



Queensland

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





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

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# 2021

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## A Bill

for

**An Act to amend the *COVID-19 Emergency Response Act 2020*, the *Domestic and Family Violence Protection Act 2012*, the *Domestic and Family Violence Protection Rules 2014*, the *Liquor Act 1992*, the *Oaths Act 1867*, the *Powers of Attorney Act 1998* and the *Property Law Act 1974* for particular purposes, to repeal 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*, and to make minor and consequential amendments of the legislation mentioned in schedule 1**

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[s 1]

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**The Parliament of Queensland enacts—** 1

**Part 1 Preliminary** 2

**Clause 1 Short title** 3

This Act may be cited as the *Justice Legislation (COVID-19  
Emergency Response—Permanency) Amendment Act 2021*. 4  
5

**Clause 2 Commencement** 6

Parts 3 to 10 and schedule 1 of this Act commence on a day to  
be fixed by proclamation. 7  
8

**Part 2 Amendment of COVID-19  
Emergency Response Act 2020** 9  
10

**Clause 3 Act amended** 11

This part amends the *COVID-19 Emergency Response Act  
2020*. 12  
13

**Clause 4 Amendment of s 23 (Regulation-making power for retail  
leases and other prescribed leases)** 14  
15

Section 23(6)— 16

*omit, insert—* 17

(6) A regulation under this section— 18

(a) must be made before the COVID-19  
legislation expiry day; and 19  
20

(b) expires 2 years after the COVID-19  
legislation expiry day, unless it is sooner  
repealed. 21  
22  
23

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<b>Part 3</b>	<b>Amendment of Domestic and Family Violence Protection Act 2012</b>	1 2 3
<b>Clause 5</b>	<b>Act amended</b>	4
	This part amends the <i>Domestic and Family Violence Protection Act 2012</i> .	5 6
<b>Clause 6</b>	<b>Amendment of s 27 (When can a court make a temporary protection order)</b>	7 8
	Section 27(b) and (c)—	9
	<i>omit, insert—</i>	10
	(b) the applicant for a protection order has asked the clerk of the court under section 36 for the application to be heard by the court—	11 12 13 14
	(i) before the application is served on the respondent; or	15 16
	(ii) before the application is served on the respondent and without the applicant giving the court a verification declaration; or	17 18 19 20
	(c) the applicant for the variation of a protection order has asked the clerk of the court under section 90 for the application to be heard by the court—	21 22 23 24
	(i) before the application is served on the respondent; or	25 26
	(ii) before the application is served on the respondent and without the applicant giving the court a variation declaration; or	27 28 29 30

[s 7]

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<b>Clause 7</b>	<b>Amendment of s 32 (Application for protection order)</b>	1
	(1) Section 32(2)(d), after ‘declaration’—	2
	<i>insert—</i>	3
	<b>(a verification declaration)</b>	4
	(2) Section 32—	5
	<i>insert—</i>	6
	(3) However, subsection (2)(d) does not apply to an applicant if the clerk of the court agrees to grant the applicant’s request under section 36(2)(b).	7 8 9
<b>Clause 8</b>	<b>Amendment of s 34 (Service of application)</b>	10
	Section 34(1)—	11
	<i>insert—</i>	12
	<i>Note—</i>	13
	Under section 36 an applicant may ask the court for a hearing before the application is served on the respondent.	14 15 16
<b>Clause 9</b>	<b>Replacement of s 36 (Applicant may ask clerk of court for hearing before respondent is served)</b>	17 18
	Section 36—	19
	<i>omit, insert—</i>	20
	<b>36 Applicant may ask clerk of court for hearing before respondent is served or without giving verification declaration</b>	21 22 23
	(1) This section applies for the purpose of the court making a temporary protection order under division 2.	24 25 26
	(2) The applicant for a protection order may ask the clerk of the court to arrange for the application to be heard by the court—	27 28 29

---

	(a) before the application is served on the respondent; or	1 2
	(b) before the application is served on the respondent and without the applicant giving the court a verification declaration.	3 4 5
	(3) This section applies despite section 34.	6
<b>Clause 10</b>	<b>Amendment of s 44 (When court may make temporary protection order)</b>	7 8
	Section 44(1)(d) and (e)—	9
	<i>omit, insert—</i>	10
	(d) the applicant for a protection order has asked the clerk of the court under section 36 for the application to be heard by the court—	11 12 13 14
	(i) before the application is served on the respondent; or	15 16
	(ii) before the application is served on the respondent and without the applicant giving the court a verification declaration; or	17 18 19 20
	(e) the applicant for the variation of a protection order has asked the clerk of the court under section 90 for the application to be heard by the court—	21 22 23 24
	(i) before the application is served on the respondent; or	25 26
	(ii) before the application is served on the respondent and without the applicant giving the court a variation declaration; or	27 28 29 30

[s 11]

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<b>Clause 11</b>	<b>Amendment of s 45 (Matters court must be satisfied of)</b>	1
	Section 45(2), ‘section 44(b)’—	2
	<i>omit, insert—</i>	3
	section 44(1)(b)	4
<b>Clause 12</b>	<b>Insertion of new s 47A</b>	5
	After section 47—	6
	<i>insert—</i>	7
	<b>47A Temporary protection order when applicant unable to give declaration</b>	8 9
	(1) This section applies if—	10
	(a) an applicant for a protection order has not given a court a verification declaration; or	11 12
	(b) an applicant for a variation of a domestic violence order has not given a court a variation declaration.	13 14 15
	(2) The court may make a temporary protection order against the respondent only if the applicant verifies, on oath or affirmation, that the application is true and correct.	16 17 18 19
	(3) To remove any doubt, it is declared that this section applies in addition to section 45.	20 21
	<i>Note—</i>	22
	Under section 142A a Magistrates Court may enable a person to take an oath or make an affirmation by audio visual link or audio link.	23 24 25
<b>Clause 13</b>	<b>Amendment of s 86 (Application for variation)</b>	26
	(1) Section 86(2)(d), after ‘declaration’—	27
	<i>insert—</i>	28
	(a <i>variation declaration</i> )	29



- 
- (2) Section 86— 1  
*insert*— 2  
    (2A) However, subsection (2)(d) does not apply to an 3  
        applicant if the clerk of the court agrees to grant 4  
        the applicant’s request under section 90(2)(b). 5
- (3) Section 86(2A) to (5)— 6  
*renumber* as section 86(3) to (6). 7

- Clause 14 Amendment of s 88 (Service of application) 8**  
Section 88(1)— 9  
*insert*— 10  
    *Note*— 11  
        Under section 90 an applicant may ask the court for a 12  
        hearing before the application is served on the 13  
        respondent. 14

- Clause 15 Replacement of s 90 (Particular applicants may ask clerk 15  
of court for hearing before respondent is served) 16**  
Section 90— 17  
*omit, insert*— 18  
    **90 Particular applicants may ask clerk of court for 19  
    hearing before respondent is served or 20  
    without variation declaration 21**  
    (1) This section applies— 22  
        (a) if the applicant for a variation of a domestic 23  
            violence order is a person other than the 24  
            respondent; and 25  
        (b) for the purpose of the court making a 26  
            temporary protection order under division 2. 27  
    (2) The applicant may ask the clerk of the court to 28  
        arrange for the application to be heard by the 29  
        court— 30

[s 16]

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	(a) before the application is served on the respondent; or	1 2
	(b) before the application is served on the respondent and without the applicant giving the court a variation declaration.	3 4 5
	(3) This section applies despite section 88.	6
<b>Clause 16</b>	<b>Insertion of new s 142A</b>	7
	After section 142—	8
	<i>insert—</i>	9
	<b>142A Use of audio visual links or audio links—Magistrates Court</b>	10 11
	(1) This section applies in relation to a proceeding under the Act before a Magistrates Court.	12 13
	(2) The Magistrates Court may conduct all or part of the proceeding by the use of audio visual links or audio links.	14 15 16
	(3) Without limiting subsection (2), the Magistrates Court may enable a person to do any of the following things by audio visual link or audio link—	17 18 19 20
	(a) appear before the Magistrates Court;	21
	(b) give evidence or make a submission to the Magistrates Court;	22 23
	(c) take an oath or make an affirmation.	24
	(4) If all or part of a proceeding is conducted by the use of audio visual links or audio links, a person who appears before the Magistrates Court for the proceeding is taken to be present before the Magistrates Court.	25 26 27 28 29
	(5) In this section—	30
	<i>Magistrates Court</i> means—	31

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	(a) if an application is made to a Magistrates Court—the Magistrates Court; or	1 2	
	(b) if an application is made to a magistrate—the magistrate.	3 4	
<b>Clause 17</b>	<b>Amendment of s 154 (Court may issue subpoena)</b>	5	
	Section 154(1), note, ‘section 145(1A)’—	6	
	<i>omit, insert—</i>	7	
	section 145(1)(a)	8	
<b>Clause 18</b>	<b>Insertion of new pt 10, div 4</b>	9	
	Part 10—	10	
	<i>insert—</i>	11	
	<b>Division 4</b>	<b>Transitional provisions for Justice Legislation (COVID-19 Emergency Response—Permanency) Amendment Act 2021</b>	12 13 14 15 16
	<b>229 Definitions for division</b>	17	
	In this division—	18	
	<i>former</i> , for a provision of this Act, means the provision as in force from time to time before the commencement.	19 20 21	
	<i>new</i> , for a provision of this Act, means the provision as in force from the commencement.	22 23	
	<i>repealed regulation</i> means the <i>Domestic and Family Violence Protection (COVID-19 Emergency Response) Regulation 2020</i> , as in force immediately before the commencement.	24 25 26 27	

[s 18]

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<b>230 Use of audio visual links or audio links</b>	1
(1) This section applies to a proceeding to which section 6 of the repealed regulation applied and that—	2 3 4
(a) commenced before the commencement; but	5
(b) was not finalised immediately before the commencement.	6 7
(2) The proceeding may continue under new section 142A.	8 9
<b>231 Particular applications for protection order filed before the commencement</b>	10 11
(1) This section applies to an applicant who, before the commencement—	12 13
(a) filed an application for a protection order under former section 32; but	14 15
(b) did not verify the application under former section 32(2)(d).	16 17
(2) The repealed regulation, section 7 continues to apply to the applicant.	18 19
<b>232 Particular variation applications filed before the commencement</b>	20 21
(1) This section applies to an applicant who, before the commencement—	22 23
(a) filed an application for a variation of a domestic violence order under former section 86; but	24 25 26
(b) did not verify the application under former section 86(2)(d).	27 28
(2) The repealed regulation, section 8 continues to apply to the applicant.	29 30

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<b>Clause 19</b>	<b>Amendment of schedule (Dictionary)</b>	1
	Schedule—	2
	<i>insert</i> —	3
	<i>variation declaration</i> see section 86(2)(d).	4
	<i>verification declaration</i> see section 32(2)(d).	5
<b>Part 4</b>	<b>Amendment of Domestic and Family Violence Protection Rules 2014</b>	6
		7
		8
<b>Clause 20</b>	<b>Rules amended</b>	9
	This part amends the <i>Domestic and Family Violence Protection Rules 2014</i> .	10
		11
<b>Clause 21</b>	<b>Amendment of r 9 (How document is to be filed)</b>	12
	(1) Rule 9, heading—	13
	<i>omit, insert</i> —	14
	<b>9 How documents may be filed—general</b>	15
	(2) Rule 9(1)—	16
	<i>insert</i> —	17
	(c) electronic or computer-based means—	18
	(i) if the party filing the document is a police officer—by filing the document under subrule (4); or	19
		20
		21
	(ii) otherwise—by filing the document under rule 9A.	22
		23
<b>Clause 22</b>	<b>Insertion of new rr 9A and 9B</b>	24
	After rule 9—	25

[s 22]

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*insert—*

**9A How particular parties may file documents electronically**

- (1) A party to a proceeding, other than a police officer, may file a document electronically if the principal registrar approves—
- (a) the electronic filing of the document or documents of that class; and
- (b) the electronic file format for the document or class of documents.

