

THIS PUBLIC BILL has this day been read a Third time and passed

The Clerk of the Parliament.

*Legislative Assembly Chamber,
Brisbane, November 2021*



Queensland

**No.
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 Governors (Salary and Pensions) Act 2003, the Liquor Act 1992, the Oaths Act 1867, the Powers of Attorney Act 1998, the Property Law Act 1974 and the Queensland Building and Construction Commission Act 1991 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



Queensland

Justice and Other Legislation Amendment Bill 2021

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2021

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 Governors (Salary and Pensions) Act 2003, the Liquor Act 1992, the Oaths Act 1867, the Powers of Attorney Act 1998, the Property Law Act 1974 and the Queensland Building and Construction Commission Act 1991 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

[s 1]

The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Justice and Other Legislation Amendment Act 2021*.

2 Commencement

The following provisions of this Act commence on a day to be fixed by proclamation—

- (a) parts 3 and 4;
- (b) parts 5 to 8;
- (c) parts 9 and 10;
- (d) schedule 1.

Part 2 Amendment of COVID-19 Emergency Response Act 2020

3 Act amended

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

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

Section 23(6)—

omit, insert—

- (6) A regulation under this section—

- (a) must be made before the COVID-19 legislation expiry day; and
- (b) expires 2 years after the COVID-19 legislation expiry day, unless it is sooner repealed.

Part 3

Amendment of Domestic and Family Violence Protection Act 2012

5 Act amended

This part amends the *Domestic and Family Violence Protection Act 2012*.

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

Section 27(b) and (c)—
omit, insert—

- (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—
 - (i) before the application is served on the respondent; or
 - (ii) before the application is served on the respondent and without the applicant giving the court a verification declaration; or
- (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—

[s 7]

- (i) before the application is served on the respondent; or
- (ii) before the application is served on the respondent and without the applicant giving the court a variation declaration; or

7 Amendment of s 32 (Application for protection order)

- (1) Section 32(2)(d), after ‘declaration’—

insert—

(a *verification declaration*)

- (2) Section 32—

insert—

- (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).

8 Amendment of s 34 (Service of application)

Section 34(1)—

insert—

Note—

Under section 36 an applicant may ask the court for a hearing before the application is served on the respondent.

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

Section 36—

omit, insert—

36 Applicant may ask clerk of court for hearing before respondent is served or without giving verification declaration

- (1) This section applies for the purpose of the court making a temporary protection order under division 2.
- (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—
 - (a) before the application is served on the respondent; or
 - (b) before the application is served on the respondent and without the applicant giving the court a verification declaration.
- (3) This section applies despite section 34.

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

Section 44(1)(d) and (e)—

omit, insert—

- (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—
 - (i) before the application is served on the respondent; or
 - (ii) before the application is served on the respondent and without the applicant giving the court a verification declaration; or
- (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—

[s 11]

- (i) before the application is served on the respondent; or
- (ii) before the application is served on the respondent and without the applicant giving the court a variation declaration; or

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

Section 45(2), ‘section 44(b)’—

omit, insert—

section 44(1)(b)

12 Insertion of new s 47A

After section 47—

insert—

47A Temporary protection order when applicant unable to give declaration

- (1) This section applies if—
 - (a) an applicant for a protection order has not given a court a verification declaration; or
 - (b) an applicant for a variation of a domestic violence order has not given a court a variation declaration.
- (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.
- (3) To remove any doubt, it is declared that this section applies in addition to section 45.

Note—

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.

13 Amendment of s 86 (Application for variation)

(1) Section 86(2)(d), after ‘declaration’—

insert—

(a *variation declaration*)

(2) Section 86—

insert—

(2A) 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 90(2)(b).

(3) Section 86(2A) to (5)—

renumber as section 86(3) to (6).

14 Amendment of s 88 (Service of application)

Section 88(1)—

insert—

Note—

Under section 90 an applicant may ask the court for a hearing before the application is served on the respondent.

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

Section 90—

omit, insert—

90 Particular applicants may ask clerk of court for hearing before respondent is served or without variation declaration

(1) This section applies—

(a) if the applicant for a variation of a domestic violence order is a person other than the respondent; and

[s 16]

- (b) for the purpose of the court making a temporary protection order under division 2.
- (2) The applicant may ask the clerk of the court to arrange for the application to be heard by the court—
 - (a) before the application is served on the respondent; or
 - (b) before the application is served on the respondent and without the applicant giving the court a variation declaration.
- (3) This section applies despite section 88.

16 Insertion of new s 142A

After section 142—

insert—

142A Use of audio visual links or audio links—Magistrates Court

- (1) This section applies in relation to a proceeding under the Act before a Magistrates Court.
- (2) The Magistrates Court may conduct all or part of the proceeding by the use of audio visual links or audio links.
- (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—
 - (a) appear before the Magistrates Court;
 - (b) give evidence or make a submission to the Magistrates Court;
 - (c) take an oath or make an affirmation.
- (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.

