed for individuals, corporations, partnerships and unincorporated associations. These amendments may potentially infringe the fundamental legislative principle provided for in section 4(3)(b) of the LSA that legislation is consistent with the principles of natural justice and the fundamental legislative principle contained in section 4(2)(a) of the LSA that legislation has sufficient regard to the rights and liberties of individuals.

The execution of deeds electronically and without a witness may increase the risk of fraud and disproportionately impact some vulnerable or disadvantaged individuals who are susceptible to coercion or undue influence.

These amendments are considered justified as they will deliver significant benefits to the business and legal communities by improving transactional efficiency for the execution of deeds. The changes also benefit people who live and work regionally or remotely by allowing people to create and execute documents without a significant impost on their time and reducing the cost of travelling to physically attend offices to prepare and execute such documents.

The Bill also mitigates the risks discussed above by introducing a consent requirement so that signatories to a deed must consent to the method of electronic signature used by other signatories. This is consistent with the approach in section 14(1)(c) of the *Electronic Transactions Act 2001* and enables parties to better control their own risks. For deeds that contain a power of attorney for an individual, the risks are managed by only allowing commercial or other deeds for arms-length transactions to be signed electronically and without a witness. In these circumstances, the risks of coercion are relatively low.

The use of technology for making documents can be a disadvantage where there is inequitable access to sufficient technology, or persons lack the skills and supports to properly utilise technology. However, the option of preparing a deed in the form of a physical document and physically signing is still available to persons who prefer this approach. The existing requirements will continue to apply and can continue to be used by people who do not have access to technology.

Particular Mortgages

The Bill introduces amendments to the *Property Law Act 1974* to provide that a ‘same terms mortgage’ can be made as an electronic document and signed electronically, without the need for any witnessing, as long as it complies with section 11 of the *Property Law Act 1974*. A ‘same terms mortgage’ is a mortgage signed by a mortgagor that is required, under the participation rules under the ECNL to be obtained and held by a mortgagee on the same terms as a mortgage that is lodged for eConveyancing. The amendments enable electronic signature of same terms mortgage documents that are required to be kept where the mortgage is lodged using electronic conveyancing.

These amendments may infringe the fundamental legislative principle provided for in section 4(3)(b) of the LSA that legislation is consistent with the principles of natural justice and the fundamental legislative principle contained in section 4(2)(a) of the LSA that legislation has sufficient regard to the rights and liberties of individuals.

The changes may disadvantage persons who do not have equitable access to technology, and may increase the risk of fraud and improper use of digital signatures.

The amendments are considered reasonable and justified to facilitate the efficient execution of important legal documents. The changes will benefit persons who may find it difficult to attend offices in person.

Further, the risks discussed above are considered low given that the changes only apply to same terms mortgages under the ECNL and do not remove the current rigorous requirements for executing and witnessing of paper mortgages under the *Land Title Act 1994* and *Land Act 1994*.

Domestic and Family Violence Reforms

The proposed amendments are largely consistent with fundamental legislative principles. The use of AV link or audio link in proceedings under the DFVP Act may be considered a departure from the legislative principle that legislation should have sufficient regard to individuals’ rights and liberties, including that legislation should be consistent with principles of natural justice in the LSA, section 4(3)(b). An individual’s right to be heard may be infringed to the extent that the use of AV link or audio link in proceedings may negatively impact members of the community who have limited access to, or familiarity with, technology-based facilities or who may be otherwise disadvantaged by the use of such facilities. The right to equality before the law may similarly be impacted, particularly where culturally and linguistically diverse communities and people with disability may be disadvantaged by the use of technology.

The proposed amendments are considered reasonable and justified given that the use of AV link or audio link in proceedings will be at the court’s discretion, parties can still

choose to attend proceedings in person and that, as a whole, the amendments increase accessibility in proceedings where individuals have access to this technology.

Consultation

Documents Reforms

Consultation on the Documents Reforms was undertaken with a wide range of legal, health and community stakeholders, including the Queensland Law Society, the Bar Association of Queensland, the Property Council of Australia, the Australian College of Nurse Practitioners and the Australian Medical Association of Queensland. A consultation paper, together with an exposure draft of the Bill, was released on a confidential basis to key stakeholders in June 2021. Further consultation was conducted directly with key stakeholders on the Documents Reforms prior to the finalisation of the Bill.

Overall, stakeholders expressed broad support for the Documents Reforms. Legal stakeholders strongly supported making permanent many of the reforms introduced on a temporary basis during the COVID-19 emergency that modernised the way certain documents were made, brought many efficiencies, reduced transaction costs and aligned with contemporary business practice.

Given the significance of the changes to the way important legal documents are made, some stakeholders emphasised the importance of sufficient safeguards. This included concerns that the solemnity of making these important documents not be eroded by the introduction of electronic signatures and witnessing over AV link.

Domestic and Family Violence Reforms

Consultation on a draft version of the Domestic and Family Violence Reforms was undertaken with key DFV and legal stakeholders, who expressed general support for the reforms.

Several stakeholders raised discrete issues regarding the draft version of the DFV provisions, which have been addressed in the Bill, where appropriate, to balance greater accessibility and flexibility for DFV proceedings while ensuring appropriate safeguards for DFV victims are maintained (beyond the COVID-19 emergency including access to domestic violence supports).

In accordance with the requirements of section 57C of the *Magistrates Courts Act 1921*, the Chief Magistrate has consented to the amendments to the *Domestic and Family Violence Protection Rules 2014*.

Liquor Reforms

In May and June 2021, the LGFT division of DJAG undertook consultation on an original proposal to allow licensed restaurants and cafés operating under a subsidiary on-premises licence (meals) to sell takeaway liquor as of right until 10pm:

- with a takeaway food order; and

- in amounts not exceeding 2.25 litres of liquor (excluding straight spirits) – equivalent to three bottles of wine or either a six-pack of beer, cider or pre-mixed alcoholic drinks.

The original proposal exactly mirrored the allowances under temporary takeaway liquor authorities granted to licensees of a subsidiary on-premises licence (meals) since 23 March 2020 in response to limitations placed on businesses during the COVID-19 pandemic.

Overall, 12 stakeholders made submissions in response to consultation. Of these, four stakeholders supported the proposal: Restaurants and Caterers Association (R&CA); the QSBC; Chamber of Commerce and Industry Queensland (CCIQ); and the Independent Brewers Association (IBA). The proposal was supported on the basis of:

- *Benefits to restaurant and café operators* – by allowing licensees to meet customer demands for greater choice and convenience in takeaway food and beverage offerings. The R&CA’s submission notes this is a growing trend that emerged prior to the COVID-19 health emergency, with online food delivery services increasing from 15.4% in 2017 to 31.2% in 2018, and indicates the acceleration of this trend due to the pandemic and reliance on takeaway and delivery will be permanent for the restaurant, café and catering sector; and
- *No evidence of alcohol related harm* – The R&CA submission notes the provision of takeaway liquor in this manner (i.e. as allowed by the temporary changes introduced through the COVID-19 pandemic) poses a low risk from a responsible service of alcohol perspective.

Eight stakeholders did not support the proposal: Queensland Hotels Association; Retail Drinks Australia; RSL and Services Clubs Association Queensland Incorporated; Queensland Coalition for Action on Alcohol; Foundation for Alcohol Research & Education; Drug ARM; the Queensland Network of Alcohol and Other Drug Agencies; and the United Workers Union. The issues raised against the proposal include:

- lack of community need or justification for continuing the arrangements of the COVID-19 temporary takeaway liquor authority on a permanent basis;
- lack of rigour under the current framework for takeaway liquor sales leading to the irresponsible supply of liquor and adverse intoxication outcomes resulting from home delivery of liquor;
- the significant increase in the number of packaged liquor outlets in Queensland increases the risk of alcohol-related harm arising from;
- increased potential for irresponsible supply of alcohol and adverse intoxication by allowing takeaway liquor to be sold with nominal amounts of prepared food (e.g. hot chips);
- allowing restaurants to sell up to 2.25 litres of wine under the COVID-19 temporary takeaway liquor authority is considered to pose a greater risk of harm due to its high alcohol content per volume, particularly if the wine is consumed immediately; and

- adverse impacts for commercial hotels and bottle shops, including the potential loss of business to restaurants and cafés operating as ‘de facto bottle shops’.

Having regard to concerns raised by stakeholders, amendments in the Bill provide for greater regulatory oversight and responsible service of alcohol practices. These include:

- *Responsible service and delivery of takeaway alcohol* – licensees seeking the ability to sell takeaway liquor will be required to apply to the Office of Liquor and Gaming Regulation for the approval to do so. Under that process, licensees will need to establish adequate systems to ensure the responsible service and delivery of alcohol. The Commissioner may apply further conditions to an approval to ensure takeaway liquor is served responsibly;
- *Provision of a full meal* – takeaway food sold with takeaway wine must be of a substance to be accepted as a meal, and not just a snack. The provision of a meal with alcohol is a known responsible service of alcohol measure. However, licensees of a subsidiary on-premises licence with the principal activity of providing prepared food rather than meals (i.e. licensed cafés) will be unable to obtain an approval to sell takeaway liquor;
- *Limitation on wine* – the maximum volume of wine able to be sold with a takeaway meal has been reduced from 2.25 litres (i.e. three bottles) to 1.5 litres (i.e. two bottles). This provides consistency with existing provisions allowing the sale of one opened and one unopened bottle of takeaway wine to adults dining on the premises. The limitations on the amount and type of takeaway liquor able to be sold with a takeaway meal also reduce the likelihood for the operation of restaurants as de facto bottle shops; and
- *Removal beer and pre-mixed alcoholic drinks* – given some beer and pre-mixed alcoholic drinks with spirits have a very high percentage of alcohol by volume, therefore posing a greater risk of adverse intoxication, these types of liquor will not be able to be sold for takeaway.

On 20 July 2021, LGFT asked stakeholders supporting the original proposal to provide feedback on the key components of the above changes. While the R&CA and CCIQ support the changes, the QSBC and IBA were not supportive on the basis that the changes create additional regulatory burden that would disproportionately impact small business restaurant and café owners.