*Note—*

See the *Oaths Act 1867* for how an affidavit or statutory declaration may be signed electronically and made in counterparts.

- (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.
- (3) A document filed electronically in the registry—
- (a) may be retained in electronic form by the registry; and
- (b) is taken for all purposes to be a document in a court file.

**9B Approvals given by principal registrar**

- (1) This rule applies to an approval given by the principal registrar under rule 9A(1).
- (2) The approval—
- (a) may be given on conditions; and
- (b) must be published on the Queensland Courts website.
- (3) The failure of the principal registrar to comply with subrule (2)(b) does not affect the validity of

---

	the approval.	1
<b>Clause 23</b>	<b>Amendment of r 35 (Requirements for affidavits)</b>	2
	Rule 35—	3
	<i>insert—</i>	4
	(9) Also, an affidavit must comply with the <i>Oaths Act 1867</i> .	5 6
<b>Clause 24</b>	<b>Amendment of r 36 (Swearing or affirming affidavits)</b>	7
	Rule 36(1), note—	8
	<i>omit, insert—</i>	9
	<i>Note—</i>	10
	For persons who may take an affidavit, see the <i>Oaths Act 1867</i> , parts 4 and 6A.	11 12
<b>Clause 25</b>	<b>Amendment of sch 2 (Dictionary)</b>	13
	Schedule 2—	14
	<i>insert—</i>	15
	<i>principal registrar</i> see the <i>Uniform Civil Procedure Rules 1999</i> , schedule 3.	16 17
	<b>Part 5</b>	
	<b>Amendment of Liquor Act 1992</b>	18
<b>Clause 26</b>	<b>Act amended</b>	19
	This part amends the <i>Liquor Act 1992</i> .	20
<b>Clause 27</b>	<b>Amendment of s 4 (Definitions)</b>	21
	Section 4—	22
	<i>insert—</i>	23

[s 28]

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	<i>takeaway meal</i> means food that—	1
	(a) is ordinarily eaten by a person sitting at a table with cutlery provided; and	2 3
	(b) is of sufficient substance as to be ordinarily accepted as a meal; and	4 5
	(c) is sold on licensed premises to be consumed off the licensed premises.	6 7
<b>Clause 28</b>	<b>Amendment of s 9 (Ordinary trading hours)</b>	8
	Section 9(1A)(d) and (1C), ‘or commercial special facility licence’—	9 10
	<i>omit, insert—</i>	11
	, commercial special facility licence or subsidiary on-premises licence (meals)	12 13
<b>Clause 29</b>	<b>Amendment of s 67A (Principal activity is the provision of meals)</b>	14 15
	(1) Section 67A(2)(a), after ‘liquor’—	16
	<i>insert—</i>	17
	during ordinary trading hours or approved extended trading hours	18 19
	(2) Section 67A(2)(b), after ‘wine’—	20
	<i>insert—</i>	21
	during ordinary trading hours or approved extended trading hours	22 23
	(3) Section 67A(2)—	24
	<i>insert—</i>	25
	(c) if the licence is subject to a condition mentioned in section 67AA—for each sale that includes the provision of a takeaway meal, the sale of takeaway liquor under the	26 27 28 29



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	condition during ordinary trading hours (takeaway liquor).	1 2
(4)	Section 67A— <i>insert—</i>	3 4
(3A)	Despite section 225, if the sale of takeaway liquor is authorised under the licence under subsection (2)(c), the licence also authorises the removal from the premises of the takeaway liquor after the end of the ordinary trading hours (takeaway liquor) and until the end of the ordinary trading hours or approved extended trading hours for the premises.	5 6 7 8 9 10 11 12
(5)	Section 67A(4)— <i>insert—</i>	13 14
	<b><i>ordinary trading hours (takeaway liquor)</i></b> means the ordinary trading hours of between 10a.m. and 10p.m. for the sale of takeaway liquor for the premises mentioned in section 9(1C).	15 16 17 18
(6)	Section 67A(3A) and (4)— <i>renumber</i> as section 67A(4) and (5).	19 20
<b>Clause 30</b>	<b>Insertion of new s 67AA</b>	21
	After section 67A— <i>insert—</i>	22 23
	<b>67AA Sale of particular takeaway liquor</b>	24
(1)	This section applies if the commissioner is satisfied a licensee of a subsidiary on-premises licence (meals) to which section 67A applies has, or will have, systems and procedures in place to ensure the responsible service of takeaway liquor.	25 26 27 28 29
(2)	The commissioner may impose a condition on the licence authorising the licensee, for each sale that includes the provision of a takeaway meal, to sell	30 31 32

[s 31]

---

	takeaway liquor that consists of wine in a quantity of not more than 1.5L in total.	1 2
	(3) If the commissioner imposes a condition under subsection (2), the commissioner may also impose further conditions on the licence to ensure the responsible service of takeaway liquor.	3 4 5 6
	<i>Examples of further conditions—</i>	7
	• keeping records about proof of age	8
	• notification of systems and procedures changes	9
	• specifying the type, volume or product of liquor	10
	(4) This section does not limit the power of the commissioner, under part 5, to impose, amend or revoke conditions on a licence.	11 12 13
<b>Clause 31</b>	<b>Amendment of s 67E (Restriction on sale of liquor for consumption off premises)</b>	14 15
	Section 67E(4), after ‘section 67A(2)(b)’—	16
	<i>insert—</i>	17
	or (c)	18
<b>Clause 32</b>	<b>Amendment of s 162 (Taking liquor onto or away from premises subject to subsidiary on-premises licence)</b>	19 20
	(1) Section 162(3)(a)(ii), ‘either’—	21
	<i>omit, insert—</i>	22
	any	23
	(2) Section 162(3)(a)(ii)(B)—	24
	<i>omit, insert—</i>	25
	(B) the person brought the liquor onto the premises;	26 27
	(C) the liquor is takeaway liquor, the sale of which was authorised under the licence under section 67A(2)(c); or	28 29 30

---

<b>Clause 33</b>	<b>Insertion of new pt 12, div 23</b>	1
	Part 12—	2
	<i>insert—</i>	3
	<b>Division 23</b>	<b>Transitional provision for</b>
		<b>Justice Legislation</b>
		<b>(COVID-19 Emergency</b>
		<b>Response—Permanency)</b>
		<b>Amendment Act 2021</b>
		8
	<b>357 No fee payable for particular applications to vary subsidiary on-premises licences (meals)</b>	9
		10
	(1) This section applies if—	11
	(a) before the commencement, a licensee was the holder of a licence for licensed premises the subject of a takeaway liquor authority granted under part 10A; and	12 13 14 15
	(b) immediately before the commencement, the licensee held a subsidiary on-premises licence (meals) to which section 67A applied; and	16 17 18 19
	(c) on or before 30 June 2022, the licensee applies under section 105 to vary the licence in relation to the sale of takeaway liquor under section 67A(2)(c).	20 21 22 23
	(2) Despite section 105(1)(d), no fee is payable in relation to the application.	24 25
	<b>Part 6</b>	<b>Amendment of Oaths Act 1867</b>
		26
<b>Clause 34</b>	<b>Act amended</b>	27
	This part amends the <i>Oaths Act 1867</i> .	28

[s 35]

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<b>Clause 35</b>	<b>Amendment of s 1B (Definitions)</b>	1
	Section 1B—	2
	<i>insert—</i>	3
	<b><i>accepted method—</i></b>	4
1	<i>Accepted method</i> , for electronically signing an affidavit or a declaration, means—	5 6
	(a) a method prescribed, or a method stated in a rule of court or practice direction made, given, issued or approved, under section 13A that is applicable to the affidavit or declaration; or	7 8 9 10 11 12
	(b) if no method is prescribed, or no rule or practice direction is made, given, issued or approved, that applies to the affidavit or declaration—a method described in paragraph 2.	13 14 15 16 17
2	<i>Accepted method</i> , for electronically signing a document other than an affidavit or a declaration to which paragraph 1(a) applies, means a method that—	18 19 20 21
	(a) identifies the signatory for the document and the signatory’s intention in relation to the contents of the document; and	22 23 24 25
	(b) is either—	26
	(i) as reliable as appropriate for the purpose for which the document is signed, having regard to all the circumstances, including any relevant agreement; or	27 28 29 30 31
	(ii) proven in fact to have fulfilled the functions described in paragraph (a), by itself or together with further evidence.	32 33 34 35

- 
- 3 However, for paragraph 2, the term is 1  
subject to a regulation prescribing under 2  
section 13A a method that is not an accepted 3  
method for electronically signing an 4  
affidavit or a declaration. 5
- administer***— 6
- (a) for part 4—see section 11; or 7
- (b) for part 6A—see section 31B. 8
- audio visual link*** means facilities that enable 9  
reasonably contemporaneous and continuous 10  
audio and visual communication between persons 11  
at different places and includes 12  
videoconferencing. 13
- Australian legal practitioner*** see the *Legal* 14  
*Profession Act 2007*, section 6(1). 15
- authorised person***, in relation to a person’s oath 16  
or affirmation, means a person who is authorised 17  
by law to administer the person’s oath or 18  
affirmation. 19
- commissioner for declarations*** see the *Justices of* 20  
*the Peace and Commissioners for Declarations* 21  
*Act 1991*, section 3. 22
- confirm***, a document, for part 6A, see section 23  
31B. 24
- copy***, of an electronic document, for part 6A, see 25  
section 31B. 26
- counterpart***, for a document, means a copy of the 27  
document that includes the entire contents of the 28  
document but does not include the signatures of 29  
all the other persons who are to sign the 30  
document. 31
- direct***, in relation to a document, includes instruct. 32
- document*** means any record of information 33  
however recorded and includes— 34

[s 35]

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- (a) anything on which there is writing; and 1
- (b) anything on which there are marks, symbols 2  
or perforations having a meaning for 3  
persons qualified to interpret them; and 4
- (c) anything from which sounds, images or 5  
writings can be reproduced with or without 6  
the aid of anything else; and 7
- (d) any record of information that exists in 8  
digital form and is capable of being 9  
reproduced, transmitted, stored or 10  
duplicated by electronic means. 11
- electronically sign***, a document, means sign the 12  
document using an accepted method. 13
- electronic document*** means— 14
- (a) a record of information reproduced from a 15  
thing mentioned in definition *document*, 16  
paragraph (c); or 17
- (b) a document of a type mentioned in 18  
definition *document*, paragraph (d). 19
- information*** includes information in the form of 20  
data, text or images. 21
- make***, in relation to a document— 22
- (a) for part 4—see section 11; or 23
- (b) for part 6A—see section 31B. 24
- official version***, of a document, for part 6A, see 25  
section 31Y(2) and (3). 26
- originating version***, of a document, for part 6A, 27  
see section 31Y(4). 28
- physical document*** means a document of a type 29  
mentioned in definition *document*, paragraph (a) 30  
or (b). 31
- sign***, a document, means— 32