(5) In this section—

Magistrates Court means—

- (a) if an application is made to a Magistrates Court—the Magistrates Court; or
- (b) if an application is made to a magistrate—the magistrate.

17 Amendment of s 154 (Court may issue subpoena)

Section 154(1), note, ‘section 145(1A)’—

omit, insert—

section 145(1)(a)

18 Insertion of new pt 10, div 4

Part 10—

insert—

**Division 4 Transitional provisions for
Justice and Other
Legislation Amendment
Act 2021**

229 Definitions for division

In this division—

former, for a provision of this Act, means the provision as in force from time to time before the commencement.

new, for a provision of this Act, means the provision as in force from the commencement.

repealed regulation means the *Domestic and*

[s 18]

*Family Violence Protection (COVID-19
Emergency Response) Regulation 2020*, as in
force immediately before the commencement.

230 Use of audio visual links or audio links

- (1) This section applies to a proceeding to which section 6 of the repealed regulation applied and that—
 - (a) commenced before the commencement; but
 - (b) was not finalised immediately before the commencement.
- (2) The proceeding may continue under new section 142A.

231 Particular applications for protection order filed before the commencement

- (1) This section applies to an applicant who, before the commencement—
 - (a) filed an application for a protection order under former section 32; but
 - (b) did not verify the application under former section 32(2)(d).
- (2) The repealed regulation, section 7 continues to apply to the applicant.

232 Particular variation applications filed before the commencement

- (1) This section applies to an applicant who, before the commencement—
 - (a) filed an application for a variation of a domestic violence order under former section 86; but

- (b) did not verify the application under former section 86(2)(d).
- (2) The repealed regulation, section 8 continues to apply to the applicant.

19 Amendment of schedule (Dictionary)

Schedule—

insert—

variation declaration see section 86(2)(d).

verification declaration see section 32(2)(d).

Part 4 Amendment of Domestic and Family Violence Protection Rules 2014

20 Rules amended

This part amends the *Domestic and Family Violence Protection Rules 2014*.

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

- (1) Rule 9, heading—

omit, insert—

9 How documents may be filed—general

- (2) Rule 9(1)—

insert—

(c) electronic or computer-based means—

- (i) if the party filing the document is a police officer—by filing the document under subrule (4); or

[s 22]

- (ii) otherwise—by filing the document under rule 9A.

22 Insertion of new rr 9A and 9B

After rule 9—

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.

23 Amendment of r 35 (Requirements for affidavits)

Rule 35—

insert—

- (9) Also, an affidavit must comply with the *Oaths Act 1867*.

24 Amendment of r 36 (Swearing or affirming affidavits)

Rule 36(1), note—

omit, insert—

Note—

For persons who may take an affidavit, see the *Oaths Act 1867*, parts 4 and 6A.

25 Amendment of sch 2 (Dictionary)

Schedule 2—

insert—

principal registrar see the *Uniform Civil Procedure Rules 1999*, schedule 3.

[s 25A]

Part 4A **Amendment of Governors (Salary and Pensions) Act 2003**

25A Act amended

This part amends the *Governors (Salary and Pensions) Act 2003*.

25B Insertion of new s 7A

After section 7—

insert—

7A Pension relating to Governor to whom defined benefits paid or payable

- (1) This section applies in relation to a person—
 - (a) who ceases to hold the office of Governor after the commencement; and
 - (b) who, immediately before holding the office of Governor, was a member of a defined benefit category in the State public sector scheme.
- (2) The rate of the pension payable to the person is the rate mentioned in section 7(3) less the defined benefit offset amount for the person.
- (3) If the defined benefit offset amount for the person is the same as or more than the rate mentioned in section 7(3), the rate of the pension payable to the person under this part is nil.
- (4) If the defined benefit offset amount for the person is less than the rate mentioned in section 7(3)—
 - (a) the rate of the pension payable under subsection (2) applies in relation to the person instead of the rate mentioned in section 7(3); and

- (b) the pension payable in relation to the person for a financial year under this part must be worked out on the basis of the rate of the pension payable under subsection (2).
- (5) For this section, the ***defined benefit offset amount*** for a person is the amount decided by an actuary approved by the Minister to be the annual value of defined benefits paid or payable to the person in relation to the person's defined benefit membership by—
- (a) working out the State funded component of the defined benefits; and
- (b) converting the amount mentioned in paragraph (a) into an annual amount, as if it were paid in the form of an annual pension on the same terms as a pension payable under this part.
- (6) In this section—

defined benefit membership, in relation to a person, means the person's membership of the State public sector scheme mentioned in subsection (1)(b).

defined benefits means benefits payable to a member in a defined benefit category of the State public sector scheme under the deed for that scheme.