The Office of Best Practice Regulation have been consulted on the liquor reforms in the Bill. Given the proposal is primarily deregulatory in nature and preserves harm minimisation requirements, no further regulatory impact analysis is required.

Consistency with legislation of other jurisdictions

The Bill is specific to the State of Queensland and is not uniform with or complementary to legislation of the Commonwealth or another state.

Documents Reforms

All of the states and territories, except for the Northern Territory, introduced temporary laws providing for modified arrangements for document execution during the COVID-19 emergency. To date, only Victoria has legislated to make permanent their reforms in relation to transforming the way documents are made and witnessed.

The Bill would broadly bring Queensland into line with the reforms in Victoria, except that the Victorian legislation also extends their reforms to enduring documents and wills. The Victorian legislation also permits general powers of attorney for corporations and individuals to be signed electronically if witnessed over AV link (but not if witnessed in person). However, in Victoria, a general power of attorney for an individual, corporation or other business is not required to be witnessed unless the general power of attorney is signed by another person at the direction of the person making the document (in which case it could be witnessed in person or over AV link).

The Bill is also consistent with recent amendments to the requirements for the execution of documents (including deeds) by corporations under the *Corporations Act 2001* (Cth) made by the *Treasury Laws Amendment (2021 Measures No. 1) Act 2021*.

As technology is constantly evolving, the Bill deliberately adopts a technology-neutral approach to electronic signatures so that the legislation is sufficiently flexible to keep pace with technology and be responsive to emerging issues, including developments in other jurisdictions.

Domestic and Family Violence Reforms

The reforms are broadly consistent with permanent measures in other states and territories to modernise and streamline access to justice for domestic and family violence victims through expanded use of electronic filing and AV / audio links in line with courts capability.

Liquor Reforms

The Liquor Reforms contained in the Bill are specific to the State of Queensland and are not uniform with or complementary to legislation of the Commonwealth or another state. However, other jurisdictions, including the Australian Capital Territory and Victoria, offer licensing options that allow restaurants and/or cafés to sell liquor for off-premises consumption in certain circumstances.

On 23 June 2021, the Victorian Government introduced further legislation providing for eligible licences, including restaurants and cafés, to be granted a licence condition as of right enabling the sale of one 750ml bottle of wine or either a six-pack of beer, cider or mixed spirits with a takeaway meal, subject to the following conditions:

- delivery of takeaway liquor is limited to persons 18 years of age and over during ordinary trading hours of the venue; and
- the licensee must notify the Commission before commencing the supply of takeaway liquor or supply of liquor by online orders.

On 24 August 2021, the South Australian Government introduced a Bill that provides for the licensing authority to impose a licence condition that authorises licensees of prescribed licences, including a restaurant and catering licence, to sell, as of right, either two bottles of wine or one bottle of wine and a six-pack of beer, cider or pre-mixed spirits with a takeaway meal between 8am and 10pm.

Notes on provisions

Part 1 – Preliminary

Short title

Clause 1 sets out the short title of the Act which will be the *Justice Legislation (COVID-19 Emergency Response—Permanency) Amendment Act 2021*.

Commencement

Clause 2 sets out the parts of the Bill which will commence on proclamation. All other parts of the Bill will commence on assent.

Part 2 – Amendment of COVID-19 Emergency Response Act 2020

Act amended

Clause 3 states that this part of the Bill amends the *COVID-19 Emergency Response Act 2020*.

Amendment of s 23 (Regulation-making power for retail leases and other prescribed leases)

Clause 4 amends section 23 of the *COVID-19 Emergency Response Act 2020* to provide that a regulation made under the section must be made before the COVID-19 legislation expiry day and expires two years after the COVID-19 legislation expiry day, unless it is sooner repealed.

Part 3 – Amendment of Domestic and Family Violence Protection Act 2012

Act amended

Clause 5 provides that this part amends the *Domestic and Family Violence Protection Act 2012*.

Amendment of s 27 (When can a court make a temporary protection order)

Clause 6 amends section 27 (When can a court make a temporary protection order) to replace existing paragraphs (b) and (c) to enable the court to make a temporary protection order in circumstances where the applicant has not verified by statutory declaration an application for a protection order or an application for a variation of a protection order.

New subparagraph (b)(ii) provides that the court can make a temporary protection order if the applicant for a protection order has: asked the clerk of the court under section 36 for a hearing before the application is served on the respondent; and without the applicant verifying the application by statutory declaration (giving the court a verification declaration). New subparagraph (b)(i) replicates in effect existing paragraph (b).

New subparagraph (c)(ii) provides that the court can make a temporary protection order if the applicant for the variation of a protection order has: asked the clerk of the court under section 90 for a hearing before the application is served on the respondent; and without the applicant verifying the application by statutory declaration (giving the court a variation declaration). New subparagraph (c)(i) replicates in effect existing paragraph (c).

Amendment of s 32 (Application for protection order)

Clause 7 amends section 32 (Application for protection order) paragraph (2)(d) to provide that a statutory declaration used to verify an application by applicant who is not a police officer is a defined term “a verification declaration”.

This clause also amends section 32 to insert a new subsection (3) to provide that the requirement for an applicant who is not a police officer to verify an application for a protection order by a statutory declaration (as provided in subparagraph 32(2)(d)) does not apply to an applicant if the clerk of the court agrees to grant the applicant’s request for a hearing under new subparagraph 36(2)(b).

Amendment of s 34 (Service of application)

Clause 8 amends subsection (1) in section 34 (Service of application) to insert a note that an applicant may ask the court for a hearing before the application is served on the respondent (for the purpose of making a temporary protection order under part 3, division 2 of the Act).

Replacement of s 36 (Applicant may ask clerk of court for hearing before respondent is served)

Clause 9 replaces section 36 (Applicant may ask clerk of court to provide for hearing before respondent is served or without giving verification declaration) to provide an additional ground on which the applicant for a protection order may ask the clerk of the court to arrange for a hearing, for the purpose of the court making a temporary protection order under part 3, division 2 of the Act.

Subsections (1) and (2)(a) together replicate the existing ground in subsection 36(1).

New paragraph (2)(b) provides for an additional ground. The applicant may ask the clerk of the court for a hearing before the application is served on the respondent and without the applicant giving the court a verification declaration. The purpose of this new ground is to allow a private applicant for a protection order the option to verify the application at a hearing before the court as an alternative to verifying the application by a statutory declaration (for the purpose of court making a temporary protection order under division 2 of the Act).

New subsection (3) provides that section 36 applies despite section 34 (Service of application), replicating the existing subsection 36(2).

Amendment of s 44 (When court may make temporary protection order)

Clause 10 amends section 44 (When court may make temporary protection order) by replacing paragraphs (1)(d) and (1)(e) to allow the court to make a temporary protection order where the applicant has not verified by statutory declaration an application for a protection order or an application for a variation of a protection order.

New subparagraph (1)(d)(ii) provides that the court may make a temporary protection order if the applicant for a protection order has asked the clerk of the court under section 36 for a hearing before the application is served on the respondent and without the applicant giving the court a verification declaration. New subparagraph (1)(d)(i) replicates in effect existing paragraph (1)(d).

Under new subparagraph (1)(e)(ii) the court may make a temporary protection order if the applicant for the variation of a protection order has asked the clerk of the court under section 90 for a hearing before the application is served on the respondent and without the applicant giving the court a variation declaration. New subparagraph (1)(e)(i) replicates in effect existing paragraph (1)(e).

Amendment of s 45 (Matters court must be satisfied of)

Clause 11 amends a cross-reference in section 45 (Matters court must be satisfied of) to section 44(1)(b) of the Act.

Insertion of new s 47A

Clause 12 inserts a new section 47A (Temporary protection order when applicant unable to give declaration). As provided in new subsection (1), the new section will apply if an applicant for a protection order or an applicant for a variation of a domestic violence order has not verified the application by statutory declaration.

Subsection (2) provides that the court may make a temporary protection order against the respondent only if the applicant verifies that the application is true and correct by taking an oath or making an affirmation. This method of verification of the application is an alternative to the applicant verifying the application by statutory declaration.

Subsection (3) confirms that new section 47A applies in addition to section 45 (Matters courts must be satisfied of). A new note is also inserted in subsection (3) to cross-reference section 142A which provides that the court may enable a person to take an oath or make an affirmation by AV link or audio link.

Amendment of s 86 (Application for variation)

Clause 13 amends section 86 (Application for variation) by inserting new subsection (2A) to provide that the requirement under paragraph (2)(d), for an applicant who is not a police officer to verify an application for a variation of a domestic violence order by a statutory declaration (“a variation declaration”), does not apply to an applicant if the clerk of the court agrees to grant the applicant’s request for a hearing under section 90(2)(b).

Amendment of s 88 (Service of application)

Clause 14 amends section 88 (Service of application) to insert a note in subsection (1) that under section 90, an applicant may ask the court for a hearing before the application is served on the respondent (that is, for the purpose of making a temporary protection order under part 3, division 2 of the Act).

Replacement of s 90 (Particular applicants may ask clerk of court for hearing before respondent is served)

Clause 15 replaces section 90 (Particular applicants may ask clerk of court for hearing before respondent is served or without variation declaration) to provide an additional ground on which the applicant for a variation of a domestic violence order who is a person, other than the respondent, may ask the clerk of the court to arrange for a hearing, for the purpose of the court making a temporary protection order under part 3, division 2.

Subsections (1) and (2)(a) replicate the existing ground in section 90.

New paragraph (2)(b) provides that the applicant may ask the clerk of the court for a hearing before the application is served on the respondent and without the applicant giving the court a variation declaration. The purpose of this new ground is to allow the applicant the option to verify the application at a hearing before the court as an alternative to verifying the application by a statutory declaration (for the purpose of the court making a temporary protection order under part 3, division 2).

New subsection (3) provides that section 90 applies despite section 88.

Insertion of new s 142A

Clause 16 inserts a new section 142A (Use of AV links or audio links—Magistrates Court) to clarify that proceedings under the Act before a Magistrates Court (the court) can be conducted by AV links or audio links.