---

	(a) for a physical document—physically sign the document or counterpart; or	1 2
	(b) for an electronic document—electronically sign the document or counterpart.	3 4
	<i>special witness</i> , for a document, see section 12.	5
	<i>water allocations register</i> see the <i>Water Act 2000</i> , schedule 4.	6 7
	<i>witness</i> , a document—	8
	(a) for part 4—see section 11; or	9
	(b) for part 6A—see section 31B.	10
<b>Clause 36</b>	<b>Amendment of pt 4, hdg (Statutory declarations)</b>	11
	Part 4, heading, ‘Statutory’—	12
	<i>omit, insert—</i>	13
	<b>Affidavits and statutory</b>	14
<b>Clause 37</b>	<b>Amendment, relocation and renumbering of s 13 (Who may take declarations)</b>	15 16
	(1) Section 13, heading, ‘take’—	17
	<i>omit, insert—</i>	18
	<b>witness</b>	19
	(2) Section 13, ‘taken’—	20
	<i>omit, insert—</i>	21
	witnessed	22
	(3) Section 13(1)—	23
	<i>insert—</i>	24
	(d) another person prescribed by regulation for this section.	25 26
	(4) Section 13(1)—	27

[s 38]

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*insert—* 1

*Note—* 2

See also section 13E and part 6A for requirements for  
witnessing a declaration by audio visual link. 3  
4

(5) Section 13— 5

*insert—* 6

(1A) However, a regulation may provide that a person  
mentioned in subsection (1)(a), (b), (c) or (d)— 7  
8

(a) may witness a declaration only of a  
prescribed type and subject to any  
prescribed conditions; or 9  
10  
11

(b) may not witness a declaration of a  
prescribed type. 12  
13

(6) Section 13(3)— 14

*omit.* 15

(7) Section 13(1A) and (2)— 16

*renumber* as section 13(2) and (3). 17

(8) Section 13— 18

*relocate* to part 4, division 3, as inserted by this Act, and  
*renumber* as section 16B. 19  
20

**Clause 38 Insertion of new pt 4, div 1, div 2, hdg and ss 13A–13E** 21

Part 4— 22

*insert—* 23

**Division 1 Preliminary** 24

**11 Definitions for part** 25

In this part— 26

*administer* includes— 27



- 
- (a) in relation to an oath or affirmation—take, receive and swear; and 1  
2
  - (b) in relation to a declaration—take and receive. 3  
4
  - make**, in relation to a document, includes execute. 5
  - special witness**, for a document, see section 12. 6
  - witness**, a document, includes— 7
  - (a) witness the signing of the document; and 8
  - (b) for an affidavit—administer an oath or affirmation for the affidavit; and 9  
10
  - (c) for a declaration—administer the declaration. 11  
12

## 12 Special witnesses 13

- (1) A **special witness**, for a document, is a person who is— 14  
15
  - (a) an Australian legal practitioner; or 16
  - (b) a government legal officer under the *Legal Profession Act 2007* who is an Australian lawyer but not an Australian legal practitioner and who witnesses documents in the course of the government work engaged in by the officer; or 17  
18  
19  
20  
21  
22
  - (c) a justice or commissioner for declarations approved by the chief executive under subsection (2); or 23  
24  
25
  - (d) a justice or commissioner for declarations— 26
    - (i) employed by the law practice that prepared the document; and 27  
28
    - (ii) who witnesses documents in the course of that employment; or 29  
30
  - (e) a notary public; or 31

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- (f) a person mentioned in subsection (3) for the document. 1  
2
- Note—* 3
- See sections 31Q and 31S for further provision about special witnesses. 4  
5
- (2) The chief executive may approve a justice or commissioner for declarations to be a special witness if the chief executive is satisfied the justice or commissioner for declarations is an appropriate person for witnessing documents under part 6A. 6  
7  
8  
9  
10  
11
- (3) For subsection (1)(f), a person is also a special witness for a document if— 12  
13
- (a) the document is prepared by the public trustee; and 14  
15
- (b) the person is a justice or commissioner for declarations who is an employee of the public trustee. 16  
17  
18
- (4) In this section— 19
- Australian lawyer* see the *Legal Profession Act 2007*, section 5(1). 20  
21
- law practice* see the *Legal Profession Act 2007*, schedule 2. 22  
23
- 13 References to witnesses, signatories and substitute signatories** 24  
25
- (1) In this part— 26
- (a) a reference to a witness in relation to a document is a reference to a person witnessing the making of the document; and 27  
28  
29
- (b) a reference to a signatory in relation to a document is a reference to the person for whom the document is made, whether 30  
31  
32

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signed by the person or by a substitute signatory at the direction of the person; and	1 2
(c) a reference to a substitute signatory in relation to a document is a reference to a person signing the document at the direction of the signatory.	3 4 5 6
(2) Also, for an affidavit or a declaration—	7
(a) a reference to a witness in relation to the affidavit or declaration is a reference to the person who administers an oath or affirmation to the person making the affidavit or declaration before the affidavit or declaration is made; and	8 9 10 11 12 13
(b) a reference to a signatory in relation to the affidavit or declaration is a reference to the person who makes or gives an oath or affirmation for the person's affidavit or declaration before the affidavit or declaration is made.	14 15 16 17 18 19
<b>Division 2</b>	<b>20</b>
<b>General requirement for affidavits and declarations</b>	<b>21</b>
<b>13A Accepted method for electronically signing affidavits or declarations</b>	<b>22</b> <b>23</b>
(1) A regulation may prescribe an accepted method, or what is not an accepted method, for electronically signing an affidavit or a declaration, including an affidavit or a declaration to be filed or admitted into evidence in a proceeding in a court or tribunal.	24 25 26 27 28 29
(2) The person or body for a court or tribunal who has the power to make rules of court or practice directions regulating the practice and procedure of the court or tribunal may make, give, issue or	30 31 32 33

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approve a rule or practice direction that states an  
accepted method for electronically signing an  
affidavit or a declaration to be filed or admitted  
into evidence in a proceeding in the court or  
tribunal.

- (3) The person or body for the court or tribunal must,  
when making, giving, issuing or approving a rule  
or practice direction under subsection (2),  
consider the need to ensure consistency of the rule  
or practice direction with the rules or practice  
directions of other courts and tribunals.
- (4) If a rule or practice direction made, given, issued  
or approved under subsection (2) is inconsistent  
with a regulation made under subsection (1), the  
regulation prevails to the extent of the  
inconsistency.

### **13B Jurat of affidavit**

- (1) This section applies in relation to an affidavit  
made, signed or witnessed under this Act or  
another law.
- (2) The signatory must ensure the affidavit's jurat  
states the following matters—
- (a) if applicable, that the affidavit was made in  
the form of an electronic document;
- (b) if applicable, that the affidavit was  
electronically signed by the signatory or  
substitute signatory;
- (c) if applicable, that the affidavit was made,  
signed and witnessed under part 6A;
- (d) that either—
- (i) the contents of the affidavit are true; or
- (ii) if the contents of the affidavit are stated  
on the basis of information and

- 
- belief—those contents are true to the 1  
best of the knowledge of the person 2  
making the statement; 3
- (e) that the signatory understands that a person 4  
who provides a false matter in the affidavit 5  
commits an offence. 6
- Example of offence—* 7  
perjury under the Criminal Code, section 123 8

**13C Statement in declaration** 9

- (1) This section applies in relation to a declaration 10  
made, signed or witnessed under this Act or 11  
another law. 12
- (2) The signatory must ensure the declaration states 13  
the following matters— 14
- (a) if applicable, that the declaration was made 15  
in the form of an electronic document; 16
- (b) if applicable, that the declaration was 17  
electronically signed by the signatory or 18  
substitute signatory; 19
- (c) if applicable, that the declaration was made, 20  
signed and witnessed under part 6A; 21
- (d) that either— 22
- (i) the contents of the declaration are true; 23  
or 24
- (ii) if the contents of the declaration are 25  
stated on the basis of information and 26  
belief—those contents are true to the 27  
best of the knowledge of the person 28  
making the statement; 29
- (e) that the signatory understands that a person 30  
who provides a false matter in the 31  
declaration commits an offence. 32

[s 38]

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<i>Example of offence—</i>	1
perjury under the Criminal Code, section 123	2
<b>13D Witness must verify particular matters</b>	3
A person who witnesses an affidavit or a declaration must take reasonable steps to verify each of the following matters—	4 5 6
(a) the identity of the signatory;	7
(b) that the name of the signatory matches the name of the signatory written on or in the affidavit or declaration.	8 9 10
<b>13E Additional requirement for witness for affidavit or declaration</b>	11 12
A person who witnesses an affidavit or a declaration must include all of the following information on the affidavit or declaration—	13 14 15
(a) the witness’s full name;	16
(b) if the witness is a special witness—	17
(i) that the witness is a special witness; and	18 19
(ii) the type of witness under section 12(1) that the special witness is; and	20 21
<i>Examples of a type of witness for subparagraph (ii)—</i>	22 23
• an Australian legal practitioner	24
• a justice approved by the chief executive under section 12(2)	25 26
• a commissioner for declarations approved by the chief executive under section 12(2)	27 28 29
(iii) for a witness who is an Australian legal practitioner and an employee of, or a	30 31

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partner in, a law practice—the name of the law practice; and	1 2
(iv) if subparagraph (iii) does not apply—the witness’s place of employment, if applicable; and	3 4 5
(v) that the witness understands the requirements for witnessing a document by audio visual link and has complied with those requirements, if applicable;	6 7 8 9 10
<i>Example of information to be included on an affidavit or a declaration for a special witness who is an Australian legal practitioner and who witnesses the affidavit or declaration by audio visual link—</i>	11 12 13 14
Jane Anne Doe	15
Australian legal practitioner, ABC Legal	16
Special witness under the <i>Oaths Act 1867</i>	17
I understand the requirements for witnessing a document by audio visual link and have complied with those requirements.	18 19 20
(c) if paragraph (b) does not apply—	21
(i) the type of witness under section 16A or 16B that the witness is; and	22 23
<i>Examples of a type of witness for subparagraph (i)—</i>	24 25
• a lawyer	26
• a justice of the peace	27
(ii) the witness’s place of employment, if applicable;	28 29
(d) other information prescribed by regulation for this section.	30 31
<b>Clause 39 Insertion of new pt 4, div 3</b>	32
Part 4—	33

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[s 39]

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*insert—*

**Division 3                    Signing in physical  
   presence of witness**

**16 Application of division**

This division applies to an affidavit or a  
declaration signed in the physical presence of a  
witness, including a special witness.

*Note—*

See part 6A for requirements for witnessing an affidavit  
or a declaration by audio visual link.

