

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

## **Explanatory Notes**

### **FOR**

**Amendments to be moved during consideration in detail by the Honourable Shannon Fentiman MP, Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence**

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

### **Objectives of the Amendments**

The Justice Legislation (COVID-19 Emergency Response—Permanency) Amendment Bill 2021 (the Bill) includes amendments to the *Oaths Act 1867* (Oaths Act), the *Powers of Attorney Act 1998* (Powers of Attorney Act) and the *Property Law Act 1974* (Property Law Act) that will modernise the way in which important legal documents are made, signed and witnessed, in line with contemporary business practice, and improve access to justice (Document Reforms).

The objectives of the amendments are to improve the intended operation of the Document Reforms, clarify provisions and introduce a transitional provision to provide legal certainty for deeds executed by the State and corporations sole under the *Justice Legislation (COVID-19 Emergency Response—Documents and Oaths) Regulation 2020* (the DO Regulation).

The objectives of the amendments also include to:

- change the title of the Bill to the Justice and Other Legislation Amendment Bill 2021;
- amend the Governor’s pension arrangements under the *Governors (Salary and Pensions) Act 2003*; and
- amend the *Queensland Building and Construction Commission Act 1991* (QBCC Act) to clarify a technical issue relating to directions to rectify building work.

## **Amendments to the Document Reforms**

### Amendments to the Oaths Act

The objectives of the amendments to Part 6 of the Bill (which contains amendments to the Oaths Act) are to clarify the procedural and document retention requirements that apply to the witnessing of affidavits and statutory declarations in person and over audio visual link, consistent with the policy objectives of the Bill.

#### *Background – ways that documents can be made*

The Bill allows a witness to sign either the same document, a true copy of the document signed by the signatory/substitute signatory, or a counterpart of the document (which is a copy that does not contain the other signatures). This provides flexibility for the document creation process, to ensure documents can be made efficiently depending on the circumstances in each case.

When the witness signs the same document or a true copy of the document signed by the signatory or substitute signatory, this results in a document that has both signatures on it (this is called the **official version**), but the signatures may not be original (because the documents can be scanned and electronically shared).

The Bill currently provides that the version of the document that was signed (either physically or electronically) by the signatory/substitute signatory (the **originating version**) must be kept together with the official version. This ensures that appropriate evidence is available in the event that a court, tribunal or other person to whom the document is given needs to test the authenticity of the document. It also ensures appropriate evidence is available in the event of any prosecution for perjury.

#### *Amendment to retention requirement*

It is proposed to replace the requirement to retain the originating version of a document with the official version with a requirement for the signatory to ensure that the “**original physical version**” of the document is kept (the version signed by the signatory/substitute signatory in wet ink). This will remove the requirement to keep an electronic originally signed document (because it is virtually indistinguishable from the copy), and it will no longer be necessary to keep it together with the official version (because practically this may not be possible if the official version is given to an entity, such as a court). It is also proposed to clarify that if the signatory fails to keep the

original physical version of the document (for example, if it gets lost), then the signatory does not commit an offence and the validity of the document is not affected.

It is proposed to allow rules of court and practice directions to be made to specify a minimum retention period for the original physical versions of documents that are used in proceedings.

It is also proposed to clarify that courts, tribunals and other persons to whom a document is given can require production of the original physical version of a document.

It is also proposed to clarify the definition of “official version” and clearly define “original physical version” (which replaces the term “originating version”).

#### *Clarification of the process after witness confirms document*

It is proposed to clarify that a signatory can direct the witness to retain the affidavit or statutory declaration after the witness confirms the document. This amendment is proposed in recognition of the fact that legal practitioners usually retain documents for their clients.

#### *No requirement to keep other versions*

Section 31Y(5) of the Oaths Act as inserted by the Bill currently provides that once the witness gives the version of the document that they have signed to the person directed by the signatory, there is no requirement to keep any other version of the document unless required by law to do so. It is proposed to clarify that this provision does not displace any existing record-keeping requirements on the witnesses, such as under the *Public Records Act 2002* or the *Australian Solicitors Conduct Rules*.

#### *Amendments to section 16D of the Oaths Act*

It is proposed to amend section 16D of the Oaths Act as inserted by the Bill to correct a minor drafting oversight to accommodate situations where a document is witnessed in person and the witness signs a true copy of an electronic document signed by the signatory or substitute. It is also proposed to amend the provision to reflect the amendments being made to sections 31Y and 31V as inserted by the Bill (discussed above).

#### Amendments to the Powers of Attorney Act

Powers of attorney (other than enduring powers of attorney) can be made using the approved form under the Powers of Attorney Act (Form 1), or otherwise can be made as a deed.