State funded component, of defined benefits paid or payable to a person in relation to the person's defined benefit membership, means the amount of the defined benefits less the amount attributable to contributions made by the person in relation to the membership.

State public sector scheme means the scheme under the *Superannuation (State Public Sector) Act 1990*.

[s 26]

Part 5 Amendment of Liquor Act 1992

26 Act amended

This part amends the *Liquor Act 1992*.

27 Amendment of s 4 (Definitions)

Section 4—

insert—

takeaway meal means food that—

- (a) is ordinarily eaten by a person sitting at a table with cutlery provided; and
- (b) is of sufficient substance as to be ordinarily accepted as a meal; and
- (c) is sold on licensed premises to be consumed off the licensed premises.

28 Amendment of s 9 (Ordinary trading hours)

Section 9(1A)(d) and (1C), ‘or commercial special facility licence’—

omit, insert—

, commercial special facility licence or subsidiary on-premises licence (meals)

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

- (1) Section 67A(2)(a), after ‘liquor’—

insert—

during ordinary trading hours or approved extended trading hours

- (2) Section 67A(2)(b), after ‘wine’—

insert—

during ordinary trading hours or approved extended trading hours

(3) Section 67A(2)—

insert—

(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 condition during ordinary trading hours (takeaway liquor).

(4) Section 67A—

insert—

(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) Section 67A(4)—

insert—

ordinary trading hours (takeaway liquor) 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).

(6) Section 67A(3A) and (4)—

renumber as section 67A(4) and (5).

30 Insertion of new s 67AA

After section 67A—

insert—

[s 31]

67AA Sale of particular takeaway liquor

- (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.
- (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 takeaway liquor that consists of wine in a quantity of not more than 1.5L in total.
- (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.

Examples of further conditions—

- keeping records about proof of age
 - notification of systems and procedures changes
 - specifying the type, volume or product of liquor
- (4) This section does not limit the power of the commissioner, under part 5, to impose, amend or revoke conditions on a licence.

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

Section 67E(4), after ‘section 67A(2)(b)’—

insert—

or (c)

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

- (1) Section 162(3)(a)(ii), ‘either’—

omit, insert—

any

(2) Section 162(3)(a)(ii)(B)—

omit, insert—

(B) the person brought the liquor onto the premises;

(C) the liquor is takeaway liquor, the sale of which was authorised under the licence under section 67A(2)(c); or

33 Insertion of new pt 12, div 23

Part 12—

insert—

Division 23 Transitional provision for Justice and Other Legislation Amendment Act 2021

357 No fee payable for particular applications to vary subsidiary on-premises licences (meals)

(1) This section applies if—

(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

(b) immediately before the commencement, the licensee held a subsidiary on-premises licence (meals) to which section 67A applied; and

(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).

[s 34]

- (2) Despite section 105(1)(d), no fee is payable in relation to the application.

Part 6 Amendment of Oaths Act 1867

34 Act amended

This part amends the *Oaths Act 1867*.

35 Amendment of s 1B (Definitions)

Section 1B—

insert—

accepted method—

- 1 *Accepted method*, for electronically signing an affidavit or a declaration, means—
 - (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
 - (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.
- 2 *Accepted method*, for electronically signing a document other than an affidavit or a declaration to which paragraph 1(a) applies, means a method that—
 - (a) identifies the signatory for the document and the signatory's intention in relation to the contents of the document; and

(b) is either—

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

3 However, for paragraph 2, the term is subject to a regulation prescribing under section 13A a method that is not an accepted method for electronically signing an affidavit or a declaration.

administer—

- (a) for part 4—see section 11; or
- (b) for part 6A—see section 31B.

audio visual link means facilities that enable reasonably contemporaneous and continuous audio and visual communication between persons at different places and includes videoconferencing.

Australian legal practitioner see the *Legal Profession Act 2007*, section 6(1).

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

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

confirm, a document, for part 6A, see section 31B.

[s 35]

copy, of an electronic document, for part 6A, see section 31B.

counterpart, for a document, means a copy of the document that includes the entire contents of the document but does not include the signatures of all the other persons who are to sign the document.

direct, in relation to a document, includes instruct.

document means any record of information however recorded and includes—

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

electronically sign, a document, means sign the document using an accepted method.

electronic document means—

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

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

make, in relation to a document—

- (a) for part 4—see section 11; or

(b) for part 6A—see section 31B.

official version, of a document, for part 6A, see section 31B.

original physical version, of a document, for part 6A, see section 31B.

physical document means a document of a type mentioned in definition *document*, paragraph (a) or (b).

sign, a document, means—

(a) for a physical document—physically sign the document or counterpart; or

(b) for an electronic document—electronically sign the document or counterpart.

special witness, for a document, see section 12.

water allocations register see the *Water Act 2000*, schedule 4.

witness, a document—

(a) for part 4—see section 11; or

(b) for part 6A—see section 31B.