**16C Affidavit or declaration electronically signed in  
physical presence of witness**

(1) This section applies if a signatory or substitute  
signatory signs an affidavit or a declaration in the  
physical presence of a witness.

*Note—*

See section 31R in relation to a substitute signatory  
directed by audio visual link to sign a document for a  
signatory.

(2) 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 another  
person prescribed by regulation for this section.

(3) However, a regulation made under subsection (2)  
may provide that a person prescribed for this  
section—

(a) may witness an affidavit or a declaration  
only of a prescribed type and subject to any  
prescribed conditions; or

(b) may not witness an affidavit or a declaration  
of a prescribed type.



- 
- (4) 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 counterpart for the electronic document. 1  
2  
3  
4  
5  
6
- (5) If a justice or commissioner for declarations confirms the affidavit or declaration under subsection (4), the justice or commissioner for declarations is not required to insert on the affidavit or declaration the imprint of a seal of office issued to the person under the *Justices of the Peace and Commissioners for Declarations Act 1991*. 7  
8  
9  
10  
11  
12  
13  
14
- (6) This section does not apply to a declaration lodged or deposited in the land registry or water allocations register. 15  
16  
17
- (7) To remove any doubt, it is declared that this section applies to a declaration that is supporting evidence under the participation rules within the meaning of the Electronic Conveyancing National Law (Queensland) for a document lodged under section 7 of that Law. 18  
19  
20  
21  
22  
23
- 16D Effect of affidavit or declaration electronically signed in physical presence of witness** 24  
25
- (1) This section applies to an affidavit or a declaration under section 16C if— 26  
27
- (a) either— 28
- (i) the affidavit or declaration is in the form of an electronic document and the signatory or substitute signatory electronically signed the electronic document; and 29  
30  
31  
32  
33

[s 39]

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- (ii) the witness confirmed the affidavit or declaration by signing the same electronic document; or
- (b) the affidavit or declaration is made using counterparts in the form of electronic documents.
- (2) If subsection (1)(b) applies—
- (a) the counterpart confirmed by the witness for the document must be kept with the document signed by the signatory or substitute signatory; and
- (b) the counterpart mentioned in paragraph (a) and the document signed by the signatory or substitute signatory together constitute the affidavit or declaration.
- (3) 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—
- (a) given, produced or used for the purpose; and
- (b) relied on as evidence of the affidavit or declaration.
- Example for subsection (3)—*
- The electronic document or a printout of the electronic document, or the counterparts or a printout of the counterparts constituting an affidavit or a declaration, may be given to a court or other entity, and relied on by the court or other entity, as evidence of the affidavit or declaration.
- (4) Subsection (3) does not limit the power of a court to require production of the electronic document, or the counterparts in the form of electronic documents, in a proceeding.

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<b>Clause 40</b>	<b>Insertion of new pt 6A</b>	1
	After part 6—	2
	<i>insert</i> —	3
	<b>Part 6A</b>	
	<b>Audio visual links</b>	4
	<b>Division 1</b>	
	<b>Preliminary</b>	5
	<b>31B Definitions for part</b>	6
	In this part—	7
	<i>administer</i> includes—	8
	(a) in relation to an oath or affirmation—take, receive and swear; and	9 10
	(b) in relation to a declaration—take and receive.	11 12
	<i>confirm</i> , a document, means attest or otherwise confirm a document by signing the document.	13 14
	<i>copy</i> , of an electronic document, means a reproduction of the document in either electronic or hard copy form.	15 16 17
	<i>make</i> , in relation to a document, includes execute.	18
	<i>official version</i> , of a document, see section 31Y(2) and (3).	19 20
	<i>originating version</i> , of a document, see section 31Y(4).	21 22
	<i>witness</i> , a document, includes—	23
	(a) witness the signing of the document; and	24
	(b) for an affidavit—administer an oath or affirmation for the affidavit; and	25 26
	(c) for a declaration—administer the declaration.	27 28

[s 40]

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<b>31C References to witnesses, signatories and substitute signatories</b>	1 2
(1) In this part—	3
(a) a reference to a witness in relation to a document is a reference to a person witnessing the making of the document; and	4 5 6
(b) a reference to a signatory in relation to a document is a reference to the person for whom the document is made, whether signed by the person or by a substitute signatory at the direction of the person; and	7 8 9 10 11
(c) a reference to a substitute signatory in relation to a document is a reference to a person signing the document at the direction of the signatory.	12 13 14 15
(2) Also, for an affidavit or a declaration—	16
(a) a reference to a witness in relation to the affidavit or declaration is a reference to the person who administers an oath or affirmation to the person making the affidavit or declaration before the affidavit or declaration is made; and	17 18 19 20 21 22
(b) a reference to a signatory in relation to the affidavit or declaration is a reference to the person who makes or gives an oath or affirmation for the person’s affidavit or declaration before the affidavit or declaration is made.	23 24 25 26 27 28
 <b>Division 2           Affidavits</b>	 29
 <b>31D Application of division</b>	 30
This division applies to an affidavit made, signed or witnessed under this Act or another law.	31 32

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**31E Presence by audio visual link**

- 1  
2 A requirement under this Act or another law for  
3 the presence of a witness, signatory, substitute  
4 signatory or other person in relation to the  
5 making, signing or witnessing of an affidavit is  
6 taken to be satisfied if—
- (a) the witness, signatory, substitute signatory 7  
or other person is present by audio visual 8  
link; and 9
- (b) the signatory’s oath or affirmation for the 10  
affidavit is administered by a special witness 11  
for the affidavit or another person prescribed 12  
by regulation under section 31S; and 13
- (c) the making, signing or witnessing of the 14  
affidavit is carried out in accordance with 15  
division 5. 16

**31F Affidavit may be in form of electronic 17  
document and electronically signed 18**

- 19 An affidavit may be in the form of an electronic  
20 document, and may be electronically signed, if—
- (a) the witness, signatory, substitute signatory 21  
or another person in relation to the making, 22  
signing or witnessing of the affidavit is 23  
present by audio visual link; and 24
- (b) the affidavit is made, signed and witnessed 25  
in accordance with division 5. 26

**31G Admission of affidavit not complying with 27  
requirements 28**

- (1) This section applies in relation to a purported 29  
affidavit that does not comply with the 30  
requirements under this Act, another law or any 31  
regulation, rule of court or practice direction 32  
made, given, issued or approved under section 33

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13A if—	1
(a) a court is satisfied compliance with the requirements in relation to the purported affidavit was not reasonably practicable; and	2 3 4
(b) the purported affidavit states the reasons why compliance with the requirements was not reasonably practicable.	5 6 7
(2) The court may admit the purported affidavit in evidence in a proceeding if the court considers it is desirable in the interests of justice.	8 9 10
<b>31H Disapplication of s 33</b>	11
Section 33 does not apply in relation to an affidavit made, signed or witnessed under this division.	12 13 14
<b>Division 3      Declarations</b>	15
<b>31I Application of division</b>	16
This division applies to a declaration made, signed or witnessed under this Act or another law.	17 18
<b>31J Presence by audio visual link</b>	19
A requirement under this Act or another law for the presence of a witness, signatory, substitute signatory or other person in relation to the making, signing or witnessing of a declaration is taken to be satisfied if—	20 21 22 23 24
(a) the witness, signatory, substitute signatory or other person is present by audio visual link; and	25 26 27
(b) the signatory’s oath or affirmation for the declaration is administered by a special	28 29

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witness for the declaration or another person	1
prescribed by regulation under section 31S;	2
and	3
(c) the making, signing or witnessing of the	4
declaration is carried out in accordance with	5
division 5.	6
<b>31K Declaration may be in form of electronic</b>	7
<b>document and electronically signed</b>	8
(1) A declaration may be in the form of an electronic	9
document, and may be electronically signed, if—	10
(a) the witness, signatory, substitute signatory	11
or another person in relation to the making,	12
signing or witnessing of the declaration is	13
present by audio visual link; and	14
(b) the declaration is made, signed and	15
witnessed in accordance with division 5.	16
(2) Subsection (1) does not apply to a declaration	17
lodged or deposited in the land registry or water	18
allocations register.	19
(3) To remove any doubt, it is declared that	20
subsection (1) applies to a declaration that is	21
supporting evidence under the participation rules	22
within the meaning of the Electronic	23
Conveyancing National Law (Queensland) for a	24
document lodged under section 7 of that Law.	25
<b>31L Disapplication of s 33</b>	26
Section 33 does not apply in relation to a	27
declaration made, signed or witnessed under this	28
division.	29
<b>Division 4 Oaths and affirmations</b>	30

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<b>31M Application of division</b>	1	
(1) This division applies to an oath or affirmation, however described, that is administered or made anywhere, including, for example, in open court, under this Act or another law and in the presence of an authorised person if the authorised person is present by audio visual link.	2 3 4 5 6 7	
(2) However, this division does not apply to—	8	
(a) an oath or affirmation administered or made in relation to an affidavit under division 2 or a declaration under division 3; or	9 10 11	
(b) an oath of allegiance or oath of office under part 2.	12 13	
<b>31N Presence by audio visual link</b>	14	
A requirement under this Act or another law for the presence of an authorised person in relation to a person’s oath or affirmation is taken to be satisfied if the authorised person is present by audio visual link.	15 16 17 18 19	
<b>31O Disapplication of s 33</b>	20	
Section 33 does not apply in relation to an oath or affirmation administered or made under this division.	21 22 23	
<b>Division 5</b>	<b>Signing or witnessing documents by audio visual link</b>	24 25 26
<b>Subdivision 1</b>	<b>Requirements about signing documents by audio visual link</b>	27 28 29



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<b>31P Persons who may be directed to sign</b>	1
(1) This section applies in relation to a substitute signatory who—	2 3
(a) is directed by a signatory in the signatory’s physical presence to sign a document for the signatory that is to be witnessed by audio visual link; or	4 5 6 7
(b) is directed by audio visual link to sign a document for a signatory.	8 9
(2) The following persons are excluded from signing a document as a substitute signatory—	10 11
(a) a person excluded under an Act or other law from signing the document as a signatory;	12 13
(b) without limiting paragraph (a)—	14
(i) a person witnessing the document; or	15
(ii) 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.	16 17 18 19 20
(3) Also, a person may be directed by audio visual link to sign a document for a signatory only if the person is—	21 22 23
(a) an Australian legal practitioner; or	24
(b) a government legal officer under the <i>Legal Profession Act 2007</i> who is an Australian lawyer but not an Australian legal practitioner and who witnesses documents in the course of the government work engaged in by the officer; or	25 26 27 28 29 30
(c) an employee of the public trustee.	31
(4) In this section—	32
<i>relation</i> , of a person, see the <i>Powers of Attorney</i>	33

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*Act 1998, schedule 3.* 1

**31Q Substitute signatory signing in physical presence of witness requires special witness** 2  
3

- (1) This section applies in relation to a substitute signatory directed by audio visual link to sign a document for a signatory if the substitute signatory is to sign the document in the physical presence of a witness. 4  
5  
6  
7  
8

*Note—* 9

See section 31S in relation to the signing of a document to be witnessed by audio visual link. 10  
11

- (2) The signing of the document by the substitute signatory must be witnessed by a special witness for the document. 12  
13  
14

- (3) This section does not— 15

(a) affect any requirement under an Act or other law about the number of witnesses required or permitted to witness a document; or 16  
17  
18

(b) authorise or permit a person who is excluded from witnessing a document under an Act or other law to witness the document. 19  
20  
21

**31R Witness must observe direction and verify particular matters** 22  
23

- (1) This section applies if a substitute signatory is directed by the signatory by audio visual link to sign a document. 24  
25  
26

- (2) The witness for the signing of the document by the substitute signatory must— 27  
28

(a) observe the signatory direct the substitute signatory to sign the document; and 29  
30

- 
- (b) be satisfied that the substitute signatory is permitted under section 31P to be a substitute signatory for the document; and
- (c) be satisfied that the signatory is freely and voluntarily directing the substitute signatory to sign the document.