Section 12(2) of the Powers of Attorney Act provides that a power of attorney under that Act must be signed by, or by direction and in the presence of, the principal. Section 12(1) provides that the section does not apply to powers of attorney created by and contained in another instrument, for example, a mortgage or lease.

It is proposed to amend section 12(1) of the Powers of Attorney Act to insert a note to cross-refer to the Property Law Act in relation to powers of attorney given under a deed.

### Amendments to the Property Law Act

#### *Execution of deeds by the State and corporations sole*

Submissions to the State Development and Regional Industries Committee (the Committee) in its inquiry into the Bill suggested that the Bill needs to be amended to clarify that the State and corporations sole can also sign deeds electronically using the modernised framework.

The submissions indicate that there may be legal uncertainty as to whether the State can execute a deed electronically, in counterparts and by split execution under both the temporary arrangements in the DO Regulation and the Bill.

The submissions also suggested providing for how a statutory corporation can sign a deed, and that without similarly providing for a corporation sole creates the implication that a corporation sole cannot execute a deed electronically under the modified arrangements.

Recommendation 3 of the State Development and Regional Industries Committee Report was that further reforms be considered to address the execution of deeds by the State.

The intent of the DO Regulation and the Bill was to enable parties, including government, to create a deed electronically and to be able to sign the deed electronically, without a seal, without a witness, in counterparts and by split execution provided the deed is signed by an authorised person.

It is proposed to clarify the execution requirements for a statutory corporation and a corporation sole and put it beyond doubt that a deed may be executed electronically for the State by an authorised person, without a witness, without using a seal, in counterparts and by split execution.

In addition, in order to avoid any uncertainty as to the validity of a deed executed by the State or a corporation sole electronically, in counterparts and by split execution under the DO Regulation, the amendments validate the execution of any document that is to have effect as a deed for a corporation sole or the State that was signed by an authorised person from 22 May 2020 until the Bill commences if the document was signed electronically, without a seal, without a witness, in counterparts and by split execution.

#### *Powers of attorney given by an individual in a deed*

Clause 51 of the Bill inserts a new section 46A in the Property Law Act to provide a limited exception to the requirement for a power of attorney for an individual to be made as a physical document that is signed by the individual in the presence of a witness.

The exception provides that 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:

- the document is part of a commercial or other arms-length transaction; and
- the power of attorney is given for the purpose of the commercial or other arms-length transaction.

This reflects commercial reality where a power of attorney for an individual is given for a very limited or specific purpose that is ancillary to the dominant purpose of the transaction, or necessary and convenient to allow the transaction to occur.

The amendments clarify that a document containing a power of attorney given by an individual under a deed may be characterised as part of a commercial or arms-length transaction even if the document is executed at a different time, and is separate to, other documents that form part of the transaction.

### **Amendments to the *Governors (Salary and Pensions) Act 2003***

Under section 29 of the *Constitution of Queensland 2001*, the Queensland Governor is appointed by Commission from Her Majesty The Queen. By convention a Governor of Queensland serves for a period of five years.

Under section 3 of the *Governors (Salary and Pensions) Act 2003* (the Act), the salary of a Governor is prescribed in a Regulation, which is set from the beginning of the term of each newly appointed Governor.

The Act currently provides for an indexed lifetime pension payable to a former Governor, which is offset by any pension or retiring allowance they receive in respect of any former public service.

Under section 7 of the Act, former Governors, who held office for at least 5 years are entitled to a lifetime pension of 35% of their Governor's salary. If a Governor leaves office with less than 5 years' service because they are incapable of performing the duties, the Minister may under section 11 of the Act declare that they are entitled to a pension under section 7 of the Act. Section 7 also provides that a surviving partner of a deceased Governor is entitled to 62.5% of the Governor's pension for their lifetime.

Part 3A of the Act provides for an incoming Governor to choose to: retain their current superannuation fund or transition to the State public sector scheme under the *Superannuation (State Public Sector) Act 1990* (the Superannuation Act); or receive a pension under part 3 of the Act.

The policy objective of these amendments is to clarify the Government's intention that post-employment benefits payable from State funding will be offset from the Governor's pension, should a Governor choose to receive a lifetime pension at the end of their term in office.

### **Amendments to the QBCC Act**

One of the Queensland Building and Construction Commission's (QBCC) key compliance and enforcement mechanisms is the ability to direct a person to rectify

defective or incomplete building works or remedy consequential damage within a prescribed period.

From 1 October 1999, the rectification period was legislated in the QBCC Act, which required the period stated in a direction to be at least 28 days, unless a shorter period was warranted because of a significant hazard, or a substantial loss might otherwise be incurred.

In 2017, QBCC Act amendments were made to enhance the rectification of building work provisions, including providing for the period stated in a direction, within which the person must rectify the work, to be the period prescribed by regulation.