New subsection (2) provides that the court may conduct all or part of the proceedings by AV links or audio links.

Under new subsection (3), the court may enable a person to appear before the court, give evidence or make a submission, and take an oath or make an affirmation by AV or audio link.

New subsection (4) provides that a person who appears before the court by AV or audio link for all or part of a proceeding is taken to be present before the court.

New subsection (5) provides a definition for “Magistrates Court” for this section.

Amendment of s 154 (Court may issue subpoena)

Clause 17 amends section 154 (Court may issue subpoena) to fix an irregularity in the cross-referencing of section 145(1)(a).

Insertion of new pt 10, div 4

Clause 18 inserts a new Part 10, Division 4 (Transitional provisions for *Justice Legislation (COVID-19 Emergency Response—Permanency) Amendment Act 2021*), which provides transitional provisions for part 3 of this Act.

New section 229 (Definitions for division) provides definitions for the transitional provisions.

New section 230 (Use of AV links or audio links) provides that a proceeding commenced under the alternative arrangements for the use of AV links or audio links provided under section 6 of the repealed regulation (the *Domestic and Family Violence (COVID Emergency Response) Regulation 2020*) but was not finalised immediately before commencement may continue under the new section 142A.

New section 231 (Particular applications for protection order filed before the commencement) provides that section 7 of the repealed regulation continues to apply to an applicant who before commencement filed an application for a protection order under former section 32 of the Act but did not verify the application under former section 32(2)(d).

New section 232 (Particular variation applications filed before the commencement) provides that section 8 of the repealed regulation continues to apply to an applicant who before commencement filed an application for a variation of a domestic violence order under the former section 86 of the repealed regulation but did not verify the application under former section 86(2)(d).

Amendment of schedule (Dictionary)

Clause 19 amends the schedule (Dictionary) to insert new definitions for “variation declaration” and “verification declaration”.

Part 4 – Amendment of Domestic and Family Violence Protection Rules 2014

Rules amended

Clause 20 states that this part amends the *Domestic and Family Violence Protection Rules 2014*.

Amendment of r 9 (How document is to be filed)

Clause 21 amends rule 9 (How document is to be filed) by replacing the rule heading (How documents may be filed—general) and inserting new subrule (1)(c) to define “electronic” as filing of document under rule 9A (including a party who is not a police officer) or electronic filing of documents by a police officer (as currently provided under subrule (4)).

Insertion of new rr 9A and 9B

Clause 22 inserts new rules 9A (How particular parties may file documents electronically) and 9B (Approvals given by principal registrar).

New rule 9A allows a party to a proceeding, other than a police officer, to file a document electronically if the principal registrar approves: the electronic filing of the document, or documents of that class and the electronic file format for the document, or class of documents. Rule 9A also includes a notation to refer to the *Oaths Act 1867* which provides for how an affidavit or statutory declaration may be signed electronically and made in counterparts.

Under new subrule (2) the party files a document electronically if the document is sent electronically to the registry and the party receives an electronic message from the registry that the document was received.

New subrule (3) provides that a document filed electronically in the registry may be retained in electronic form by the registry and is taken to be a document in a court file.

New Rule 9B provides that an approval given by the principal registrar under rule 9A(1) may be given on conditions and must be published on the Queensland Courts website. New subrule (3) confirms that the failure of the principal registrar to publish the approval on the Queensland Courts website does not affect the validity of the approval.

Amendment of r 35 (Requirements for affidavits)

Clause 23 inserts a new subrule in rule 35 to make it clear that the requirements of the *Oaths Act 1867* also apply.

Amendment of r 36 (Swearing or affirming affidavits)

Clause 24 amends the note in rule 36. This amendment is consequential to the amendments to the *Oaths Act 1867* in part 6 of this Act.

Amendment of sch 2 (Dictionary)

Clause 25 amends schedule 2 (Dictionary) to provide a definition of principal registrar, with reference to the existing definition of principal registrar in the *Uniform Civil Procedure Rules 1999*, schedule 3.

Part 5 – Amendment of Liquor Act 1992

Act amended

Clause 26 provides that this part amends the *Liquor Act 1992*.

Amendment of s 4 (Definitions)

Clause 27 amends section 4 (Definitions) to insert a new definition for “takeaway meal”. This new definition aligns with the existing definition for “meal” under section 4 which currently states that a meal is food eaten by a person sitting at a table, or fixed

structure used as a table, with cutlery provided for the purpose of eating the food; and is of sufficient substance as to be ordinarily accepted as a meal.

Accordingly, the new definition of “takeaway meal” means food that is ordinarily eaten by a person sitting at a table with cutlery provided, is of sufficient substance as to be ordinarily accepted as a meal and is sold on licensed premises to be consumed off the premises. While a takeaway meal is food that would ordinarily be eaten at a table with cutlery provided, the restaurant licensee does not need to provide cutlery with the takeaway meal under the new definition.

Amendment of s 9 (Ordinary trading hours)

Clause 28 amends subsections (1A)(d) and (1C) in section 9 (Ordinary trading hours) to provide that the ordinary trading hours for the sale of takeaway liquor from a premises that is subject to a subsidiary on-premises licence (meals) are between 10am and 10pm. This ensures the ordinary trading hours for the sale of takeaway liquor by licensed restaurant operators aligns with the ordinary trading hours for the sale of takeaway liquor under the authority of a commercial hotel licence, community club licence or commercial special facility licence.

Amendment of s 67A (Principal activity is the provision of meals)

Clause 29 amends section 67A (Principal activity is the provision of meals).

Subsection (1) amends section 67A(2)(a) to clarify that the authority of a subsidiary on-premises licence (meals) allows the sale and supply of liquor for consumption on the premises (in association with or without a person eating a meal) during the ordinary trading hours or approved extended trading hours for the premises.

Subsection (2) amends section 67A(2)(b) to clarify that the authority of a subsidiary on-premises licence (meals) allows the sale and supply of one opened and one unopened bottle of wine for consumption off the premises to each adult consumer eating a meal on the premises, during the ordinary trading hours or approved extended trading hours for the premises. The amendment ensures that the existing authority to sell one opened and one unopened bottle of takeaway wine to patrons dining on the premises during ordinary hours until midnight or approved extended hours to 1am is not affected by the amendments limiting takeaway liquor sales with a takeaway meal to 10pm.

Subsection (3) inserts new section 67A(2)(c) to provide that the authority of a subsidiary on-premises licence (meals) licence allows the sale of takeaway liquor with the provision of a takeaway meal during the ordinary trading hours (takeaway liquor) as newly defined in section 67A(4), being 10am to 10pm as mentioned in section 9(1C). To utilise this authority, the licensee must be subject to the appropriate condition mentioned in new section 67AA.

Subsection (4) inserts new section 67A(3A) which provides that despite section 225, if the sale of takeaway liquor is authorised under new section 67A(2)(c), the licence also enables takeaway liquor purchased prior to 10pm to be removed from the premises up until the end of the trading hours for on premises liquor consumption being midnight or 1am. Section 225 would otherwise limit the removal of liquor to

30 minutes after the maximum time for takeaway liquor sales being 10.30pm which is not considered a reasonable or convenient timeframe for collection by customers.

Subsection (5) amends section 67A(4) to insert a new definition for “ordinary trading hours (takeaway liquor)” to clarify that the ordinary trading hours for the sale of takeaway liquor for the premises are the hours of 10am to 10pm as mentioned in section 9(1C).

The clause also renumbers subsections (3A) and (4) due to the insertion of new subsections.

Insertion of new s 67AA

Clause 30 inserts new section 67AA (Sale of particular takeaway liquor) to provide an ability for licensees holding a subsidiary on-premises licence (meals) to which section 67A applies, to apply to vary the conditions of the licence to sell takeaway liquor.

Subsection (1) provides that new section 67AA only applies if the Commissioner for Liquor and Gaming (Commissioner) is satisfied that the licensee has, or will have, relevant systems and procedures in place to ensure the responsible service of takeaway liquor. For example, systems requiring the identification of online customers to prevent liquor service to minors. The provisions allow for the relevant systems and procedures to be established and for further conditioning powers to be exercised (where necessary) to ensure systems and procedures are appropriately implemented by the licensee following approval of the condition to sell takeaway liquor.

Subsection (2) empowers the Commissioner to impose a condition on a subsidiary on-premises licence (meals) authorising the licensee to sell a maximum volume of 1.5 litres of wine with each sale that includes a takeaway meal.

Subsection (3) provides the Commissioner with the power to impose further conditions on the licence to ensure the responsible service of takeaway liquor. The subsection outlines examples of the types of conditions that may be imposed, which include: keeping records about proof of age; notification of systems and procedures changes; and specifying the type, volume or product of liquor.

Subsection (4) ensures new section 67AA does not limit the power of the Commissioner, under part 5, to impose, amend or revoke conditions on a licence.

Amendment of s 67E (Restriction on sale of liquor for consumption off premises)

Clause 31 amends section 67E (Restriction on sale of liquor for consumption off premises). Amendments to section 67E(4) ensure the restrictions relating to the sale of liquor in the course of providing catering facilities for functions under section 67E(1) and (2) do not apply in relation to the authority for the sale of takeaway liquor under new section 67A(2)(c).

Amendment of s 162 (Taking liquor onto or away from premises subject to subsidiary on-premises licence)

Clause 32 amends section 162 (Taking liquor onto or away from premises subject to subsidiary on-premises licence) to maintain the existing provisions enabling liquor to be brought onto, or away from licensed premises. New section 162(3)(a)(ii)(C) ensures that a person does not commit an offence if the person takes takeaway liquor from the premises that was sold under the authority of a subsidiary on-premises licence (meals) pursuant to new section 67A(2)(c).

Insertion of new pt 12, div 23

Clause 33 inserts a new Part 12, Division 23 (Transitional provision for *Justice Legislation (COVID-19 Emergency Response—Permanency) Amendment Act 2021*) to waive the application fee on applications for the permanent takeaway liquor condition until 1 July 2022.