*Note—*

For additional requirements for witnessing an affidavit or a declaration, see section 13D.

## **Subdivision 2 Requirements about witnessing documents by audio visual link**

### **31S Witness must be special witness or another prescribed person**

- (1) A document may be witnessed by audio visual link only if the witness is a special witness for the document or another person prescribed by regulation for this section.
- (2) However, a regulation made under subsection (1) may provide that a person prescribed for this section—
- (a) may witness a document only of a prescribed type and subject to any prescribed conditions; or
- (b) may not witness a document of a prescribed type.
- (3) This section does not—
- (a) affect any requirement under an Act or other law about the number of witnesses required or permitted to witness a document; or

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- (b) authorise or permit a person who is 1  
excluded from witnessing a document under 2  
an Act or other law to witness the document. 3

**31T General requirements for witnessing 4  
documents 5**

A document may be witnessed by audio visual 6  
link only if— 7

- (a) the witness observes the signatory direct the 8  
substitute signatory to sign the document, if 9  
applicable; and 10
- (b) the audio visual link enables the witness to 11  
be satisfied, by the sounds and images made 12  
by the link, that the signatory or substitute 13  
signatory is signing the document; and 14
- (c) the witness forms the satisfaction under 15  
paragraph (b) in real time; and 16
- (d) the witness is satisfied that the signatory is 17  
freely and voluntarily signing the document 18  
or directing the substitute signatory to sign 19  
the document. 20

*Note—* 21

See also sections 13D and 13E for additional 22  
requirements for a witness for an affidavit or a 23  
declaration. 24

**31U Confirmation of signed document by witness 25**

- (1) A person who witnesses a document by audio 26  
visual link must confirm the document as soon as 27  
practicable after witnessing it, which may or may 28  
not be the day on which the document is 29  
witnessed. 30
- (2) The person may confirm a document as the 31  
document witnessed by the person only if the 32  
person is satisfied the document— 33

- 
- (a) is the document signed by the signatory or substitute signatory; or 1  
2
- (b) is a true copy of the document signed by the signatory or substitute signatory; or 3  
4
- Examples for paragraph (b)—* 5
- a scanned copy of a signed document sent electronically to the witness 6  
7
  - a printout of an electronically signed document sent to the witness 8  
9
- (c) is a counterpart for the document signed by the signatory or substitute signatory. 10  
11
- Note—* 12
- Affidavits and declarations in the form of electronic documents may be electronically signed—see sections 31F (for affidavits) and 31K (for declarations). 13  
14  
15  
16
- (3) If a justice or commissioner for declarations confirms an electronic document, the justice or commissioner for declarations is not required to insert on the document the imprint of a seal of office issued to the person under the *Justices of the Peace and Commissioners for Declarations Act 1991*. 17  
18  
19  
20  
21  
22  
23

### **31V Action after witness confirms document** 24

- (1) After a witness confirms a document witnessed by the witness by audio visual link, the witness must give the document, a true copy or a counterpart of the document to the relevant person for the document. 25  
26  
27  
28  
29
- Examples of giving a true copy of a document to a person—* 30
- scanning the document and emailing the scanned copy to the person 31  
32
  - giving a hard copy printout of the document to the person 33  
34
- (2) In this section— 35

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- give* includes— 1
- (a) give by electronic means; and 2
  - (b) give by allowing online computer access; 3  
and 4
- Example for paragraph (b)—* 5
- allowing a person to access and download a 6  
document from an online file-sharing website 7
- (c) give by post. 8
- relevant person*, for a document, means— 9
- (a) the signatory for the document; or 10
  - (b) a person to whom the signatory directs the 11  
document, true copy or counterpart be 12  
given. 13

### **Subdivision 3 Other provisions** 14

#### **31W When document starts to be effective** 15

- (1) A document made, signed and witnessed under 16  
this part starts to be effective when the signatory 17  
or substitute signatory signs the document. 18
- (2) Subsection (1) applies even if the witness 19  
confirms the document on a later day than the day 20  
the signatory or substitute signatory signs the 21  
document. 22

#### **31X Presumptions** 23

In a proceeding, the following must be presumed 24  
in relation to a document made, signed or 25  
witnessed under this part, unless a party to the 26  
proceeding, by reasonable notice, requires proof 27  
of it— 28

- 
- (a) the validity of the document, to the extent it is made, signed or witnessed under this part; 1 2
  - (b) the eligibility of a witness to witness the document; 3 4
  - (c) the eligibility of a substitute signatory to sign the document at the direction of the signatory; 5 6 7
  - (d) that a signature on or in the document purporting to be the signature of a witness, signatory or substitute signatory for the document is the signature of the witness, signatory or substitute signatory. 8 9 10 11 12

### **31Y Official and originating versions of document** 13

- (1) This section applies to a document, or a true copy of a document— 14 15
  - (a) that is confirmed by a person as the document witnessed by the person under section 31U(2)(a) or (b); and 16 17 18
  - (b) given to a relevant person for the document under section 31V(1). 19 20
- Note—* 21
  - For a document made using counterparts, see section 31Z. 22 23
- (2) If the document or true copy is given in the form of a physical document, the document or true copy is the *official version* of the document. 24 25 26
- (3) If the document or true copy is given in the form of an electronic document, the document or true copy, or a printout of the document or true copy, is the *official version* of the document. 27 28 29 30
- (4) If the official version of the document is not the version of the document that was signed by the signatory or substitute signatory (the *originating version*), the originating version must be kept 31 32 33 34

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with the official version. 1

(5) Once the witness gives the document or true copy 2  
to the relevant person, there is no requirement to 3  
keep any version of the document confirmed by 4  
the witness that has not been given to the relevant 5  
person. 6

(6) If a document made, signed or witnessed in 7  
accordance with this part is required to be given, 8  
produced or used for any purpose, the official 9  
version of the document may be— 10

(a) given, produced or used for the purpose; and 11

(b) relied on as evidence of the document. 12

*Example for subsection (6)—* 13

The official version of an affidavit or a declaration may 14  
be given to a court or other entity, and relied on by the 15  
court or other entity, as evidence of the affidavit or 16  
declaration. 17

(7) Subsection (6) does not limit the power of a court 18  
to require production of the originating version of 19  
the document in a proceeding. 20

### **31Z Documents made using counterparts** 21

(1) This section applies to a document that is made 22  
using counterparts if a counterpart— 23

(a) is confirmed by a person as the counterpart 24  
witnessed by the person under section 25  
31U(2)(c); and 26

(b) is given to a relevant person for the 27  
document under section 31V(1). 28

(2) The counterpart confirmed by the witness for the 29  
document must be kept with the counterpart 30  
signed by the signatory or substitute signatory. 31

(3) The counterparts together constitute the 32  
document. 33



- 
- (4) If a document made using counterparts is required to be given, produced or used for any purpose, the counterparts constituting the document, or a printout of the counterparts if they are in the form of an electronic document, may be—
- (a) given, produced or used for the purpose; and
  - (b) relied on as evidence of the document.

**31ZA Lodgement or deposit of document in land registry or water allocations register**

- (1) 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* may require the originating version of the document to be given to the registrar for lodgement or depositing with the official version.
- (2) If a document made using counterparts is lodged or deposited in the land registry or water allocations register, each counterpart must be lodged or deposited.

**31ZB Audio visual recording of signing or witnessing of document**

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

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<b>Clause 41</b>	<b>Amendment, relocation and renumbering of s 41 (Who may take affidavits)</b>	1 2
(1)	Section 41, heading, ‘take’— <i>omit, insert—</i> <b>witness</b>	3 4 5
(2)	Section 41, ‘taken’— <i>omit, insert—</i> witnessed	6 7 8
(3)	Section 41(1)— <i>insert—</i> (e) another person prescribed by regulation for this section.	9 10 11 12
(4)	Section 41(1)— <i>insert—</i> <i>Note—</i> See also section 13E and part 6A for requirements for witnessing an affidavit by audio visual link.	13 14 15 16 17
(5)	Section 41— <i>insert—</i> (1A) However, a regulation may provide that a person mentioned in subsection (1)(a), (b), (c), (d) or (e)— (a) may witness an affidavit only of a prescribed type and subject to any prescribed conditions; or (b) may not witness an affidavit of a prescribed type.	18 19 20 21 22 23 24 25 26 27
(6)	Section 41(3)— <i>omit.</i>	28 29
(7)	Section 41(1A) and (2)—	30

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*renumber* as section 41(2) and (3). 1

(8) Section 41— 2

*relocate* to part 4, division 3, as inserted by this Act, and 3

*renumber* as section 16A. 4

**Clause 42 Insertion of new s 44** 5

After section 43— 6

*insert*— 7

**44 Regulation-making power** 8

(1) The Governor in Council may make regulations 9  
under this Act. 10

(2) A regulation may be made about the making, 11  
signing and witnessing of affidavits and 12  
declarations. 13

**Clause 43 Insertion of new pt 8** 14

After part 7— 15

*insert*— 16

**Part 8 Transitional provisions** 17

**for Justice Legislation** 18

**(COVID-19 Emergency** 19

**Response—** 20

**Permanency)** 21

**Amendment Act 2021** 22

**45 Definitions for part** 23

In this part— 24

*amending Act* means the *Justice Legislation* 25

*(COVID-19 Emergency Response—Permanency)* 26

*Amendment Act 2021.* 27

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*repealed regulation* means the repealed *Justice Legislation (COVID-19 Emergency Response—Documents and Oaths) Regulation 2020* as in force immediately before its repeal.

**46 Repealed regulation continues to apply to affidavit or declaration in particular circumstances**

- (1) This section applies in relation to a document that is an affidavit or a declaration if—
- (a) before the commencement, the document was signed by a signatory or substitute signatory, and a person witnessed the document, under the repealed regulation; and
  - (b) immediately before the commencement, the person—
    - (i) had not confirmed the document as the document witnessed by the person under the repealed regulation; or
    - (ii) had not complied with another requirement relating to the document under the repealed regulation.
- (2) Despite the repeal of the repealed regulation, the repealed regulation continues to apply to the person in relation to the document as if the amending Act had not been enacted.