The QBCC Act amendments automatically commenced on 11 November 2019. Between 11 November 2019 and 9 November 2021, the QBCC generally continued with its long-established practice of providing 35 days, from the day the direction is issued, for a person to rectify building work. This was to provide a minimum 28-day period for the work to be completed, while allowing for the postage and receipt of directions.

On 10 November 2021, the *Queensland Building and Construction Commission (Rectification of Building Work) Amendment Regulation 2021* was made to provide that the prescribed period is 35 days.

The objectives of the amendments are to retrospectively validate directions issued by QBCC since 2019. These amendments reflect the long-standing and well understood practice for issuing directions. They also give confidence the directions previously issued, and actions taken in reliance upon those directions, have legal effect as if the timeframe for rectification had, at the time of issue of the directions, been prescribed in the regulation.

## **Achievement of the Objectives**

### **Amendments to the Documents Reforms**

The amendments to the Documents Reforms in the Bill will achieve the stated policy objectives by:

- amending new section 31Y of the Oaths Act as inserted by the Bill to: remove the requirement for the originating and official versions of a document to be kept together and instead require the original physical version to be kept (and clarify that failure to comply is not an offence and does not invalidate the document); allow rules of court and practice directions to specify a retention period for the original physical version of a document that is used in a proceeding; clarify that nothing in the provision limits the ability of a court, tribunal or other person to whom a document is given for a purpose to require production of the originating version; clarify the meaning of defined terms; and clarify the operation of section 31Y(5) as inserted by the Bill;
- amending new section 31V of the Oaths Act inserted by the Bill to allow a signatory to direct the witness to keep the document, true copy or counterpart;

- amending new section 16D of the Oaths Act inserted by the Bill to: correct a minor drafting oversight to accommodate situations where the witness signs a true copy of a document; and ensure that the provision is consistent with equivalent provisions in Part 6 of the Oaths Act (new sections 31U, 31Y and 31Z as inserted by the Bill);
- amending section 16D(4) of the Oaths Act as inserted by the Bill to clarify that a court, tribunal or other person to whom a document is given for a purpose can require production of the electronic document, consistent with the amendment to section 31Y of the Oaths Act inserted by the Bill discussed above;
- adding a note to existing section 12(1) of the Powers of Attorney Act to cross-refer to the Property Law Act in relation to powers of attorney given under a deed;
- amending new section 46A of the Property Law Act inserted by the Bill to clarify that a document containing a power of attorney given by an individual under a deed may be characterised as part of a commercial or arms-length transaction even if the document is executed at a different time, and is separate to, other documents that form part of the transaction provided it is given for the purpose of the transaction;
- amending new section 46F of the Property Law Act inserted by the Bill to clarify the execution requirements for corporations, a corporation sole and a statutory corporation, removing a potential overlap and clarifying how particular entities execute a deed under the new provisions;
- inserting a new section 46GA into the Property Law Act to clarify that a person authorised to execute deeds for the State may execute deeds electronically, in counterparts and by split execution;
- amending section 46H of the Property Law Act inserted by the Bill to clarify that all types of entities can execute deeds using counterparts, including individuals, corporations, corporations sole, statutory corporations, partnerships, unincorporated associations and the State;
- inserting a new transitional provision to validate the execution of a document that is to have effect has a deed that may have been executed by an authorised person for the State or a corporation sole under the DO Regulation.

### **Amendments to the *Governors (Salary and Pensions) Act 2003***

To achieve the policy objective the amendments ensure that, if a Governor chooses to receive a lifetime pension, the pension is offset by the amount of the State funded component of the superannuation benefit payable to the Governor under the Defined Benefit Category in the State public sector superannuation scheme (Defined Benefit).

The amount will be determined by an actuary approved by the relevant Minister (the State Actuary). Defined Benefit entitlements are crystallised as a lump sum upon exit from the fund. The State Actuary will determine the value of the State funded component of the Defined Benefit entitlements and convert that amount into an equivalent annual pension amount, as at the end of the Governor's term of appointment.

The annual pension amount will be based on the same parameters as the Governor's pension, that is: a pension for life; with reversionary rights to the Governor's surviving partner; and indexation in accordance with the rates prescribed in section 15 of the Act. This amount will then be subtracted from the Governor's pension payable under part 3 of the Act. Once the first year pension amount is set, it will be indexed in accordance with section 15 of the Act and subject to any other offsets under section 16 of the Act.

### **Amendments to the QBCC Act**

The amendments will retrospectively validate directions issued by QBCC (and any consequential actions taken arising from those directions), as if a regulation had been made at the date of the commencement of the amendments in 2019.