New section 357 (No fee payable for particular applications to vary subsidiary on-premises licences (meals)) provides that despite section 105(1)(d), no application fee will be payable for an application to vary the licence in relation to the sale of takeaway liquor under new section 67A(2)(c) if, before commencement, a licensee was the holder of a licence for a licensed premises the subject of a takeaway liquor authority granted under Part 10A; and immediately before the commencement, the licensee held a subsidiary on-premises licence (meals) to which section 67A applied; and on or before 30 June 2022, the licensee applies under section 105 to vary the licence in relation the sale of takeaway liquor under new section 67A(2)(c). For the purpose of the fee waiver, a licensee will be considered subject to a temporary liquor authority even if the temporary liquor authority was granted under Part 10A to the class of licensee, and not the individual licensee. The prescribed fee will apply to applications for the permanent takeaway liquor condition from 1 July 2022.

Part 6 – Amendment of Oaths Act 1867

Act amended

Clause 34 provides that this part of the Bill amends the *Oaths Act 1867*.

Amendment of s 1B (Definitions)

Clause 35 amends section 1B (Definitions) to include further definitions in the *Oaths Act 1867*, including for “accepted method” and “counterpart”.

An “accepted method”, for electronically signing an affidavit or declaration, means a method prescribed in a regulation made under new section 13A(1), or stated in a rule of court or practice direction made, given, issued or approved under new section 13A(2).

If no method is prescribed, or no rule of court or practice direction has been made, given, issued or approved, an “accepted method” means a method that:

- (a) identifies the signatory and the signatory’s intention in relation to the contents of the document; and
- (b) is either:

- as reliable as appropriate for the purpose for which the document is signed, having regard to all the circumstances, including any relevant agreement; or
- proven in fact to have fulfilled the functions described in (a), by itself or together with further evidence.

This definition is consistent with the signature requirements contained in section 14(1) of the *Electronic Transactions (Queensland) Act 2001*, and is subject to any regulation made under the *Oaths Act 1867* prescribing what is not an accepted method for electronically signing an affidavit or statutory declaration.

A “counterpart”, for a document, is defined to mean a copy of the document that includes the entire contents of the document but does not include the signatures of all the other persons who are to sign the document. An affidavit or statutory declaration made using counterparts will necessarily comprise two or more separate (identical) documents, each showing only one or more signatures but not all signatures. For example, if an affidavit is signed by one signatory and one witness, then the signatory will sign one counterpart and the witness will sign a separate counterpart that does not contain the signatory’s signature.

Amendment of pt 4, hdg (Statutory declarations)

Clause 36 amends the heading to part 4 of the *Oaths Act 1867* to “Affidavits and statutory declarations”.

Amendment, relocation and renumbering of s 13 (Who may take declarations)

Clause 37 amends the heading to section 13 of the *Oaths Act 1867* (Who may take declarations) and amends the section to replace the words “take” or “taken” with the words “witness” or “witnessed”. The clause also inserts a new subparagraph (d) into section 13(1) to provide that other persons may be prescribed for the section. This amendment allows the list of eligible witnesses who may witness declarations in person to be expanded by way of regulation.

The clause also inserts a new note after section 13(1) referring to section 13E and part 6A for requirements for witnessing a declaration by AV link.

A new subsection (1A) is inserted into section 13 of the *Oaths Act 1867* to provide that a regulation may prescribe the types of declarations that may be witnessed and may prescribe conditions, or a regulation may specify the types of declarations that may not be witnessed in person. Existing subsection (3) is omitted, and then subsections (1A) and (2) are then consequentially renumbered as (2) and (3).

Section 13 is relocated to new division 3 of part 4, inserted by the Bill, and renumbered as section 16B.

Insertion of new pt 4, div 1, div 2, hdg and ss 13A–13E

Clause 38 inserts two new divisions into part 4 of the *Oaths Act 1867* – Division 1 Preliminary and Division 2 General requirements for affidavits and declarations.

Division 1 Preliminary contains three new sections – section 11, section 12 and section 13.

New section 11 (Definitions for part) provides new definitions for part 4 of the *Oaths Act 1867*, including for the terms “administer”, “make”, “special witness” and “witness”.

New section 12 (Special witnesses) defines a “special witness” as a person who is:

- an Australian legal practitioner;
- a government legal officer under the *Legal Profession Act 2007* who is an Australian lawyer and who witnesses documents in the course of the government work engaged in by the officer;
- a justice of the peace or commissioner for declarations approved by the chief executive;
- a justice of the peace or commissioner for declarations employed by a law practice that prepared the document and who witnesses documents in the course of that employment;
- a notary public; or
- for a document prepared by the public trustee – a justice of the peace or commissioner for declarations who is an employee of the public trustee.

New section 13 (References to witnesses, signatories and substitute signatories) clarifies the meaning of references to a witness, a signatory and a substitute signatory, for the purposes of part 4 relating to affidavits and statutory declarations. This section also provides that, for an affidavit or declaration, the witness is the person who administers an oath or affirmation to the person making the document, and the signatory is the person who makes or gives an oath or affirmation for the person’s affidavit or declaration before it is made.

Division 2 General requirements for affidavits and declarations contains new sections 13A–13E.

New section 13A (Accepted methods for electronically signing affidavits or declarations) provides that a regulation may prescribe what is and what is not an accepted method for electronically signing an affidavit or a declaration, including for affidavits or declarations that may be filed or admitted into evidence in a court or tribunal proceeding.

Subsection (2) provides that a court or tribunal may make, give, issue or approve rules of court or practice directions about acceptable methods for electronically signing affidavits or declarations that may be filed or admitted into evidence in a court or tribunal proceeding. Subsection (3) provides that when making, giving, issuing or approving a rule or practice direction, the court or tribunal must consider the need to ensure consistency with the rules or practice directions of other courts and tribunals.

Subsection (4) provides that a regulation made under subsection (1) will prevail to the extent of any inconsistency with a rule or practice direction.

New section 13B (Jurat of affidavit) prescribes requirements for the jurat of an affidavit. The requirements apply to all affidavits, regardless of whether they are made, signed or

witnessed in person or by AV link, and regardless of whether they are signed electronically or physically.

The section requires the signatory for an affidavit to ensure that the affidavit's jurat states the following matters:

- that the affidavit was made in the form of an electronic document (if applicable);
- that the affidavit was electronically signed (if applicable);
- that the affidavit was made, signed and witnessed by AV link under part 6A (if applicable);
- that the contents of the affidavit are either true, or true to the best of the knowledge of the person making the statement; and
- that the signatory understands that a person who provides a false matter in the affidavit commits an offence.

This information could be included in a pre-filled form or can be manually inserted into the document.

New section 13C (Statement in declaration) prescribes requirements for declarations. The requirements apply to all declarations, regardless of whether they are made, signed or witnessed in person or by AV link, and regardless of whether they are signed electronically or physically.

The section requires the signatory for a declaration to ensure that the declaration states the following matters:

- that the declaration was made in the form of an electronic document (if applicable);
- that the declaration was electronically signed (if applicable);
- that the declaration was made, signed and witnessed by AV link under part 6A (if applicable);
- that the contents of the declaration are either true, or true to the best of the knowledge of the person making the statement; and
- that the signatory understands that a person who provides a false matter in the declaration commits an offence.

This information could be included in a pre-filled form or can be manually inserted into the document.

New section 13D (Witness must verify particular matters) provides that a person who witnesses an affidavit or a declaration must take reasonable steps to verify the identity of the signatory and that the name of the signatory matches the name of the signatory written on or in the affidavit or declaration. The requirements apply to all affidavits and declarations regardless of whether they are made, signed or witnessed in person or by AV link, and regardless of whether they are signed electronically or physically.

New section 13E (Additional requirement for witness for affidavit or declaration) prescribes information requirements for witnesses (including special witnesses) in relation to affidavits and declarations. These requirements apply to all affidavits and declarations, regardless of whether they are made, signed or witnessed in person or by

AV link, and regardless of whether the affidavit or declaration is signed electronically or on paper.

The witness must include, on the affidavit or declaration, all of the following information:

- the witness's full name;
- the type of witness they are under section 16A (for affidavits) or section 16B (for declarations) (if applicable);
- if they are an Australian legal practitioner and an employee of, or a partner in, a law practice – the name of the law practice;
- if they are not employed by, or a partner in, a law practice – the witness's place of employment (if applicable); and
- any other information prescribed by regulation for this section.

If the witness is a special witness, the special witness must include the following information on the affidavit or declaration:

- the witness's full name;
- that they are a special witness;
- the type of special witness they are under section 12(1);
- if they are an Australian legal practitioner and an employee of, or a partner in, a law practice – the name of the law practice;
- if they are not employed by, or a partner in, a law practice – the witness's place of employment (if applicable);
- an acknowledgment that they have understood and complied with the requirements for witnessing a document by AV link (if applicable); and
- any other information prescribed by regulation for this section.

Insertion of new pt 4, div 3

Clause 39 inserts a new division 3 (Signing in physical presence of witness) into part 4 of the *Oaths Act 1867*.

New section 16 (Application of division) provides that this division applies to an affidavit or a declaration signed in the physical presence of a witness, including a special witness. The section also inserts a note referring to part 6A for requirements for witnessing an affidavit or a declaration by AV link.

Note that clause 41 renumbers, renames and relocates section 41 of the *Oaths Act 1867* (Who may witness affidavits) as section 16A and moves that into this division. Note also that clause 37 renumbers, renames and relocates section 13 of the *Oaths Act 1867* (Who may witness declarations) as section 16B and moves that into this division.

New section 16C (Affidavit or declaration electronically signed in physical presence of witness) applies if a signatory or substitute signatory signs an affidavit or a declaration in the physical presence of a witness.

Subsection (2) provides that the affidavit or declaration may be made in the form of an electronic document and may be electronically signed if the witness is a special witness for the affidavit or declaration or a person prescribed by regulation for this section.

Subsection (3) provides that a regulation made under subsection (2) may provide that a prescribed person can witness affidavits or declarations only of a prescribed type and subject to conditions, or the regulation may specify the types of affidavits or declarations that a prescribed person may not witness.

Subsection (4) provides that if the affidavit or declaration is in the form of an electronic document and electronically signed, the witness may confirm the affidavit or declaration by signing:

- the electronic document; or
- a true copy; or
- a counterpart for the electronic document.