**47 Repealed regulation continues to apply to particular documents**

- (1) This section applies to a document made, signed or witnessed under the repealed regulation, including a document to which section 46 applies.
- (2) Despite the repeal of the repealed regulation, the repealed regulation, sections 22 to 26 continues to

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	apply in relation to the document as if the amending Act had not been enacted.	1 2	
<b>Part 7</b>	<b>Amendment of Powers of Attorney Act 1998</b>	3 4	
<b>Clause 44</b>	<b>Act amended</b>	5	
	This part amends the <i>Powers of Attorney Act 1998</i> .	6	
<b>Clause 45</b>	<b>Amendment of s 12 (Execution of powers of attorney)</b>	7	
	Section 12(2)—	8	
	<i>insert—</i>	9	
	<i>Note—</i>	10	
	See also part 3A.	11	
<b>Clause 46</b>	<b>Insertion of new ch 2, pt 3A</b>	12	
	Chapter 2—	13	
	<i>insert—</i>	14	
	<b>Part 3A</b>	<b>General powers of attorney for businesses</b>	15 16
	<b>24A Definitions for part</b>	17	
	In this part—	18	
	<i>accepted method</i> , for electronically signing a general power of attorney, means—	19 20	
	(a) a method prescribed under section 24G; or	21	
	(b) if no method is prescribed, and subject to a regulation prescribing under section 24G a method that is not an accepted method for	22 23 24	

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electronically signing a general power of attorney, a method that—	1 2
(i) identifies the signatory for the document and the signatory’s intention in relation to the contents of the document; and	3 4 5 6
(ii) is either—	7
(A) as reliable as appropriate for the purpose for which the document is signed, having regard to all the circumstances, including any relevant agreement; or	8 9 10 11 12
(B) proven in fact to have fulfilled the functions described in subparagraph (i), by itself or together with further evidence.	13 14 15 16
<b>business</b> —	17
(a) means—	18
(i) a corporation; or	19
(ii) a partnership under the <i>Partnership Act 1891</i> , section 5; or	20 21
(iii) another unincorporated association; but	22
(b) does not include an enterprise carried on by a sole trader.	23 24
<b>corporation</b> includes—	25
(a) a corporation under the Corporations Act, section 57A; and	26 27
(b) a corporation sole; and	28
(c) a statutory corporation.	29
<b>counterpart</b> , for a document, see section 24B.	30
<b>document</b> means any record of information however recorded and includes—	31 32

- 
- (a) anything on which there is writing; and 1
- (b) anything on which there are marks, symbols 2  
or perforations having a meaning for 3  
persons qualified to interpret them; and 4
- (c) anything from which sounds, images or 5  
writings can be reproduced with or without 6  
the aid of anything else; and 7
- (d) any record of information that exists in 8  
digital form and is capable of being 9  
reproduced, transmitted, stored or 10  
duplicated by electronic means. 11
- electronically sign***, a document, means sign the 12  
document using an accepted method. 13
- electronic document*** means— 14
- (a) a record of information reproduced from a 15  
thing mentioned in definition *document*, 16  
paragraph (c); or 17
- (b) a document of a type mentioned in 18  
definition *document*, paragraph (d). 19
- general power of attorney*** means a general power 20  
of attorney made under this Act. 21
- information*** includes information in the form of 22  
data, text or images. 23
- make***, in relation to a document, includes execute. 24
- physical document*** means a document of a type 25  
mentioned in definition *document*, paragraph (a) 26  
or (b). 27
- seal***, of a corporation, includes a common seal of 28  
the corporation. 29
- sign***, a document, means— 30
- (a) for a physical document—physically sign 31  
the document; or 32

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(b) for an electronic document—electronically  
sign the document. 1  
2

*statutory corporation* means an entity 3  
established, incorporated or registered under an 4  
Act of the Commonwealth or a State, that is not a 5  
corporation registered under the Corporations 6  
Act. 7

*witness*, a document, includes witness the signing 8  
of the document. 9

## **24B What is a *counterpart* for a document** 10

(1) A *counterpart*, for a document, is a copy of the 11  
document that includes the entire contents of the 12  
document. 13

(2) Despite subsection (1), a counterpart need not 14  
include— 15

(a) the signatures of the other persons who are 16  
to sign the document; or 17

(b) if a common seal is fixed to the 18  
document—the seal. 19

## **24C Application of part** 20

(1) This part applies in relation to a general power of 21  
attorney for a business. 22

(2) A reference in this part to a general power of 23  
attorney is taken to include a reference to a 24  
document revoking a general power of attorney. 25

(3) If a provision of this part is inconsistent with any 26  
other provision of this Act, the provision of this 27  
part prevails to the extent of the inconsistency. 28

## **24D Relationship with other laws** 29

(1) If there is an inconsistency between this part and 30



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any other law in relation to a general power of attorney, this part prevails to the extent of the inconsistency. 1  
2  
3

- (2) Despite subsection (1), this part does not affect the way in which general powers of attorney are executed under the *Land Title Act 1994* or the *Land Act 1994*. 4  
5  
6  
7

**24E No sealing required** 8

A general power of attorney for a business may be made even if it is not sealed or stated to be sealed. 9  
10

**24F General power of attorney may be in form of electronic document and electronically signed** 11  
12

A general power of attorney for a business may be in the form of an electronic document and may be electronically signed if it is executed under this part. 13  
14  
15  
16

**24G Accepted method for electronically signing general power of attorney** 17  
18

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. 19  
20  
21  
22

**24H Execution by corporation** 23

- (1) A corporation may execute a general power of attorney, without using a common seal, if the document is signed by— 24  
25  
26
- (a) 2 directors of the corporation; or 27
- (b) 1 director and 1 secretary of the corporation; 28  
or 29

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- (c) for a proprietary company that has a sole director—that director, if—
    - (i) the director is also the sole company secretary; or
    - (ii) 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) 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; or
  - (b) 1 director and 1 secretary of the corporation; or
  - (c) for a proprietary company that has a sole director—that director, if—
    - (i) the director is also the sole company secretary; or
    - (ii) the company does not have a company secretary.
- (3) For subsection (2), the fixing of a common seal to a document is taken to have been witnessed by a person mentioned in paragraph (a), (b) or (c) of that subsection if—
- (a) the person observes the fixing of the seal by audio visual link; and
  - (b) the person signs the document; and
  - (c) the document includes a statement that the person observed the fixing of the seal by audio visual link.
- (4) Also, for a statutory corporation, the general

- 
- power of attorney may be signed by a person, or  
in a way, authorised by the Act under which the  
corporation is established, incorporated or  
registered.
- (5) Further, for a corporation that is not incorporated  
under an Australian law, the general power of  
attorney may be signed by a person, or in a way,  
authorised by the law of the place in which the  
corporation is incorporated.
- (6) A general power of attorney may be signed under  
this section whether or not in the presence of a  
witness.
- (7) If a person signs a general power of attorney for a  
corporation as a lawfully authorised agent or  
attorney for the corporation, the person must—
- (a) sign the general power of attorney in a way  
that indicates the person is signing as a  
lawfully authorised agent or attorney; and
- (b) if the person is a corporation—sign the  
general power of attorney under this section.
- (8) This section does not limit the ways in which a  
general power of attorney for a corporation may  
be executed by the corporation.
- (9) In this section—
- attorney**, for a corporation, means a person acting  
under the authority of a power of attorney given  
by the corporation under a deed, a general power  
of attorney or another law.
- audio visual link** means facilities that enable  
reasonably contemporaneous and continuous  
audio and visual communication between persons  
at different places and includes  
videoconferencing.
- director**, of a corporation, means a member of the  
board of directors, council or other governing

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body of the corporation. 1

*secretary*, of a corporation, means the clerk, 2  
secretary or other permanent officer of the 3  
corporation. 4

**24I Execution by partnership or unincorporated 5  
association 6**

(1) An individual may execute a general power of 7  
attorney on behalf of a partnership or 8  
unincorporated association by signing the general 9  
power of attorney. 10

(2) An individual may sign a general power of 11  
attorney under subsection (1) whether or not in 12  
the presence of a witness. 13

(3) If an individual signs a general power of attorney 14  
under subsection (1), the individual must sign the 15  
general power of attorney in a way that indicates 16  
the person is executing the general power of 17  
attorney on behalf of the partnership or 18  
unincorporated association. 19

(4) This section does not limit or otherwise affect 20  
another law or instrument that requires or permits 21  
a general power of attorney executed on behalf of 22  
a partnership or unincorporated association to be 23  
executed in a particular way. 24

*Example—* 25

This section does not affect an instrument that requires 26  
or permits a general power of attorney executed on 27  
behalf of a partnership to be executed by a stated 28  
number of partners. 29

**24J Requirement for signatory 30**

A person signing a general power of attorney for 31  
a business must include the following information 32  
on the general power of attorney near the person's 33  
signature— 34

- 
- (a) the person’s full name; 1
  - (b) the person’s office or designation in relation 2  
to the business. 3

**24K Signing counterpart or true copy** 4

- (1) This section applies if 2 or more persons are to 5  
sign a general power of attorney for a business. 6
- (2) A person signing the general power of attorney 7  
for the business may sign a counterpart or true 8  
copy of the general power of attorney. 9
- (3) For subsection (2), if the counterpart or true copy 10  
is electronically signed by a person, the 11  
counterpart or true copy need not include any 12  
material included in the general power of attorney 13  
about the method used for electronically signing 14  
the general power of attorney. 15

**24L Lodgement or deposit of general power of 16  
attorney in registry** 17

- (1) This section applies to a general power of attorney 18  
that is proposed to be lodged or deposited in a 19  
registry for a purpose. 20
- (2) If the general power of attorney is made in 21  
counterparts, each counterpart must be lodged or 22  
deposited in the registry for the purpose. 23
- (3) If the general power of attorney or a counterpart 24  
of the general power of attorney is in the form of 25  
an electronic document, a printed copy of the 26  
general power of attorney or counterpart certified 27  
under subsection (4) must be lodged or deposited 28  
in the registry for the purpose. 29
- (4) For subsection (3), the printed copy must be 30  
certified as a true copy of the original general 31  
power of attorney or counterpart— 32

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	(a) on the last page of the printed copy; and	1
	(b) by 1 of the following persons—	2
	(i) 1 of the signatories;	3
	(ii) a lawyer;	4
	(iii) a justice;	5
	(iv) a commissioner for declarations;	6
	(v) a notary public;	7
	(vi) a trustee company under the <i>Trustee Companies Act 1968</i> ;	8 9
	(vii) a stockbroker.	10
	(5) In this section—	11
	<i>registry</i> means—	12
	(a) the land registry; or	13
	(b) the water allocations register under the <i>Water Act 2000</i> .	14 15
<b>Clause 47</b>	<b>Amendment of s 44 (Formal requirements)</b>	16
	(1) Section 44(6) and (7), after ‘doctor’—	17
	<i>insert—</i>	18
	or nurse practitioner	19
	(2) Section 44—	20
	<i>insert—</i>	21
	(9) In this section—	22
	<i>nurse practitioner</i> means a person registered	23
	under the Health Practitioner Regulation National	24
	Law to practise in the nursing profession, other	25
	than as a student, whose registration is endorsed	26
	as being qualified to practise as a nurse	27
	practitioner.	28

<b>Clause 48</b>	<b>Insertion of new ch 9, pt 5</b>	1
	Chapter 9—	2
	<i>insert—</i>	3
	<b>Part 5</b>	4
	<b>Transitional provisions</b>	5
	<b>for Justice Legislation</b>	6
	<b>(COVID-19 Emergency</b>	7
	<b>Response—</b>	8
	<b>Permanency)</b>	9
	<b>Amendment Act 2021</b>	
	<b>176 Definitions for part</b>	10
	In this part—	11
	<i>amending Act</i> means the <i>Justice Legislation</i>	12
	<i>(COVID-19 Emergency Response—Permanency)</i>	13
	<i>Amendment Act 2021</i> .	14
	<i>repealed regulation</i> means the repealed <i>Justice</i>	15
	<i>Legislation (COVID-19 Emergency</i>	16
	<i>Response—Documents and Oaths) Regulation</i>	17
	<i>2020</i> as in force immediately before its repeal.	18
	<b>177 Repealed regulation continues to apply to</b>	19
	<b>general power of attorney in particular</b>	20
	<b>circumstances</b>	21
	(1) This section applies in relation to a document that	22
	is a general power of attorney if—	23
	(a) before the commencement, the document	24
	was signed by a signatory or substitute	25
	signatory, and a person witnessed the	26
	document, under the repealed regulation;	27
	and	28
	(b) immediately before the commencement—	29

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- (i) the person had not confirmed the document as the document witnessed by the person under the repealed regulation; or
  - (ii) a special witness had not signed a certificate for the document in accordance with the repealed regulation; or
  - (iii) the person had not complied with another requirement relating to the document under the repealed regulation.
- (2) Despite the repeal of the repealed regulation, the repealed regulation continues to apply to the person in relation to the document as if the amending Act had not been enacted.