## **Alternative Ways of Achieving Policy Objectives**

There are no alternative ways of achieving the policy objectives.

## **Estimated Cost for Government Implementation**

### **Amendments to the Document Reforms**

There are no costs to government in implementing the proposed amendments.

### **Amendments to the *Governors (Salary and Pensions) Act 2003***

Offsetting a lifetime pension by the Defined Benefit Annual Amount will reduce the cost of the Governor's pension scheme.

### **Amendments to the QBCC Act**

The estimated administrative cost to government of implementing the proposed amendments is nil.

## **Consistency with Fundamental Legislative Principles**

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

### **Amendments to the Document Reforms**

The proposed amendments related to the Oaths Act and the Powers of Attorney Act are technical in nature to improve the operation of the reforms and do not breach fundamental legislative principles.

The proposed amendments related to the Property Law Act are designed to: clarify the scope of the exception relating to powers of attorney given by individuals; clarify the execution requirements for a statutory corporation and a corporation sole; and put it



beyond doubt that a deed may be executed for the State by an authorised person, without a witness, without using a seal, and by counterparts and split execution. These amendments are clarifying in nature and are consistent with the original policy intent of the Bill and the DO Regulation.

As outlined in the Explanatory Notes to the Bill, the new framework under the Property Law Act modernises the way that deeds are made, signed and witnessed and may potentially infringe the fundamental legislative principle provided for in section 4(3)(b) of the LSA that legislation is consistent with the principles of natural justice and the fundamental legislative principle contained in section 4(2)(a) of the LSA that legislation has sufficient regard to the rights and liberties of individuals.

The execution of deeds electronically and without a witness may increase the risk of fraud and disproportionately impact some vulnerable or disadvantaged individuals who are susceptible to coercion and fraud. However, these amendments are considered justified as they will deliver significant benefits to government, business and legal communities by improving transactional efficiency and reducing costs. The Bill also seeks to mitigate the risks by introducing a consent requirement in relation the method of electronic signature used for signing a deed and by providing a limited exception to the requirement for a power of attorney for an individual to be made as a physical document that is signed by the individual in the presence of a witness. The amendments do not infringe the fundamental legislative principle any further than the provisions in the Bill.

The proposed transitional provision for deeds executed for the State or a corporation sole under the DO Regulation is retrospective in nature. This amendment may infringe upon the fundamental legislative principle provided for in section 4(3)(g) of the LSA that legislation does not adversely affect rights and liberties, or impose obligations, retrospectively. The amendment provides assurance to entities that have executed a deed with the State or the corporation sole that the deed is not invalidated merely because the deed was executed in accordance with the modified arrangements, hence preserving any rights, interests and obligations under the deed. This provides certainty in relation to deeds entered into with the State or a corporation sole since the commencement of the DO Regulation.

### **Amendment of the *Governors (Salary and Pensions) Act 2003***

The amendments are consistent with fundamental legislative principles.

### **Amendment of the QBCC Act**

Generally, the amendments are consistent with the fundamental legislative principles. Retrospectively validating directions, and consequential actions taken arising from those directions, will support QBCC's compliance and enforcement activities. As the amendments implement long-established and well understood QBCC practice, it is considered there is no adverse effect on individuals' rights and liberties.

## Consultation

### Amendments to the Document Reforms

Consultation was undertaken with the Queensland Law Society, as well as government departments and agencies, on the proposed amendments to the Oaths Act provisions in the Bill and the amendments relating to the execution of deeds by the State and corporations sole. The development of the amendments were also informed by the submissions to the Committee.

The stakeholders consulted broadly support the proposed amendments.

### Amendment of the *Governors (Salary and Pensions) Act 2003*

No consultation external to Government was undertaken on the proposed amendments.

### Amendment of the QBCC Act

The Ministerial Construction Council (MCC) was consulted on the amendments on 3 November 2021. MCC members supported amendments to provide certainty and clarity for consumers and industry.

## Consistency with legislation of other jurisdictions

See the Explanatory Notes to the Bill.

The amendments to the Bill are specific to the State of Queensland,

## NOTES ON PROVISIONS

### Amendment 1 – Clause 1 (Short title)

*Amendment 1* amends clause 1 of the Bill to change the short title of the Bill to the Justice and Other Legislation Amendment Bill 2021.

### Amendment 2 – Clause 2 (Commencement)

*Amendment 2* amends clause 2 of the Bill (Commencement) to specify the parts of the Bill which will commence on proclamation. The effect of this amendment is that new part 4A of the Bill (Amendment of *Governors (Salary and Pensions) Act 2003*) and new part 8A of the Bill (Amendment of *Queensland Building and Construction Commission Act 1991*) will commence upon assent. Parts 1 and 2 will also commence on assent.