A witness confirming a document under this section may use either a physical or electronic signature to sign electronic document, or a true copy of the document, or a counterpart for the electronic document. For example, while the signatory or substitute signatory may sign the document using an electronic signature, the witness may physically sign a printout of the electronic document or vice versa. Alternatively, the witness may use an electronic signature to confirm (sign) the same electronic document signed by the signatory or substitute or may electronically sign a separate counterpart.

Subsection (5) provides that a justice of the peace or commissioner for declarations who confirms an electronic document is not required to imprint their seal of office on the document.

Subsection (6) provides that that new section 16C does not apply to a declaration lodged or deposited in the land registry or water allocations register.

Subsection (7) is an avoidance of doubt provision to make it clear that this section applies to a declaration that is supporting evidence under the participation rules under the Electronic Conveyancing National Law (Queensland) (ECNL), for a document that is lodged electronically under section 7 of the ECNL. The effect of subsections (6) and (7) is that a statutory declaration that is used for a land or water allocations dealing can only be made and signed electronically if it is part of a transaction that occurs using eConveyancing. If eConveyancing is not used, the document must be physically signed and otherwise witnessed in accordance with the Act.

New section 16D (Effect of affidavit or declaration electronically signed in physical presence of witness) provides that this section applies to an affidavit or declaration under new section 16C if either:

- the affidavit or declaration was made in electronic form and signed electronically, and the witness confirmed the affidavit or declaration by signing the same electronic document; or
- the affidavit or declaration is made using counterparts in the form of electronic documents.

Subsection (2) provides that if the affidavit or declaration is made using counterparts in the form of electronic documents, the counterpart confirmed by the witness must be kept with the document signed by the signatory or substitute signatory and together, these documents constitute the affidavit or declaration.

Subsection (3) provides that if the affidavit or declaration is required to be given, produced or used for any purpose, the electronic document or a printout of the electronic document, or the counterparts or a printout of the counterparts constituting the affidavit or declaration, may be given, produced or used for the purpose and relied on as evidence of the affidavit or declaration.

Subsection (4) provides that a court may still require production of the electronic document, or the counterparts in the form of electronic documents, in a proceeding.

Insertion of new pt 6A

Clause 40 inserts a new part 6A (Audio visual links) into the *Oaths Act 1867*.

New section 31B (Definitions for part) inserts new definitions for the part.

New section 31C (References to witnesses, signatories and substitute signatories) clarifies the meaning of references to a witness, a signatory and a substitute signatory, for the purposes of new part 6A. This section also provides that, for an affidavit or declaration, the witness is the person who administers an oath or affirmation to the person making the document, and the signatory is the person who makes or gives an oath or affirmation for the person's affidavit or declaration before it is made.

New section 31D (Application of division) provides that division 2 of new part 6A applies to an affidavit made, signed or witnessed under the *Oaths Act 1867* or another law.

New section 31E (Presence by AV link) provides that a witness, signatory, substitute signatory or other person can be present by AV link for the making, signing or witnessing of an affidavit if the signatory's oath or affirmation is administered by a special witness or prescribed person and the making, signing or witnessing of the affidavit complies with division 5 requirements.

New section 31F (Affidavit may be in form of electronic document and electronically signed) provides that an affidavit may be made in the form of electronic document and electronically signed if:

- (a) the witness, signatory, substitute signatory or another person in relation to the making, signing or witnessing of the affidavit is present by AV link; and
- (b) the affidavit is made, signed and witnessed in accordance with division 5.

New section 31G (Admission of affidavit not complying with requirements) gives courts the power to admit a purported affidavit into evidence in limited circumstances when the affidavit does not strictly comply with requirements under the Act or any regulation, rule of court or practice direction made under section 13A in relation to acceptable methods of electronic signature. The relevant court must be satisfied that compliance with the requirements in relation to the purported affidavit was not reasonably practicable and the purported affidavit must state the reasons why compliance was not reasonably practicable. The court may admit the purported affidavit into evidence in a proceeding if the court considers it is desirable in the interests of justice.

New section 31H (Disapplication of s 33) disapplies section 33 of the *Oaths Act 1867* for affidavits made, signed or witnessed under division 2 of new part 6A. This displaces the requirement for the Bible, or the Old Testament or the New Testament, to be used when witnessing an affidavit by AV link, given that the person may not have one available.

New section 31I (Application of division) provides that division 3 of new part 6A applies to a declaration made, signed or witnessed under the *Oaths Act 1867* or another law.

New section 31J (Presence by AV link) provides that a witness, signatory, substitute signatory or other person can be present by AV link for the making, signing or witnessing of a declaration if the signatory's oath or affirmation is administered by a special witness or person prescribed by regulation under section 31S, and the making, signing or witnessing of the declaration complies with division 5 requirements.

New section 31K (Declaration may be in form of electronic document and electronically signed) provides that a declaration may be made in the form of an electronic document and electronically signed if:

- (a) the witness, signatory, substitute signatory or another person in relation to the making, signing or witnessing of the declaration is present by AV link; and
- (b) the declaration is made, signed and witnessed in accordance with division 5.

Subsection (2) provides that new section 31K does not apply to a statutory declaration lodged or deposited in the land registry or water allocations register. Subsection (3) is an avoidance of doubt provision to make it clear that a declaration may be in the form of an electronic document and may be electronically signed if the declaration is supporting evidence under the participation rules under the ECNL, for a document that is electronically lodged under section 7 of the ECNL. The effect of subsections (2) and (3) is that a statutory declaration that is used for a land or water allocation dealing can only be made and signed electronically if it is part of a transaction that occurs using eConveyancing. If eConveyancing is not used, the document must be physically signed and must otherwise be witnessed in accordance with the Act (but could still be witnessed over AV link).

New section 31L (Disapplication of s 33) disapplies section 33 of the *Oaths Act 1867* for declarations made, signed or witnessed under division 3 of new part 6A. This displaces the requirement for the Bible, or the Old Testament or the New Testament, to be used when witnessing a declaration by AV link, given that the person may not have one available.

New section 31M (Application of division) provides that division 4 of new part 6A applies to oaths or affirmations, however described, that are administered or made anywhere (for example, in open court) by authorised persons. An authorised person is defined in section 1B (Definitions) as a person who is authorised by law to administer a person's oath or affirmation. This division does not apply to oaths or affirmations made or administered for affidavits under division 2 or for declarations under division 3. The division also does not apply to oaths of allegiance or office under part 2 of the *Oaths Act 1867*.

New section 31N (Presence by AV link) provides that 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 can be satisfied if the authorised person is present by AV link.

New section 31O (Disapplication of s 33) disappplies section 33 of the *Oaths Act 1867* in relation to oaths or affirmations made under division 4 of new part 6A. This displaces the requirement for the Bible, or the Old Testament or the New Testament, to be used when administering an oath or affirmation by AV link, given that the person may not have one available.

New section 31P (Persons who may be directed to sign) applies to substitute signatories in two scenarios – firstly, where the substitute signatory is directed by a signatory in the signatory's physical presence and the document is to be witnessed by a witness who is present over AV link, and secondly, where the substitute signatory is directed by a signatory over AV link to sign a document for a signatory.

Subsection (2) excludes the following persons from signing a document as a substitute signatory in the aforementioned scenarios:

- a person excluded under an Act or other law from signing a document as a substitute signatory;
- a person witnessing the document; or
- 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.

Subsection (3) provides that only the following persons can act as a substitute signatory when the substitute signatory is directed over AV link to sign a document:

- an Australian legal practitioner;
- a government legal officer under the *Legal Profession Act 2007* who is an Australian lawyer and who witnesses documents in the course of the government work engaged in by the officer; or
- an employee of the public trustee.

Subsection (4) provides that “relation, of a person” has the same meaning as defined in Schedule 3 of the *Powers of Attorney Act 1998*, being:

- a spouse of the first person; or
- a person who is related to the first person by blood, marriage or adoption or because of a de facto relationship, foster relationship or a relationship arising because of a legal arrangement; or
- a person on whom the first person is completely or mainly dependent; or
- person who is completely or mainly dependent on the first person; or
- a person who is a member of the same household as the first person.

New section 31Q (Substitute signatory signing in physical presence of witness requires special witness) provides that where a substitute signatory is directed by AV link to sign a document in the physical presence of a witness, the witness must be a special witness. That is, the substitute signatory and witness are physically present with each other but the signatory is present over AV link.

New section 31R (Witness must observe direction and verify particular matters) contains additional requirements for persons who witness the signing of a document by a substitute signatory who is directed by the signatory by AV link. The witness must:

- observe the signatory direct the substitute signatory to sign the document;
- be satisfied that the substitute signatory is a permitted signatory under new section 31P; and
- be satisfied that the signatory is freely and voluntarily giving the direction to sign.

New section 31S (Witness must be special witness or another prescribed person) provides that a document may be witnessed over AV link only if the witness is a special witness or another person prescribed by regulation for this section. A regulation may provide that prescribed persons can witness affidavits or declarations only of a prescribed type and subject to conditions, or the regulation may specify the types of affidavits or declarations that a prescribed person may not witness.

New section 31T (General requirements for witnessing documents) provides that a document witnessed over AV link must meet certain requirements, including that the witness is able to be satisfied, in real time, by sounds and images made by the AV link, that the signatory or substitute signatory is signing the document. The witness must also be satisfied that the signatory is freely and voluntarily signing the document or directing the substitute signatory to sign the document.

New section 31U (Confirmation of signed document by witness) provides that a person who witnesses a document over AV link must take steps to confirm the document witnessed as soon as practicable. This may occur on the same day the document is witnessed or a later day. The witness may confirm a document (by signing the document) as the document witnessed only if the person is satisfied the document:

- (a) is the document signed; or
- (b) is a true copy of the document signed; or
- (c) is a counterpart for the document signed.

A true copy of a document can be, for example, a scanned copy of a signed document sent electronically to the witness (this could be sent by email or otherwise made available online). A true copy could also be a printout of such a scanned copy or a printout of an electronically signed document.