### **178 Signing general power of attorney for corporation**

- (1) This section applies if—
- (a) 2 or more persons (each a *required signatory*) are to sign a general power of attorney for a corporation; and
  - (b) before the commencement, at least 1 of the required signatories had signed the general power of attorney under the repealed regulation.
- (2) From the commencement and despite the repeal of the repealed regulation—
- (a) any required signatory who has not signed the general power of attorney may sign the general power of attorney in accordance with the repealed regulation as if the amending Act had not been enacted; and



- 
- (b) any requirements under the repealed regulation continue to apply in relation to the general power of attorney as if the amending Act had not been enacted.

**179 Repealed regulation continues to apply to particular general power of attorney**

- (1) This section applies to a general power of attorney made, signed or witnessed under the repealed regulation, including a general power of attorney to which section 177 or 178 applies.
- (2) Despite the repeal of the repealed regulation, the repealed regulation, sections 22 to 26 continues to apply in relation to the general power of attorney as if the amending Act had not been enacted.

**180 Certificate signed by nurse practitioner that is included in advance health directive**

- (1) This section applies to an advance health directive made after the commencement.
- (2) To remove any doubt, it is declared that a nurse practitioner may, under section 44(6), sign and date a certificate that is included in the advance health directive whether or not it is stated in the approved form for the advance health directive that the nurse practitioner may sign the certificate.
- (3) In this section—  
*nurse practitioner* means a person registered under the Health Practitioner Regulation National Law to practise in the nursing profession, other than as a student, whose registration is endorsed as being qualified to practise as a nurse practitioner.

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<b>Clause 49</b>	<b>Amendment of sch 3 (Dictionary)</b>	1
	Schedule 3—	2
	<i>insert—</i>	3
	<i>accepted method</i> , for electronically signing a general power of attorney, for chapter 2, part 3A, see section 24A.	4 5 6
	<i>business</i> , for chapter 2, part 3A, see section 24A.	7
	<i>corporation</i> , for chapter 2, part 3A, see section 24A.	8 9
	<i>counterpart</i> , for a document, for chapter 2, part 3A, see section 24B.	10 11
	<i>document</i> , for chapter 2, part 3A, see section 24A.	12 13
	<i>electronically sign</i> , a document, for chapter 2, part 3A, see section 24A.	14 15
	<i>electronic document</i> , for chapter 2, part 3A, see section 24A.	16 17
	<i>general power of attorney</i> , for chapter 2, part 3A, see section 24A.	18 19
	<i>information</i> , for chapter 2, part 3A, see section 24A.	20 21
	<i>make</i> , in relation to a document, for chapter 2, part 3A, see section 24A.	22 23
	<i>physical document</i> , for chapter 2, part 3A, see section 24A.	24 25
	<i>seal</i> , of a corporation, for chapter 2, part 3A, see section 24A.	26 27
	<i>sign</i> , a document, for chapter 2, part 3A, see section 24A.	28 29
	<i>statutory corporation</i> , for chapter 2, part 3A, see section 24A.	30 31
	<i>witness</i> , a document, for chapter 2, part 3A, see	32

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	section 24A.	1
<b>Part 8</b>	<b>Amendment of the Property Law Act 1974</b>	2
		3
<b>Clause 50</b>	<b>Act amended</b>	4
	This part amends the <i>Property Law Act 1974</i> .	5
<b>Clause 51</b>	<b>Replacement of ss 44–46</b>	6
	Sections 44 to 46—	7
	<i>omit, insert—</i>	8
	<b>Subdivision 1 Preliminary</b>	9
	<b>44 Definitions for division</b>	10
	In this division—	11
	<i>accepted method</i> , for electronically signing a document, means a method that—	12
		13
	(a) identifies the signatory for the document and the signatory’s intention in relation to the contents of the document; and	14
		15
		16
	(b) is either—	17
	(i) as reliable as appropriate for the purposes for which the document is made or signed, having regard to all the circumstances, including any relevant agreement; or	18
		19
		20
		21
		22
	(ii) proven in fact to have fulfilled the functions described in paragraph (a), by itself or together with further evidence; and	23
		24
		25
		26

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- (c) is consented to by each other signatory to the document. 1  
2
- consent** includes 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. 3  
4  
5  
6  
7
- copy**, of an electronic document, means a reproduction of the document in either electronic or hard copy form. 8  
9  
10
- corporation** includes— 11
- (a) a corporation under the Corporations Act, section 57A; and 12  
13
- (b) a corporation sole; and 14
- (c) a statutory corporation. 15
- counterpart**, for a document, see section 45. 16
- document** means any record of information however recorded and includes— 17  
18
- (a) anything on which there is writing; and 19
- (b) anything on which there are marks, symbols or perforations having a meaning for persons qualified to interpret them; and 20  
21  
22
- (c) anything from which sounds, images or writings can be reproduced with or without the aid of anything else; and 23  
24  
25
- (d) any record of information that exists in digital form and is capable of being reproduced, transmitted, stored or duplicated by electronic means. 26  
27  
28  
29
- electronically sign**, a document, means sign the document using an accepted method. 30  
31
- electronic document** means— 32

- 
- (a) a record of information reproduced from a thing mentioned in definition *document*, paragraph (c); or
- (b) a document of a type mentioned in definition *document*, paragraph (d).
- information* includes information in the form of data, text or images.
- physical document* means a document of a type mentioned in definition *document*, paragraph (a) or (b).
- seal*, of a corporation, includes a common seal of the corporation.
- secretary*, of a corporation, means the clerk, secretary or other permanent officer of the corporation.
- sign*, a document, means—
- (a) for a physical document—physically sign the document; or
- (b) for an electronic document—electronically sign the document.
- statutory corporation* means an entity established, incorporated or registered under an Act of the Commonwealth or a State, that is not a corporation registered under the Corporations Act.

#### 45 What is a *counterpart* for a document

- (1) A *counterpart*, for a document, is a copy of the document that includes the entire contents of the document.
- (2) Despite subsection (1), a counterpart need not include—
- (a) the signatures of the other persons who are to sign the document; or

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(b) if a common seal is fixed to the document—the seal. 1  
2

**46 Division does not apply to enduring documents** 3  
4

This division does not apply to an enduring document under the *Powers of Attorney Act 1998*. 5  
6

**46A Application of division to powers of attorney** 7

(1) Despite anything in this division, each of the following documents made by an individual must be a physical document that is signed by the individual in the presence of a witness— 8  
9  
10  
11

(a) a general power of attorney under the *Powers of Attorney Act 1998*; 12  
13

(b) a power of attorney given under a deed. 14

(2) However, a document containing a power of attorney given by an individual under a deed may be an electronic document that is electronically signed by the individual if— 15  
16  
17  
18

(a) the document is part of a commercial or other arms-length transaction; and 19  
20

(b) the power of attorney is given for the purpose of the commercial or other arms-length transaction. 21  
22  
23

*Example of a document that may be electronically signed under subsection (2)—* 24  
25

A document containing a power of attorney given by an individual under a deed as security for a proprietary interest of another party to the document or the performance of an obligation owed by the individual. 26  
27  
28  
29

(3) To remove any doubt, a power of attorney given by an individual under a deed under subsection (2) may be signed under subsection (2) whether or not in the presence of a witness. 30  
31  
32  
33

---

(4) This section applies subject to section 46G.	1
(5) In this section—	2
<i>individual</i> includes an individual in the	3
individual’s capacity as a sole trader.	4
<b>46B Execution of documents under other Acts</b>	5
This division does not affect the way in which	6
documents are validly executed under the <i>Land</i>	7
<i>Act 1994</i> or the <i>Land Title Act 1994</i> .	8
<b>Subdivision 2 General rules</b>	9
<b>46C How deed is made generally</b>	10
(1) A document takes effect as a deed if the	11
document—	12
(a) is in writing; and	13
(b) contains a clear statement that the document	14
is a deed; and	15
(c) is executed under this division; and	16
(d) is delivered in accordance with section 47.	17
(2) A document takes effect as a deed under	18
subsection (1) even if—	19
(a) it is not written on paper or parchment; or	20
(b) it is not an indenture or stated to be an	21
indenture; or	22
(c) it is not sealed or stated to be sealed.	23
<b>46D Deed may be in form of electronic document</b>	24
<b>and electronically signed</b>	25
A document that is to have effect as a deed may be	26
in the form of an electronic document and may be	27

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electronically signed. 1

**46E Execution by individual** 2

(1) An individual may execute a document that is to 3  
have effect as a deed by signing the document. 4

(2) An individual may sign a document under 5  
subsection (1) whether or not in the presence of a 6  
witness. 7

**46F Execution by corporation** 8

(1) A corporation may execute a document that is to 9  
have effect as a deed, without using a common 10  
seal, if the document is signed by— 11

(a) 2 directors of the corporation; or 12

(b) 1 director and 1 secretary of the corporation; 13  
or 14

(c) for a proprietary company that has a sole 15  
director—that director, if— 16

(i) the director is also the sole company 17  
secretary; or 18

(ii) the company does not have a company 19  
secretary; or 20

(d) a lawfully authorised agent or attorney of 21  
the corporation, whether or not the agent or 22  
attorney is appointed under seal. 23

(2) A corporation with a common seal may execute a 24  
document that is to have effect as a deed if the seal 25  
is fixed to the document and the fixing of the seal 26  
is witnessed by— 27

(a) 2 directors of the corporation; or 28

(b) 1 director and 1 secretary of the corporation; 29  
or 30



- 
- (c) for a proprietary company that has a sole director—that director, if—
- (i) the director is also the sole company secretary; or
- (ii) the company does not have a company secretary.
- (3) For subsection (2), the fixing of a common seal to a document is taken to have been witnessed by a person mentioned in paragraph (a), (b) or (c) of that subsection if—
- (a) the person observes the fixing of the seal by audio visual link; and
- (b) the person signs the document; and
- (c) the document includes a statement that the person observed the fixing of the seal by audio visual link.
- (4) Also, 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.
- (5) Further, for a corporation that is not incorporated under an Australian law, 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.
- (6) A document that is to have effect as a deed may be signed under this section whether or not in the presence of a witness.
- (7) If a person signs a document that is to have effect as a deed for a corporation as a lawfully authorised agent or attorney for the corporation, the person must—
- (a) sign the document in a way that indicates the person is signing as a lawfully authorised agent or attorney; and
-

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- (b) if the person is an individual—sign the document under section 46E; and
- (c) if the person is a corporation—sign the document under this section.
- (8) This section does not limit the ways in which a document that is to have effect as a deed for a corporation may be executed by the corporation.
- (9) In this section—
- attorney*, for a corporation, means 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.
- audio visual link* means facilities that enable reasonably contemporaneous and continuous audio and visual communication between persons at different places and includes videoconferencing.