### Amendment 3 – Clause 18 (Insertion of new pt 10, div 4)

*Amendment 3* amends clause 18 of the Bill to reflect the new short title of the Bill.

#### **Amendment 4 – After clause 25**

*Amendment 4* inserts a new part 4A (Amendment of *Governors (Salary and Pensions) Act 2003*) into the Bill.

New clause 25A provides that part 4A amends the Act.

New clause 25B inserts new section 7A into the Act.

Section 7A(1) prescribes that the provision applies to a person who ceases to hold the office of Governor after commencement, and was, immediately before holding office of Governor, a member of the Defined Benefit Category in the State public sector superannuation scheme (Defined Benefit).

Section 7A(2) prescribes the rate of the pension payable to a former Governor subject to this section. The rate is the pension rate prescribed in section 7(3) of the Act less the ‘defined benefit offset amount’. The defined benefit offset amount is defined at new subsection (5).

Section 7A(3) clarifies that if the defined benefit offset amount is greater than or equal to the pension amount, the pension is reduced to nil.

Section 7A(4) clarifies that if the defined benefit offset amount is less than the pension amount under section 7(3), the rate of pension paid is in accordance with section 7A(2). The section would also ensure that the rate of a pension payable to a relevant former Governor or the partner of a deceased former Governor will be determined in accordance with subsection (2).

Section 7A(5) defines the term ‘defined benefit offset amount’. The defined benefit offset amount is the amount determined by an actuary approved by the relevant Minister to be the annual value of defined benefits paid or payable to the former Governor in relation to their Defined Benefit. To determine the amount, the actuary will convert the State funded component of the Defined Benefit into an annual pension on the same terms as a pension payable under this part.

Section 7A(6) prescribes definitions for other terms used in the new section.

#### **Amendment 5 – Clause 33 (Insertion of new pt 12, div 23)**

*Amendment 5* amends clause 33 of the Bill to reflect the new short title of the Bill.

#### **Amendment 6 – Clause 35 (Amendment of s 1B (Definitions))**

*Amendment 6* amends clause 35 of the Bill. This clause amends section 1B of the Oaths Act to include further definitions.

The definition of “official version” is amended to update the section cross-reference, and the definition of “originating version” is omitted and replaced with a definition for “original physical version”.

**Amendment 7 – Clause 39 (Insertion of new pt 4, div 3)**

*Amendment 7* amends clause 39 of the Bill. This clause inserts a new division 3 (Signing in physical presence of witness) into part 4 of the Oaths Act.

The amendment corrects a drafting oversight in new section 16D (Effect of affidavit or declaration electronically signed in physical presence of witness) to accommodate the situation where a witness signs a true copy of the document (as is possible in section 16C(4)).

**Amendment 8 – Clause 39 (Insertion of new pt 4, div 3)**

*Amendment 8* further amends new section 16D (Effect of affidavit or declaration electronically signed in physical presence of witness) by reorganising the structure of the section.

Subsection (2) is replaced with a new provision which applies to affidavits and statutory declarations that are made in electronic form and signed electronically in the physical presence of a (special) witness. The new subsection provides that, if the witness confirms the document by signing the same electronic document or a true copy, the electronic document or true copy confirmed by the witness, or a printout of the electronic document or true copy, may be given, produced or used for any purpose and relied on as evidence of the document.

New subsection (3) applies to affidavits and statutory declarations that are made in counterparts in the form of electronic documents. This new subsection (which is essentially a renumbered version of the former subsection (2)) provides that the counterpart confirmed by the witness must be kept with the document signed by the signatory or substitute signatory, and together the counterpart and document constitute the affidavit or declaration.

**Amendment 9 – Clause 39 (Insertion of new pt 4, div 3)**

*Amendment 9* inserts a new subparagraph (c) into section 16D(3) to provide that the counterparts constituting the document, or a printout of the counterparts, may be given, produced or used for any purpose or relied on as evidence of the document.

Section 16D(4) provides that a court, tribunal or other person to whom the affidavit or declaration is given for any purpose may require production of the electronic document or a true copy, or the counterparts in the form of electronic documents. The scope of this section has been expanded to clarify that nothing in the section prevents tribunals and other third parties (in addition to courts) to require production of the electronic document or a true copy of the document.

### **Amendment 10 – Clause 40 (Insertion of new pt 6A)**

*Amendment 10* amends clause 40 of the Bill. This clause inserts a new part 6A (Audio visual links) into the Oaths Act.

The amendment replaces the definitions of “official version” and “originating version” in new section 31B of the Oaths Act (Definitions for part) in order to clarify the meaning of these terms.