Subsection (3) provides that a justice of the peace or commissioner for declarations who confirms an electronic document is not required to imprint their seal of office on the document.

A witness can confirm a document as the document witnessed by AV link using either a physical signature or an electronic signature. For example, the signatory or substitute signatory may physically sign a physical document, which is then scanned and emailed to the witness for confirmation. The witness may choose to apply an electronic signature to the scanned document, or the witness may physically sign a printout of the scanned document. Alternatively, the signatory or substitute signatory may electronically sign an electronic document, and the witness may electronically sign the document, true copy or a counterpart of the electronic document.

New section 31V (Action after witness confirms document) provides that after confirming a document witnessed, the witness must give the document, a true copy or a counterpart of the document, to the signatory or a person to whom the signatory directs the document, true copy or counterpart be given. The term “give” is defined to include give by electronic means, by allowing online computer access or give by post. For example, a witness could upload the document, or a scanned copy of the document, to a file sharing website from which the person can access and download the document.

New section 31W (When document starts to be effective) provides that a document made, signed and witnessed under new part 6A is effective from when the signatory or substitute signatory signs the document, once the document is confirmed by the witness. Once the document is confirmed by the witness, the document’s effective date is backdated to the date when the signatory or substitute signatory signed the document.

New section 31X (Presumptions) contains statutory presumptions about the regularity of documents made, signed or witnessed under new part 6A for the purposes of a proceeding.

New section 31Y (Official and originating versions of document) provides that when a witness confirms the document signed by the signatory or substitute signatory, or a true copy of that document under section 31U(2)(a) or (b), that document is taken to be the official version of the document for evidentiary purposes. The section requires that both the originating version (that is, the version that was originally signed by the signatory or substitute signatory) and the official version (that is, the version of the document that was confirmed by the witness) must be kept together. This section does not apply to affidavits or declarations signed in counterparts (refer to new section 31Z instead).

The process for witnessing documents over AV link under this part provides flexibility as to how signatures can be applied and how documents, copies or counterparts can be used. Below are some of the scenarios that are possible:

- A signatory signs a physical document (the originating version), witnessed over AV link by a special witness. The document is posted or physically delivered to the witness for confirmation. The witness signs the document, and then scans and emails the document back to the signatory or relevant person. The scanned document, or a printout of the scanned document, containing the signatures of both the signatory and the witness is the official version.
- A signatory signs a physical document (the originating version), witnessed over AV link by a special witness. The signatory scans and emails a copy of the signed document to the witness for confirmation. The witness physically signs a printout of the scanned document, and then scans and emails that document back to the signatory or relevant person. The scanned document, or a printout of the scanned document, containing the signatures of both the signatory and the witness is the official version.
- A signatory applies an electronic signature to an electronic document (the originating version), witnessed over AV link by a special witness. The document is emailed to the witness for confirmation. The witness electronically signs the

document, and send its back to the signatory or relevant person. The electronic document, or a printout of the electronic document, containing both signatures is the official version.

- A signatory applies an electronic signature to an electronic document (the originating version), witnessed over AV link by a special witness. The document is emailed to the witness for confirmation. The witness physically signs a printout of the document, and then scans and emails a copy to the signatory. The scanned document, or a printout of the scanned document, containing the signatures of both the signatory and the witness is the official version.

New section 31Z (Documents made using counterparts) applies to affidavits and declarations made using counterparts, which is where witness confirms a counterpart for a document signed by the signatory or substitute signatory under section 31U(2)(c). This section provides that the counterpart confirmed by the witness must be kept with the counterpart signed by the signatory or substitute signatory. Together, these documents constitute the affidavit or declaration and can be relied on as evidence or for any other purpose.

Unlike a document produced using the originating/official version method, a counterpart of a document does not contain the signature of all persons who are to sign the document. For example, for an affidavit for a single deponent, the witness would sign a copy of the affidavit that does not contain the signature of the deponent (i.e. a counterpart).

For an affidavit made by two or more deponents, each deponent may either sign the same document or separate copies of the same document (i.e. counterparts), and the witness (or witnesses) also signs a separate copy of the document (i.e. counterpart).

New section 31ZA (Lodgement or deposit of documents in land register or water allocations register) provides that if an official version of a document is lodged or deposited in the land registry or water allocations register, the registrar of titles under the *Land Title Act 1994* or the registrar of water allocations under the *Water Act 2000* has the power to require the originating version of a document to be lodged or deposited with the official version. If a document is made using counterparts, each counterpart must be lodged or deposited in the land registry or water allocations register.

New section 31ZB (AV recording of signing or witnessing of document) provides that an AV recording of the signing or witnessing of a document may be made only with the consent of the signatory, witness and, if applicable, the substitute signatory. Whether or not an AV recording is made does not affect the validity of the document, or the signing or witnessing of the document.

Amendment, relocation and renumbering of s 41 (Who make take affidavits)

Clause 41 amends the heading to section 41 of the *Oaths Act 1867* (Who may take affidavits) and amends the section to replace the words “take” or “taken” with the words “witness” or “witnessed”. The clause also inserts new subparagraph (e) into section 41(1) of the *Oaths Act 1867* (Who may take affidavits) to provide that other persons

may be prescribed for the section. This amendment allows the list of eligible witnesses for the taking of affidavits in person to be expanded by regulation.

The clause also inserts a new note after section 41(1) referring to section 13E and part 6A for requirements for witnessing an affidavit by AV link.

A new subsection (1A) is inserted into section 41 of the *Oaths Act 1867* to provide that a regulation may prescribe the types of affidavits that may be witnessed and may prescribe conditions, or a regulation may specify the types of affidavits that cannot be witnessed in person. Existing subsection (3) is omitted, and then subsections (1A) and (2) are then consequentially renumbered as (2) and (3).

The amendment also relocates section 41 to part 4, division 3, and renumbers the section as section 16A.

Insertion of new s 44

Clause 42 inserts a new regulation-making power into the *Oaths Act 1867* and provides that a regulation may be made about the making, signing and witnessing of affidavits and declarations.

Insertion of new pt 8

Clause 43 inserts a new part 8 into the *Oaths Act 1867* (Transitional provisions for Justice Legislation (COVID-19 Emergency Response—Permanency) Amendment Act 2021) which contains transitional provisions for amendments made in the Bill.

New section 45 (Definition for part) provides definitions for the new part 8.

New section 46 (Repealed regulation continues to apply to affidavit or declaration in particular circumstances) provides a transitional provision for the scenario where a document was signed and witnessed before commencement, and at commencement the witness had not confirmed the document or complied with requirements under the repealed *Justice Legislation (COVID-19 Emergency Response—Documents and Oaths) Regulation 2020* (the repealed regulation). In these circumstances, the repealed regulation will continue to apply to the witness. This provision allows incomplete documents to be finished after the commencement.

New section 47 (Repealed regulation continues to apply to particular documents) provides that sections 22 to 26 of the repealed regulation will continue to apply to any documents made, signed or witnessed under the repealed regulation, including any documents to which new section 46 applies. This ensures that provisions that apply to the future retention and use of documents made under the repealed regulation continue to apply to the documents after commencement.

Part 7 – Amendment of Powers of Attorney Act 1998

Clause 44 provides that this part amends the *Powers of Attorney Act 1998*.

Amendment of s 12 (Execution of powers of attorney)

Clause 45 inserts a note referring to part 3A in relation to general powers of attorney for businesses.

Insertion of new ch 2, pt 3A

Clause 46 inserts a new part 3A (General powers of attorney for businesses) into chapter 2 of the *Powers of Attorney Act 1998*. The part introduces a new modernised framework for making, signing and witnessing general powers of attorney for businesses, including corporations, partnerships and unincorporated associations, similar to amendments to the *Property Law Act 1974* in part 8 of the Bill.

New section 24A (Definitions for part) inserts definitions for the new part including definitions for “accepted method”, for electronically signing a general power of attorney, “business” and “corporation”.

An “accepted method”, for electronically signing a general power of attorney, means a method prescribed under new section 24G, or if no method is prescribed, means a method that:

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

This definition is consistent with the signature requirements contained in section 14(1) of the *Electronic Transactions (Queensland) Act 2001*, and is subject to any regulation made under new section 24G prescribing what is not an accepted method for electronically signing a general power of attorney.

A “business” means a corporation, a partnership under the *Partnership Act 1891* or other unincorporated associations. The definition excludes sole traders. A “corporation” is defined to include a corporation under the *Corporations Act 2001* (Cth), a corporation sole and a statutory corporation.

New section 24B (What is a *counterpart* for a document) provides that a counterpart for a document is a copy of the document including its entire contents, but need not (although it could) include the signatures of the other persons who are to sign the document or, if a common seal is fixed to the document, the seal.

New section 24C (Application of part) provides that new part 3A applies to a general power of attorney for a business. It also applies to a document revoking a general power of attorney.

The provisions in new part 3A will prevail to the extent of any inconsistency with other provisions in the *Powers of Attorney Act 1998*.

New section 24D (Relationship with other laws) provides that if there is an inconsistency between new part 3A and any other law relating to general powers of attorney, new part 3A will prevail to the extent of the inconsistency. An exception is provided for in subsection (2) which provides that new part 3A does not affect the way in which general powers of attorney are executed under the *Land Title Act 1994* or the *Land Act 1994*. The effect of this provision means that general powers of attorney for corporations, partnerships and unincorporated associations must be executed in accordance with the requirements set out in section 161 of the *Land Title Act 1994* or section 310 of the *Land Act 1994* if they are to be lodged or deposited in the land registry. General powers of attorney for corporations, partnerships and unincorporated associations made for other purposes can be made in accordance with the new requirements in part 3A.

New section 24E (No sealing required) provides that a general power of attorney may be made without a seal, even if it is stated to be sealed.

New section 24F (General power of attorney may be in form of electronic document and electronically signed) provides that a general power of attorney for a business may be made in the form of an electronic document and electronically signed, if executed under new part 3A.

New section 24G (Accepted method for electronically signing general power of attorney) provides that a regulation may prescribe an accepted method, or what is not an accepted method, for electronically signing a general power of attorney for a business.

New section 24H (Execution by corporation) specifies how a corporation may execute a general power of attorney.

