

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

Statement of Compatibility

FOR

Amendments during consideration in detail to be moved 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

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 38 of the *Human Rights Act 2019*, I, Shannon Fentiman MP, Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence make this statement of compatibility with respect to the amendments to be moved during consideration in detail (ACiDS) of the Justice Legislation (COVID-19 Emergency Response—Permanency) Amendment Bill 2021 (the Bill).

In my opinion, the ACiDS for the Bill are compatible with the human rights protected by the *Human Rights Act 2019*. I base my opinion on the reasons outlined in this statement.

Overview of the Amendments

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 during consideration in detail of the Bill 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 Documents Reforms

The proposed ACiDS relating to the Documents Reforms involve:

- 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 31Y(5);
- amending new section 31V of the Oaths Act as 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 as 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 (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 as 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 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 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 to clarify the entities that can execute deeds using counterparts include an individual and a corporation, (under the definition of ‘person’ in the *Acts Interpretation Act 1954*), including corporations sole and statutory corporations, as well as a partnership, unincorporated association and the State; and
- inserting a new transitional provision to validate the execution of a document that is to have effect as 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*

The amendments to the *Governors (Salary and Pensions) Act 2003* (the Act) provide that a former Governor’s lifetime pension under part 3 of the Act, is offset by the State funded component of the superannuation benefit payable to a Governor under the Defined Benefit Category of the State public sector superannuation scheme (Defined Benefit). The amount will be determined by an actuary approved by the relevant Minister.

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 to be at least 28 days, unless the QBCC was satisfied there was 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. Section 72(4) was amended to provide for the rectification period stated in a direction 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 for a person to rectify building work, from the day the direction is issued. 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 pursuant to section 72(4) to provide that the prescribed period is 35 days.

The amendments amend the QBCC Act to retrospectively validate directions (and any necessary validation of consequential actions taken arising from those directions) that have been made on or after 11 November 2019.

Human Rights Issues

Human rights relevant to the Bill (Part 2, Division 2 and 3 *Human Rights Act 2019*)

Amendments to the Documents Reforms

The proposed amendments to the Oaths Act and the Powers of Attorney Act are technical in nature to improve the operation of the reforms. These amendments are not considered to limit human rights.

The proposed amendments to the Property Law Act are designed to clarify the scope of the exception relating to powers of attorney given by individuals, and the situation with respect to the execution of deeds by the State and corporations sole. These amendments ensure that:

- a power of attorney made by an individual under a deed can 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; and
- deeds signed by the State or corporations sole can be made in electronic form, signed electronically, in counterparts and by split execution, and without a witness or seal.

The amendments relating to deeds executed by the State and by corporations sole reflect the original policy intent of the Bill. During the inquiry into the Bill by the State Development and Regional Industries Committee (the Committee), legal stakeholders indicated that, in the absence of specific execution provisions, there may be legal uncertainty as to whether entities other than individuals, corporations, partnerships and unincorporated associations can execute deeds under both the temporary arrangements under the DO Regulation and under the Bill.

Given there is the potential for alternative and conflicting interpretations, the proposed amendments to the Property Law Act provisions in the Bill are clarifying provisions to put the issue beyond doubt. Accordingly, these amendments are not considered to engage any human rights beyond those already identified in the original Statement of Compatibility for the Bill.

The proposed transitional provision to retrospectively validate any deeds executed by the State or a corporation sole under the DO Regulation will promote human rights by ensuring that the rights and liabilities of persons who may have entered into a deed with the State or a corporation sole using the modified arrangements under the DO Regulation, are preserved and will continue in effect.

Amendments to the *Governors Salaries and Pensions Act 2003*

Compatibility with human rights protected by the *Human Rights Act 2019* has been considered during the policy and legislative process.

The nature of the amendments is to clarify the application of off-set arrangements for a Governor's pension in relation to superannuation benefits. As such, the amendments are not considered to engage human rights and no further analysis of these amendments under the *Human Rights Act 2019* is required.

Amendment to the QBCC Act

Consideration has been given as to whether the proposed amendments might engage certain human rights under the *Human Rights Act 2019*, and which rights might be relevant to the amendments.

Following consideration of the proposed amendments, it has been concluded that they do not engage any human rights as they validate a long-established practice and, in doing so, nobody's rights are prejudiced.

In my opinion, there are no human rights under the *Human Rights Act 2019* relevant to, engaged or limited by the amendments.

Conclusion

In my opinion, the amendments to be moved during consideration in detail of the Justice Legislation (COVID-19 Emergency Response—Permanency) Amendment Bill 2021 are compatible with human rights under the *Human Rights Act 2019* because they do not limit any human rights.

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