The term “official version” is defined to mean:

- (a) if under section 31U(2)(a), the document confirmed by the witness is the same document signed by the signatory or substitute signatory and—
  - the document is given in the form of a physical document – the official version is that document; or
  - the document is given in the form of an electronic document – the electronic document or a printout is the official version.
  
- (b) if under section 31U(2)(b), the witness confirms a document as a true copy of the document signed by the signatory or the substitute signatory and—
  - the true copy is given in the form of a physical document – the true copy is the official version; or
  - the true copy is given in the form of an electronic document – the true copy (in electronic form) or a printout of the true copy is the official version.

The term “originating version” is replaced with the term “original physical version”, which is defined to mean the version of the document that was physically signed by the signatory or substitute signatory, if the version is not the same as the official version. This means that the “original physical version” is the original document which bears the original wet-ink signature of the signatory or substitute signatory, where the witness has confirmed a true copy of the document. The change means that the concept of an “originating” document (now called an original physical document) no longer applies to electronically signed documents.

### **Amendment 11 – Clause 40 (Insertion of new pt 6A)**

*Amendment 11* inserts a note to new section 31V (Action after witness confirms document) in the Bill to clarify that a signatory can direct that the confirmed document, true copy or counterpart be given to the witness for the document. This amendment covers the common situation in legal practice where a person’s lawyer witnesses and retains the document.

### **Amendment 12 – Clause 40 (Insertion of new pt 6A)**

*Amendment 12* changes the title of new section 31Y of the Oaths Act from “Official and originating versions of document” to “Documents made using official and original physical versions”.

### **Amendment 13 – Clause 40 (Insertion of new pt 6A)**

*Amendment 13* amends subsections (2) to (5) of new section 31Y of the Oaths Act.

New subsection (2) provides that if an affidavit or statutory declaration is made using an original physical version, the signatory for the document must ensure the original physical version is kept.

New subsection (3) provides that a court or tribunal may make rules of court or practice directions that state the minimum period for which an original physical version of a document that is filed or admitted into evidence is to be kept.

New subsection (4) is an avoidance of doubt provision to clarify that if the signatory fails to ensure that the original physical version is kept:

- the signatory does not commit an offence against the Oaths Act or another Act; and
- the official version of a document is not invalidated.

Subsection (5) is amended to make it clear that, once the witness gives the confirmed document to the relevant person, they are not required to keep any other version of the document, unless required under a law. This amendment ensures that the provision does not affect any record-keeping requirements under another law.

### **Amendment 14 – Clause 40 (Insertion of new pt 6A)**

*Amendment 14* replaces section 31Y(7) with a provision which clarifies that nothing in this section limits the ability of a court, tribunal or other person to whom a document is given for a purpose to require production of the original physical version of the document. This provision is consistent with the amendment to section 16D(4) outlined above.

### **Amendment 15 – Clause 40 (Insertion of new pt 6A)**

*Amendment 15* replaces the reference to “originating version” in new section 31ZA (Lodgement or deposit of document in land registry or water allocations register) with a reference to the new term “original physical version”.

### **Amendment 16 – Clause 43 (Insertion of new pt 8)**

*Amendment 16* amends the title to new part 8 of the Oaths Act, inserted by clause 43 of the Bill, to reflect the new short title of the Bill.

### **Amendment 17 – Clause 43 (Insertion of new pt 8)**

*Amendment 17* amends new section 45 in the Oaths Act, inserted by clause 43 of the Bill, to reflect the new short title of the Bill.

**Amendment 18 – Clause 45 (Amendment of s 12 (Execution of powers of attorney))**

*Amendment 18* amends existing section 12 of the Powers of Attorney Act (Execution of powers of attorney). Existing section 12 of the Powers of Attorney Act provides for the execution of general powers of attorney that are regulated by the Act. Subsection (1) of section 12 provides that the section does not apply to a power of attorney created by and contained in another instrument, for example, a mortgage or lease, that is signed by, or by direction of, the principal.

The amendment inserts two notes at the end of section 12(1), to cross-refer to the new provisions in the Bill relating to deeds under the Property Law Act. Note 1 is a general reference to part 6, division 1 of the PLA in relation to a document containing a power of attorney that takes effect as a deed. Note 2 is a specific reference to new section 46A of the PLA inserted by the Bill in relation to a power of attorney given by an individual under a deed as part of a commercial or arms-length transaction.

**Amendment 19 – Clause 48 (Insertion of new ch 9, pt 5)**

*Amendment 19* amends the title to new part 5 of the Powers of Attorney Act, inserted by clause 48 of the Bill, to reflect the new short title of the Bill.

**Amendment 20 – Clause 48 (Insertion of new ch 9, pt 5)**

*Amendment 20* amends new section 176 in the Powers of Attorney Act, inserted by clause 48 of the Bill, to reflect the new short title of the Bill.