Subsection (1) provides that a corporation may execute a general power of attorney, without using a common seal, if the document is signed by:

- (a) 2 directors of the corporation; or
- (b) 1 director and 1 secretary of the corporation; or
- (c) for a proprietary company that has only 1 director – that director, if the director is also the sole company secretary or the company does not have a company secretary; or
- (d) a lawfully authorised agent or attorney of the corporation, whether or not the agent or attorney is appointed under seal.²

Subsection (2) provides that a corporation with a common seal may execute a general power of attorney if the seal is fixed to the document and the fixing of the seal is witnessed by:

- (a) 2 directors of the corporation;
- (b) 1 director and 1 secretary of the corporation; or

² This displaces the common law rule which requires an agent acting on behalf of a corporation to be appointed by deed in order for them to execute a deed on behalf of the corporation.

- (c) for a proprietary company that has only 1 director – that director, if the director is also the sole company secretary or the company does not have a company secretary.

Subsection (3) provides that, for the purposes of subsection (2), the fixing of a common seal may be witnessed over AV link by a person mentioned in (a), (b) or (c) if:

- the person observes the fixing of the seal by AV link
- the person signs the document; and
- the document includes a statement that the person observed the fixing of the seal by AV link.

Subsection (4) provides that 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.

Subsection (5) provides that for a foreign corporation, the document may be signed by a person, or in a way, authorised by the law of the place in which the corporation is incorporated.

Subsection (6) provides that a general power of attorney for a corporation may be signed under this section, whether or not in the presence of a witness. This provision makes it clear that witnessing is not required.

Subsection (7) provides that where a general power of attorney for a corporation is signed by a lawfully authorised agent or attorney for the corporation, the person must:

- sign the general power of attorney in a way that indicates the person is signing as a lawfully authorised agent or attorney; and
- if the person is a corporation – sign the general power of attorney under this section.

Subsection (8) provides that this section does not limit the ways in which a general power of attorney for a corporation may be executed by the corporation. For example, a company regulated by the *Corporations Act 2001* (Cth) may comply with the execution requirements for companies prescribed in section 127 of that Act. Also, a corporation may execute a general power of attorney in accordance with any mode of execution or attestation authorised by the charter, memorandum or articles, deed of settlement or other instrument constituting the corporation or regulating the affairs of the corporation.

Subsection (9) defines “attorney”, “director” and “secretary” for the purposes of this section.

New section 24I (Execution by partnership or unincorporated association) specifies how a partnership or unincorporated association may execute a general power of attorney. An individual may execute a general power of attorney on behalf of a partnership or unincorporated association by signing the general power of attorney, whether or not in the presence of a witness. The individual must sign the general power of attorney in a way that indicates they are executing the general power of attorney on behalf of the partnership or unincorporated association. The section does not limit or

otherwise affect another law or instrument that requires or permits a general power of attorney executed on behalf of a partnership or unincorporated association to be executed in a particular way. For example, the partnership agreement establishing the partnership may require that a general power of attorney executed for a partnership must be executed by particular partners or a stated number of partners.

New section 24J (Requirement for signatory) provides that a person signing a general power of attorney for a business must include the following information on the general power of attorney near their signature:

- the person's full name
- the person's office or designation in relation to the business.

New section 24K (Signing counterpart or true copy) allows a general power of attorney for a business to be signed in counterparts if 2 or more persons are to sign the document. A person signing can sign a counterpart or a true copy of the general power of attorney.

New section 24L (Lodgement or deposit of general power of attorney in registry) applies to general powers of attorney that are to be lodged or deposited in the land registry or water allocation register under the *Water Act 2000*.

Subsection (2) provides that if the general power of attorney is made in counterparts, each counterpart must be deposited in the registry.

Subsection (3) provides that if the general power of attorney or a counterpart of the general power of attorney is in the form of an electronic document, a certified printed copy must be deposited in the registry.

Subsection (4) sets out the certification requirements for a printed copy of a general power of attorney. The printed copy must be certified as a true copy of the original general power of attorney or counterpart:

- on the last page of the printed copy; and
- by 1 of the following persons:
 - 1 of the signatories
 - a lawyer
 - a justice of the peace
 - a commissioner for declarations
 - a notary public
 - a trustee company under the *Trustee Companies Act 1968*
 - a stockbroker.

Amendment of s 44 (Formal requirements)

Clause 47 amends section 44 (Formal requirements) of the *Powers of Attorney Act 1998* to allow nurse practitioners, in addition to doctors, to sign a certificate (which forms part of an advance health directive) stating that the person making the document appears to have capacity to make the document.

New subsection (9) of section 44 defines a nurse practitioner to mean 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.

Insertion of new ch 9, pt 5

Clause 48 inserts a new part 5 into chapter 9 of the *Powers of Attorney Act 1998* (Transitional provisions for Justice Legislation (COVID-19 Emergency Response—Permanency) Amendment Act 2021) containing transitional provisions for amendments made in the Bill.

New section 176 (Definitions for part) provides definitions for the new part.

New section 177 (Repealed regulation continues to apply to general power of attorney in particular circumstances) provides transition arrangements for the circumstance where a general power of attorney was signed and witnessed under the repealed *Justice Legislation (COVID-19 Emergency Response—Documents and Oaths) Regulation 2020* (the repealed regulation) before commencement, and at commencement the witnessed document had not been confirmed or a special witness certificate had not been signed or another requirement had not been complied with by the witness. In this circumstance, the repealed regulation will continue to apply to the witness. This will allow incomplete documents to be finished after the commencement.

New section 178 (Signing general power of attorney for corporation) provides clarity in relation to the situation where a general power of attorney was required to be signed by 2 or more persons, but at commencement not all persons had signed the document. In that situation, any required signatory may sign the general power of attorney in accordance with the repealed regulation and any requirements under the repealed regulation will continue to apply to the general power of attorney.

New section 179 (Repealed regulation continues to apply to particular general power of attorney) provides that sections 22 to 26 of the repealed regulation will continue to apply to any general power of attorney made, signed or witnessed under the repealed regulation, including any general powers of attorney to which new sections 177 or 178 apply. This ensures that documents made under the repealed regulation continue to be valid and provisions about retention and future use of the documents continue to apply.

New section 180 (Certificate signed by nurse practitioner that is included in advance health directive) applies to an advance health directive made after commencement. *Clause 47* amends section 44(6) of the *Powers of Attorney Act 1998* to provide that a nurse practitioner, in addition to a doctor, may sign and date a certificate that is included in the advance health directive. The purpose of this transitional provision is to clarify that, after commencement, a nurse practitioner can sign the certificate whether or not it is stated in the approved form for the advance health directive that the nurse practitioner may sign the certificate.

Amendment of sch 3 (Dictionary)

Clause 49 amends the dictionary to include further definitions.

Part 8 – Amendment of the Property Law Act 1974

Act amended

Clause 50 provides that this part amends the *Property Law Act 1974*.

Replacement of ss 44–46

Clause 51 omits existing sections 44 to 46 of the *Property Law Act 1974* and replaces them with a new modernised framework for the making of deeds by individuals, corporations, partnerships and unincorporated associations (but not sole traders). Part 6, Division 1 is subdivided into 2 subdivisions – Subdivision 1 (Preliminary) and Subdivision 2 (General rules).

New section 44 (Definitions for division) provides definitions for the new framework, including definitions for “accepted method”, for electronically signing a document, and “consent”.

An “accepted method”, for electronically signing a document, means a method that:

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

“Consent” is defined to include consent that can reasonably be inferred from the conduct of the person concerned, but does not include consent given subject to conditions unless the conditions are complied with.

These definitions are consistent with the signature requirements contained in section 14(1) of the *Electronic Transactions (Queensland) Act 2001*, which also includes a consent requirement (including inferred consent).

New section 45 (What is a *counterpart* for a document) provides that a counterpart for a document is a copy of the document that includes its entire contents, but need not (although it could) include the signatures of the other persons who are to sign the document or if a common seal is fixed to the document, the seal.

New section 46 (Division does not apply to enduring documents) provides this division does not apply to enduring documents under the *Powers of Attorney Act 1998*.

New section 46A (Application of division to powers of attorney) provides that a general power of attorney made by an individual under the *Powers of Attorney Act 1998* or a power of attorney given by an individual under a deed must be a physical document that is signed in the presence of a witness. In this section, an “individual” includes an individual in their capacity as a sole trader.

This provision makes it clear that a document which is stand-alone power of attorney for an individual, whether made under the *Powers of Attorney Act 1998* or in the form of a deed, must be signed on paper and witnessed. This provision is consistent with the amendments to the *Powers of Attorney Act 1998* made in this Bill which only permit general powers of attorney for businesses to be made in electronic form and electronically signed, without any witnessing requirements. A “business” is defined under the *Powers of Attorney Act 1998* to exclude sole traders, who are treated as individuals.

Subsection (2) provides an exception to the rule in subsection (1) for documents which contain a power of attorney for an individual under a deed. If the document is part of a commercial or other arms-length transaction, and the power of attorney is given for the purpose of the commercial or other arms-length transaction, then the deed may be made in the form of an electronic document and electronically signed without a witness.

The purpose of this provision is to allow commercial deeds to benefit from the reforms in this Bill whilst ensuring that limitations and safeguards continue to protect the interests of vulnerable individuals and to protect against risks of elder abuse. For example, this provision will ensure that the following types of commercial deeds that contain a power of attorney can be executed electronically and without a witness:

- mortgages, leases and contracts for sale;
- contracts for off the plan sales of community titles scheme lots, where a power of attorney is given by the buyer in favour of the developer/seller to enable the developer to vote on particular disclosed matters at body corporate meetings for a period of time after the scheme is created;
- contracts requiring dealings to be signed and registered after settlement, where the buyer grants an irrevocable power of attorney in favour of the seller to sign a dealing if the buyer fails to do so within a specified timeframe;
- development agreements, co-ownership agreements and joint venture agreements containing powers of attorney exercisable by a non-defaulting party in certain circumstances to enable to project to proceed.