**46G Execution by partnership or unincorporated association**

- (1) 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.
- (2) An individual may sign a document under subsection (1) whether or not in the presence of a witness.
- (3) If an individual signs a document under subsection (1), 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.
- (4) A reference in subsection (1) to a document includes a document containing a power of

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attorney for the partnership or unincorporated  
association. 1 2

- (5) This section does not limit or otherwise affect  
another law or instrument that requires or permits  
a document executed on behalf of a partnership or  
unincorporated association to be executed in a  
particular way. 3 4 5 6 7

*Example—* 8

This section does not affect an instrument that requires  
or permits a document executed on behalf of a  
partnership to be executed by a stated number of  
partners. 9 10 11 12

#### **46H Signing counterpart or true copy** 13

- (1) A document that is to have effect as a deed for an  
individual, corporation, partnership or  
unincorporated association may be signed by or  
for the individual, corporation, partnership or  
unincorporated association by signing a  
counterpart or true copy of the document. 14 15 16 17 18 19

- (2) For subsection (1), if the counterpart or true copy  
is electronically signed by a person, the  
counterpart or true copy need not include any  
material included in the document about the  
method used for electronically signing the  
document. 20 21 22 23 24 25

#### **Clause 52 Amendment of s 47 (Delivery of deeds)** 26

Section 47(1)(b)— 27

*omit, insert—* 28

- (b) in another form under this subdivision; 29

#### **Clause 53 Insertion of new ss 53A and 53B** 30

After section 53— 31

[s 53]

---

*insert—*

**53A Deposit of deed in registry**

- |  |                            |
|--|----------------------------|
|  | 1                          |
|  | 2                          |
| (1) This section applies to a deed made under this part that is proposed to be deposited in a registry—  | 3<br>4                     |
| (a) in support of another document lodged or deposited in the registry; or   | 5<br>6                     |
| (b) for registration, enrolment or recording under section 241(1).   | 7<br>8                     |
| (2) If the deed is made in counterparts, each counterpart must be deposited in the registry for the purpose.   | 9<br>10<br>11              |
| (3) If the deed or a counterpart of the deed is in the form of an electronic document, a printed copy of the deed or counterpart certified under subsection (4) must be deposited in the registry for the purpose. | 12<br>13<br>14<br>15<br>16 |
| (4) For subsection (3), the printed copy must be certified as a true copy of the original deed or counterpart—   | 17<br>18<br>19             |
| (a) on the last page of the printed copy; and  | 20                         |
| (b) by 1 of the following persons—   | 21                         |
| (i) 1 of the signatories;  | 22                         |
| (ii) a lawyer;   | 23                         |
| (iii) a justice;   | 24                         |
| (iv) a commissioner for declarations;  | 25                         |
| (v) a notary public;   | 26                         |
| (vi) a trustee company under the <i>Trustee Companies Act 1968</i> ;   | 27<br>28                   |
| (vii) a stockbroker.   | 29                         |
| (5) In this section—   | 30                         |
| <i>registry</i> means—   | 31                         |

- 
- (a) the land registry; or 1
  - (b) the water allocations register under the *Water Act 2000*. 2  
3

**53B Protection for third parties** 4

- (1) A person may assume that a document has been duly executed by a corporation if— 5  
6
  - (a) the document appears to have been signed under section 46F(1); or 7  
8
  - (b) both of the following apply— 9
    - (i) the common seal of the corporation appears to have been fixed to the document under section 46F(2); 10  
11  
12
    - (ii) the fixing of the common seal as mentioned in subparagraph (i) appears to have been witnessed under section 46F(2). 13  
14  
15  
16
- (2) Nothing in this section limits or affects any requirement to be satisfied that a person signing a document is a director, secretary, or lawfully authorised agent or attorney, of a corporation. 17  
18  
19  
20

**Clause 54 Insertion of new s 78A** 21

After section 78— 22

*insert—* 23

**78A Mortgages lodged electronically** 24

- (1) This section applies in relation to a mortgage under this Act or another law if— 25  
26
  - (a) the mortgage is lodged under the Electronic Conveyancing National Law (Queensland), section 7; and 27  
28  
29

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	(b) the mortgagee holds a document that grants a mortgage by the mortgagor that—	1 2
	(i) is on the same terms as the lodged mortgage; and	3 4
	(ii) complies with section 11.	5
	(2) However, this section does not apply in relation to a mortgage that is a deed.	6 7
	(3) If the mortgage is required to be given, produced or used for any purpose, the document mentioned in subsection (1)(b) may be—	8 9 10
	(a) given, produced or used for the purpose; and	11
	(b) relied on as evidence of the mortgage.	12
	(4) Subsection (3) applies regardless of whether the document mentioned in subsection (1)(b)—	13 14
	(a) was signed by or for the mortgagor or mortgagee in the presence of a witness; or	15 16
	(b) was electronically signed by or for the mortgagor or mortgagee.	17 18
<b>Clause 55</b>	<b>Insertion of new pt 26</b>	19
	After section 360—	20
	<i>insert—</i>	21
	<b>Part 26</b>	<b>Transitional provision</b>
		<b>for Justice Legislation</b>
		<b>(COVID-19 Emergency</b>
		<b>Response—</b>
		<b>Permanency)</b>
		<b>Amendment Act 2021</b>

<b>360A Deed signed by different signatories before and after commencement</b>	1 2
(1) This section applies to a deed if—	3
(a) an individual or corporation signed the deed before the commencement; and	4 5
(b) another individual or corporation signs the deed after the commencement.	6 7
(2) The individual or corporation signing the deed after the commencement may electronically sign the deed under section 46D.	8 9 10
(3) For subsection (2), the requirement under section 44, definition <i>accepted method</i> , paragraph (c), for the method to be consented to by each other signatory to the deed may be inferred from conduct of the signatory before the commencement.	11 12 13 14 15 16
(4) Also, subsection (2) applies whether or not the individual or corporation who signed the deed before the commencement electronically signed the deed.	17 18 19 20
(5) To remove any doubt, it is declared that the repealed regulation applied to the individual or corporation signing the deed before the commencement.	21 22 23 24
<i>Note—</i>	25
Former section 12O(2) of the repealed regulation did not require the consent of another person to electronically signing the deed.	26 27 28
(6) In this section—	29
<b><i>corporation</i></b> means a corporation as defined under section 44.	30 31
<b><i>repealed regulation</i></b> means the repealed <i>Justice Legislation (COVID-19 Emergency Response—Documents and Oaths) Regulation 2020</i> as in force from time to time before the	32 33 34 35

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	commencement.	1
<b>Clause 56</b>	<b>Amendment of sch 6 (Dictionary)</b>	2
	Schedule 6—	3
	<i>insert—</i>	4
	<i>accepted method</i> , for electronically signing a document, for part 6, division 1, see section 44.	5 6
	<i>consent</i> , for part 6, division 1, see section 44.	7
	<i>copy</i> , of an electronic document, for part 6, division 1, see section 44.	8 9
	<i>corporation</i> , for part 6, division 1, see section 44.	10
	<i>counterpart</i> , for a document, for part 6, division 1, see section 45.	11 12
	<i>document</i> , for part 6, division 1, see section 44.	13
	<i>electronically sign</i> , a document, for part 6, division 1, see section 44.	14 15
	<i>electronic document</i> , for part 6, division 1, see section 44.	16 17
	<i>information</i> , for part 6, division 1, see section 44.	18
	<i>physical document</i> , for part 6, division 1, see section 44.	19 20
	<i>seal</i> , of a corporation, for part 6, division 1, see section 44.	21 22
	<i>secretary</i> , of a corporation, for part 6, division 1, see section 44.	23 24
	<i>sign</i> , a document, for part 6, division 1, see section 44.	25 26
	<i>statutory corporation</i> , for part 6, division 1, see section 44.	27 28



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**Part 9** **Repeal** 1

**Clause 57** **Repeal** 2

The following regulations are repealed— 3

- the Domestic and Family Violence Protection (COVID-19 Emergency Response) Regulation 2020, SL No. 153 4  
5  
6
- the Justice Legislation (COVID-19 Emergency Response—Documents and Oaths) Regulation 2020, SL No. 72. 7  
8  
9

**Part 10** **Minor and consequential amendments** 10  
11

**Clause 58** **Legislation amended** 12

Schedule 1 amends the legislation it mentions. 13

<b>Schedule 1</b>	<b>Minor and consequential amendments</b>	1 2
	section 58	3
	<b>Children’s Court Rules 2016</b>	4
<b>1</b>	<b>Rule 85(3)(d), note—</b>	5
	<i>omit, insert—</i>	6
	<i>Note—</i>	7
	For persons who may take an affidavit, see the <i>Oaths Act 1867</i> , parts 4 and 6A.	8 9
	<b>Forestry Act 1959</b>	10
<b>1</b>	<b>Section 61RV(1)(b), ‘Property Law Act 1974, section 46’—</b>	11
	<i>omit, insert—</i>	12
	<i>Property Law Act 1974</i> , section 46F	13
	<b>Guardianship and Administration Act 2000</b>	14
<b>1</b>	<b>Section 45(4), ‘Property Law Act 1974, section 46’—</b>	15
	<i>omit, insert—</i>	16
	<i>Property Law Act 1974</i> , section 46F	17

<b>Land Act 1994</b>	1
<b>1 Section 310(1)(b), ‘Property Law Act 1974, section 46’—</b>	2
<i>omit, insert—</i>	3
<i>Property Law Act 1974, section 46F</i>	4
 <b>Land Title Act 1994</b>	 5
<b>1 Section 161(1)(b), ‘Property Law Act 1974, section 46’—</b>	6
<i>omit, insert—</i>	7
<i>Property Law Act 1974, section 46F</i>	8
 <b>Powers of Attorney Act 1998</b>	 9
<b>1 Section 69(4), ‘Property Law Act 1974, section 46’—</b>	10
<i>omit, insert—</i>	11
<i>Property Law Act 1974, section 46F</i>	12
 <b>Uniform Civil Procedure Rules 1999</b>	 13
<b>1 Rule 432(3)(e), note—</b>	14
<i>omit, insert—</i>	15
<i>Note—</i>	16
For persons who may take an affidavit, see the <i>Oaths Act 1867</i> , parts 4 and 6A.	17
	18

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