**Amendment 21 – Clause 51 (Replacement of ss 44–46)**

*Amendment 21* deletes the definition of “corporation” in new section 44 of the Property Law Act (Definitions for division) inserted by clause 51 of the Bill.

**Amendment 22 – Clause 51 (Replacement of ss 44–46)**

*Amendment 22* deletes the definition of “statutory corporation” in new section 44 of the Property Law Act (Definitions for division) inserted by clause 51 of the Bill.

**Amendment 23 – Clause 51 (Replacement of ss 44–46)**

*Amendment 23* replaces new section 46A(3) of the Property Law Act, inserted by clause 51 of the Bill, to provide that new section 46A(2) applies to a document even if the document is executed at a different time from, and is separate to, other documents that form part of the transaction.

**Amendment 24 – Clause 51 (Replacement of ss 44–46)**

*Amendment 24* amends new section 46F(1) of the Property Law Act, inserted by clause 51 of the Bill, to make the application of that subsection subject to new section 46F(2A).

**Amendment 25 – Clause 51 (Replacement of ss 44–46)**

*Amendment 25* amends new section 46F(1) of the Property Law Act, inserted by clause 51 of the Bill, to replace the reference to “common seal” with “seal”.

**Amendment 26 – Clause 51 (Replacement of ss 44–46)**

*Amendment 26* amends new section 46F(2) of the Property Law Act, inserted by clause 51 of the Bill, to make the application of that subsection subject to new section 46F(2A), consistent with Amendment 24.

**Amendment 27 – Clause 51 (Replacement of ss 44–46)**

*Amendment 27* amends new section 46F of the Property Law Act, inserted by clause 51 of the Bill, to insert a new subsection (2A) which provides that a corporation sole or statutory corporation may execute a document that is to have effect as a deed, without using a seal, if the document is signed by a person, or in a way, authorised by the Act or other document under which the corporation is established, incorporated or registered.

**Amendment 28 – Clause 51 (Replacement of ss 44–46)**

*Amendment 28* amends new section 46F(3), inserted by clause 51 of the Bill, to provide that for a corporation, a corporation sole or statutory corporation if a seal is used, the fixing of a seal to a document is taken to have been witnessed by a person if the requirements of the subsection are satisfied.

**Amendment 29 – Clause 51 (Replacement of ss 44–46)**

*Amendment 29* amends new section 46F(4) of the Property Law Act, inserted by clause 51 of the Bill, to remove the provisions relating to a statutory corporation (noting that new section 46F(2A) (Amendment 27) will replace that provision).

**Amendment 30 – Clause 51 (Replacement of ss 44–46)**

*Amendment 30* amends new section 46F(5) of the Property Law Act, inserted by clause 51 of the Bill, to provide that a corporation that is not incorporated under an Australian law may execute a document that is to have effect as a deed if the document is signed by a person, or in a way, authorised by the law of the place in which the corporation is incorporated.

**Amendment 31 – Clause 51 (Replacement of ss 44–46)**

*Amendment 31* amends new section 46F(9) of the Property Law Act, inserted by clause 51 of the Bill, to insert a new sectional definition of “statutory corporation”.

**Amendment 32 – Clause 51 (Replacement of ss 44–46)**

*Amendment 32* inserts new section 46GA (Execution by the State) into the Property Law Act provisions in clause 51 of the Bill to provide that a person who is authorised to execute a document that is to have effect as a deed for the State may execute the document by signing the document, without a seal and whether or not in the presence of a witness. The new section also provides that if a seal is used, the fixing of the seal may be witnessed over audio visual link by a person if the person signs the document and includes a statement that it was so witnessed. The new section also defines “State” to include a public sector unit and any other entity that represents the State.



**Amendment 33 – Clause 51 (Replacement of ss 44–46)**

*Amendment 33* amends new section 46H(1) of the Property Law Act (Signing counterpart or true copy), inserted by clause 51 of the Bill, to clarify that a document that is to have effect as a deed for a person may be signed by or for the person by signing a counterpart or true copy of the document.

**Amendment 34 – Clause 51 (Replacement of ss 44–46)**

*Amendment 34* complements Amendment 33 by amending section 46H to insert a new subsection (3) to provide that in the section, the term “person” includes a partnership, an unincorporated association and the State. This definition builds upon the definition of person in the *Acts Interpretation Act 1954* which includes individuals and corporations.

**Amendment 35 – Clause 55 (Insertion of new pt 26)**

*Amendment 35* amends the heading to new part 26 of the Property Law Act, inserted by clause 55 of the Bill, to include a reference to validating provisions.