Subsection (3) is an avoidance of doubt provision to make it clear that if a power of attorney given by an individual under a deed is able to be electronically signed by the individual under subsection (2) then it may be signed by the individual with or without a witness. Execution requirements applicable to the other parties to a deed to which subsection (2) relates will be governed by the relevant provisions in subdivision 2

New section 46B (Execution of documents under other Acts) provides that this division does not affect the way in which documents are validly executed under the *Land Title Act 1994* or the *Land Act 1994*. The effect of this provision is that deeds that are lodged or deposited in the land registry will need to comply with the execution requirements contained in section 161 of the *Land Title Act 1994* or section 310 of the *Land Act 1994*.

New section 46C (How deed is made generally) provides that a document takes effect as a deed if the document:

- is in writing; and
- contains a clear statement that the document is a deed; and
- is executed under this division; and
- is delivered in accordance with section 47.

Subsection (2) provides that a document takes effect as a deed even if:

- it is not written on paper or parchment; or
- it is not an indenture or stated to be an indenture; or
- it is not sealed or stated to be sealed.

This provision displaces common law requirements for deeds.

New section 46D (Deed may be in form of electronic document and electronically signed) provides that a document that is to have effect as a deed may be made in the form of an electronic document and may be electronically signed.

New section 46E (Execution by individual) provides that an individual may execute a document that is to have effect as a deed by signing the document. New section 44 inserts a definition for “sign” which, for a physical document, means to physically sign the document and, for an electronic document, means to electronically sign the document.

Subsection (2) provides that an individual may sign a deed, whether or not in the presence of a witness. This provision makes it clear that witnessing is not required for deeds made by individuals.

New section 46F (Execution by corporation) specifies how a corporation may execute a document that is to have effect as a deed.

Subsection (1) provides that a corporation may execute a deed, without using a common seal, if the document is signed by:

- (a) 2 directors of the corporation;
- (b) 1 director and 1 secretary of the corporation;
- (c) for a proprietary company that has only 1 director – that director, if the director is also the sole company secretary or the company does not have a company secretary; or
- (d) a lawfully authorised agent or attorney of the corporation, whether or not the agent or attorney is appointed under seal.³

Subsection (2) provides that a corporation with a common seal may execute a deed using its common seal if the seal is fixed to the document and the fixing of the seal is witnessed by:

- (a) 2 directors of the corporation;
- (b) 1 director and 1 secretary of the corporation; or
- (c) for a proprietary company that has only 1 director – that director, if the director is also the sole company secretary or the company does not have a company secretary.

Subsection (3) provides that, for the purposes of subsection (2), the fixing of the common seal may be witnessed by AV link by a person mentioned in (a), (b) or (c) if:

- the person observes the fixing of the seal by AV link; and
- the person signs the document; and

³ This provision displaces the common law rule which requires an agent acting on behalf of a corporation to be appointed by deed in order for them to execute a deed on behalf of the corporation.

- the document includes a statement that the person observed the fixing of the seal by AV link.

Subsection (4) provides that for a statutory corporation, the document may be signed by a person, or in a way, authorised by the Act under which the corporation is established, incorporated or registered.

Subsection (5) provides that for a foreign corporation, the document may be signed by a person, or in a way, authorised by the law of the place in which the corporation is incorporated.

Subsection (6) provides that a deed for a corporation may be signed in accordance with new 46E, whether or not in the presence of a witness. This provision makes it clear that witnessing is not required for deeds executed by corporations.

Subsection (7) provides that where a deed for a corporation is signed by a lawfully authorised agent or attorney for the corporation, the person must:

- sign the document in a way that indicates the person is signing as a lawfully authorised agent or attorney; and
- if the person is an individual – sign the document under new section 46D (execution by individual)
- if the person is a corporation – sign the document under new section 46E (execution by corporation).

Subsection (8) provides that this section does not limit the ways in which a deed for a corporation may be executed by the corporation. For example, a company regulated by the *Corporations Act 2001* (Cth) may comply with the execution requirements for companies prescribed in section 127 of that Act. A company can also execute a deed in accordance with any mode of execution or attestation authorised by law or practice or by the statute, charter, memorandum or articles, deed of settlement or other instrument constituting the corporation or regulating the affairs of the corporation.

Subsection (9) defines “attorney” for a corporation to mean a person acting under the authority of a power of attorney given by the corporation under a deed, a general power of attorney under the *Powers of Attorney Act 1998*, or another law.

New section 46G (Execution by partnership or unincorporated association) specifies how a deed may be executed on behalf of a partnership or unincorporated association. An individual may execute a document that is to have effect as a deed on behalf of a partnership or unincorporated association by signing the document, whether or not in the presence of a witness. The individual must sign the document in a way that indicates the person is executing the document on behalf of the partnership or unincorporated association. The section does not limit or otherwise affect another law or instrument that requires or permits a deed executed on behalf of a partnership or unincorporated association to be executed in a particular way. For example, the partnership agreement establishing the partnership may require that a deed be executed for a partnership must be executed by particular partners or a stated number of partners.

New section 46H (Signing counterpart or true copy) provides that a deed for an individual, corporation, partnership or unincorporated association may be signed using counterparts or by signing a true copy of the document.

New subsection (2) provides that 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 document about the method used for electronically signing the document.

This provision removes requirements for corporate officers to physically sign the same physical document, reversing the effect of the court's decision in *Adelaide Bank v Pickard* [2019] SASC 13.

Amendment of s 47 (Delivery of deeds)

Clause 52 makes a minor consequential amendment to replace subsection (1)(b) of section 47 of the *Property Law Act 1974* (Delivery of deeds) to remove references to sections which have replaced by this Bill and to provide for deeds made in another form now provided for under new subdivision 1 (Deeds and covenants) of part 6 of the *Property Law Act 1974*. This amendment does not change the concept of delivery and is purely consequential in nature.

Insertion of new ss 53A and 53B

Clause 53 inserts new sections 53A and 53B into the *Property Law Act 1974* after section 53.

New section 53A (Deposit of deed in registry) applies to a deed that is to be deposited in the land registry or the water allocations register under the *Water Act 2000* in support of another document lodged or deposited in the registry, or for registration, enrolment or recording under section 241(1) of the *Property Law Act 1974*.

Subsection (2) provides that if the deed is made in counterparts, each counterpart must be deposited in the registry for the purpose.

Subsection (3) provides that if the deed or a counterpart of the deed is in the form of an electronic document, a certified printed copy of the deed or counterpart must be deposited in the registry for the purpose.

Subsection (4) sets out the certification requirements for a printed copy of a deed or counterpart made in electronic form. The printed copy must be certified as a true copy of the original deed or counterpart:

- on the last page of the printed copy; and
- by 1 of the following persons:
 - 1 of the signatories;
 - a lawyer;
 - a justice of the peace;
 - a commissioner for declarations;
 - a notary public;
 - a trustee company under the *Trustee Companies Act 1968*; or
 - a stockbroker.

New section 53B (Protection for third parties) provides that a person may assume that a document has been validly executed by a corporation if the document appears to have been signed in accordance with section 46F(1) or, for corporations using their common seal, the common seal appears to have been fixed to the document and witnessed in accordance with section 46F(2). The provision allows third parties to rely on a document that appears to have been validly made under the new provisions without having to inquire as to the internal matters of the company. This section is consistent with the statutory assumptions provided for in section 129 of the *Corporations Act 2001* (Cth).

The provision provides statutory recognition of the common law indoor management rule. However, the protection is not absolute and common law exceptions to the rule continue to apply, including the exception of actual knowledge. Further, subsection (2) clarifies that the assumptions afforded by subsection (1) do not displace any requirement for a person to satisfy themselves that a person signing a document for or on behalf of a company actually holds that position or office.

There is no similar third party reliance provision for deeds executed on behalf of partnerships or unincorporated associations. A person who seeks to rely on a deed executed by an individual on behalf of a partnership or unincorporated association should make their own enquiries as to whether the document has been properly executed on behalf of the partnership or unincorporated association.

Insertion of new s 78A

Clause 54 inserts a new section 78A (Mortgages lodged electronically) into the *Property Law Act 1974* to clarify the arrangements with respect to “same terms” mortgages. The section applies where a mortgage is lodged under the Electronic Conveyancing National Law (Queensland) and the mortgagee holds a document that grants a mortgage by the mortgagor on the same terms as the lodged mortgage and complies with section 11 of the *Property Law Act 1974*. This is referred to as a “same terms” mortgage and is essentially a copy of the lodged mortgage with the legal status of an equitable mortgage. The new section 78A allows a “same terms” mortgage document to be signed by or for the mortgagor or mortgagee electronically and without a witness.

Insertion of new pt 26

Clause 55 inserts a new part 26 into the *Property Law Act 1974* (Transitional provisions for Justice Legislation (COVID-19 Emergency Response—Permanency) Amendment Act 2021) containing a transitional provision for the Bill.

New section 360A (Deed signed by different signatories before and after commencement) provides a transitional provision for the scenario where a deed was signed by an individual or corporation before the commencement, and another individual or corporation signs the deed after commencement. The individual or corporation signing the document after commencement may electronically sign the deed under new section 46C. The provision makes it clear that each signatory must sign the document in accordance with the law applicable at the time that they sign.

The repealed regulation permitted deeds to be electronically signed regardless of whether any other person consented to the method of electronic signature. However, after commencement, a party can only electronically sign a deed if the other parties consent to the method of electronic signature. The provision clarifies that a party's consent can be implied from conduct before commencement.

Amendment of sch 6 (Dictionary)

Clause 56 amends the dictionary to include further definitions.

Part 9 – Repeal

Clause 57 provides for the repeal of the *Domestic and Family Violence Protection (COVID-19 Emergency Response) Regulation 2020* and the *Justice Legislation (COVID-19 Emergency Response—Documents and Oaths) Regulation 2020*.

Part 10 – Minor and Consequential Amendments

Legislation amended

Clause 58 provides that Schedule 1 amends the legislation it mentions.

Schedule 1 – Minor and consequential amendments

Schedule 1 of the Bill makes minor amendments to legislation listed in the schedule to correct incorrect cross-referencing as a consequence of amendments made by the Bill.