**Amendment 36 – Clause 55 (Insertion of new pt 26)**

*Amendment 36* amends the title to new part 26 of the Property Law Act, inserted by clause 55 of the Bill, to reflect the new short title of the Bill.

**Amendment 37 – Clause 55 (Insertion of new pt 26)**

*Amendment 37* inserts a new transitional provision as section 360B of the Property Law Act at clause 55 of the Bill to retrospectively validate deeds made under the DO Regulation for a corporation sole or the State. The new provision provides that the execution of a document that is to have effect as a deed that has been signed after the commencement of Part 3D of the DO Regulation until the commencement of the Bill:

- for a corporation sole, by a person, or in a way, authorised by the Act or another document under which the corporation is established, incorporated or registered; or
- for the State, by a person authorised to execute the document,

is taken to be, and always to have been, as valid as if the new provisions in the Property Law Act were in effect.

“*New provisions*” is defined to mean:

- (a) section 44, other than the following provisions—
  - (i) definition accepted method, paragraph (c);
  - (ii) definition consent; and
- (b) sections 45, 46B, 46D, 46F(2A), (3) and (6), 46GA and 46H; and
- (c) section 46C, but subject to the word ‘clear’ in section 46C(1)(b) being taken to be a reference to the word ‘conspicuous’.

The definition of accepted method, paragraph (c) in section 44 is excluded because under the DO Regulation, section 12O(2) provides that a person can sign a deed electronically without the consent of any other person.

The amendment replaces the word “clear” with “conspicuous” in section 46C(1)(b) because section 12N(1)(b) of the DO Regulation requires a deed to contain a conspicuous statement that the instrument is a deed.

Taken together these amendments will ensure that the execution of a document in the form of a deed for the State or a corporation sole is not invalidated because of the difference between the DO Regulation and the amendments in the Bill.

**Amendment 38 – Clause 56 (Amendment of sch 6 (Dictionary))**

*Amendment 38* removes the definition of “corporation” from the dictionary and is consistent with Amendment 21.

**Amendment 39 – Clause 56 (Amendment of sch 6 (Dictionary))**

*Amendment 39* removes the definition of “statutory corporation” from the dictionary and is consistent Amendment 22.

**Amendment 40 – After clause 56**

*Amendment 40* inserts a new part 8A (Amendment of Queensland Building and Construction Commission Act 1991) into the Bill.

New clause 56A of the Bill provides that part 8A of the Bill amends the QBCC Act.

New clause 56B of the Bill amends section 72 of the QBCC Act to clarify that the absence of a regulation that provides for the period within which the QBCC must make a direction does not affect the ability to issue, or the validity of, a direction. This is achieved by stating a regulation that prescribes the period ‘may’ be made.

New clause 56C of the Bill inserts a new part 18 into schedule 1 of the QBCC Act, which provides for transitional and validation provisions for particular directions to rectify or remedy building work.

Section 85 of the new part defines “validation period” to mean the period between the beginning of the day on 11 November 2019 and the end of the day on 9 November 2021. 11 November 2019 is the day that amendments to section 72(4) of the QBCC Act commenced, which provided that the rectification period stated in a direction must be the period prescribed by regulation. 10 November 2021 is the day the *Queensland Building and Construction Commission (Rectification of Building Work) Amendment Regulation 2021* commenced, which prescribed a rectification or remediation period of 35 days. The validation period is therefore the period during which no regulation pursuant to section 72(4) was in force.

Section 86 of the new part provides that the amendment to section 72 of the QBCC Act, made by new clause 56B of the Bill, is taken to have applied from the start of the validation period, i.e. 11 November 2019.

Section 87 of the new part retrospectively validates directions made by the QBCC under section 72 of the QBCC Act during the validation period, as if the regulation prescribing the period for the rectification of the defective works or remedy of the damage had been

made as at 11 November 2019. That is, the validation puts beyond doubt the matter of validity of directions issued on or from 11 November 2019 to the extent that any doubt may arise from the absence of the regulation prescribing the period for the rectification or remedy required by section 72(4) of the QBCC Act.

Section 88 of the new part extends the timeframe in which the QBCC may issue a direction under section 72A(4) of the QBCC Act. This is to account for a temporary pause by the QBCC on the issuing of directions from 3 November 2021 until the making of the Amendment Regulation.

Where the limitation period in section 72A(4) expires during the period of the pause, an amendment to the Act is necessary to provide an extension of the limitation period commensurate with the period from 3 November 2021 to the making of the Amendment Regulation, i.e. 7 days. The extension is to operate from the commencement of section 88.

#### **Amendment 41 – Long title**

*Amendment 41* amends the long title of the Bill to include references to the *Governors (Salary and Pensions) Act 2003* and the *Queensland Building and Construction Commission Act 1991* as Acts which are amended by the Bill.