36 Amendment of pt 4, hdg (Statutory declarations)

Part 4, heading, ‘Statutory’—

omit, insert—

Affidavits and statutory

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

(1) Section 13, heading, ‘take’—

omit, insert—

witness

[s 37]

(2) Section 13, ‘taken’—

omit, insert—

witnessed

(3) Section 13(1)—

insert—

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

(4) Section 13(1)—

insert—

Note—

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

(5) Section 13—

insert—

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

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

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

(6) Section 13(3)—

omit.

(7) Section 13(1A) and (2)—

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

(8) Section 13—

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

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

Part 4—

insert—

Division 1 Preliminary

11 Definitions for part

In this part—

administer includes—

- (a) in relation to an oath or affirmation—take, receive and swear; and
- (b) in relation to a declaration—take and receive.

make, in relation to a document, includes execute.

special witness, for a document, see section 12.

witness, a document, includes—

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

12 Special witnesses

- (1) A *special witness*, for a document, is a person who is—
 - (a) an Australian legal practitioner; or
 - (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

[s 38]

- (c) a justice or commissioner for declarations approved by the chief executive under subsection (2); or
- (d) a justice or commissioner for declarations—
 - (i) employed by the law practice that prepared the document; and
 - (ii) who witnesses documents in the course of that employment; or
- (e) a notary public; or
- (f) a person mentioned in subsection (3) for the document.

Note—

See sections 31Q and 31S for further provision about special witnesses.

- (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.
- (3) For subsection (1)(f), a person is also a special witness for a document if—
 - (a) the document is prepared by the public trustee; and
 - (b) the person is a justice or commissioner for declarations who is an employee of the public trustee.
- (4) In this section—

Australian lawyer see the *Legal Profession Act 2007*, section 5(1).

law practice see the *Legal Profession Act 2007*, schedule 2.

13 References to witnesses, signatories and substitute signatories

- (1) In this part—
 - (a) a reference to a witness in relation to a document is a reference to a person witnessing the making of the document; and
 - (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
 - (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.
- (2) Also, for an affidavit or a declaration—
 - (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
 - (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.

Division 2 General requirement for affidavits and declarations

[s 38]

13A Accepted method for electronically signing affidavits or declarations

- (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.
- (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 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 best of the knowledge of the person making the statement;
- (e) that the signatory understands that a person who provides a false matter in the affidavit commits an offence.

Example of offence—

perjury under the Criminal Code, section 123

13C Statement in declaration

- (1) This section applies in relation to a declaration made, signed or witnessed under this Act or another law.
- (2) The signatory must ensure the declaration states the following matters—
 - (a) if applicable, that the declaration was made in the form of an electronic document;
 - (b) if applicable, that the declaration was electronically signed by the signatory or substitute signatory;
 - (c) if applicable, that the declaration was made, signed and witnessed under part 6A;

[s 38]

- (d) that either—
 - (i) the contents of the declaration are true; or
 - (ii) if the contents of the declaration are stated on the basis of information and belief—those contents are true to the best of the knowledge of the person making the statement;
- (e) that the signatory understands that a person who provides a false matter in the declaration commits an offence.

Example of offence—

perjury under the Criminal Code, section 123

13D Witness must verify particular matters

A person who witnesses an affidavit or a declaration must take reasonable steps to verify each of the following matters—

- (a) the identity of the signatory;
- (b) that the name of the signatory matches the name of the signatory written on or in the affidavit or declaration.

13E Additional requirement for witness for affidavit or declaration

A person who witnesses an affidavit or a declaration must include all of the following information on the affidavit or declaration—

- (a) the witness's full name;
- (b) if the witness is a special witness—
 - (i) that the witness is a special witness; and

- (ii) the type of witness under section 12(1) that the special witness is; and

Examples of a type of witness for subparagraph (ii)—

- an Australian legal practitioner
 - a justice approved by the chief executive under section 12(2)
 - a commissioner for declarations approved by the chief executive under section 12(2)
- (iii) for a witness who is an Australian legal practitioner and an employee of, or a partner in, a law practice—the name of the law practice; and
- (iv) if subparagraph (iii) does not apply—the witness's place of employment, if applicable; and
- (v) that the witness understands the requirements for witnessing a document by audio visual link and has complied with those requirements, if applicable;

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—

Jane Anne Doe

Australian legal practitioner, ABC Legal

Special witness under the *Oaths Act 1867*

I understand the requirements for witnessing a document by audio visual link and have complied with those requirements.

- (c) if paragraph (b) does not apply—

- (i) the type of witness under section 16A or 16B that the witness is; and

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Examples of a type of witness for subparagraph (i)—

- a lawyer
 - a justice of the peace
- (ii) the witness's place of employment, if applicable;
- (d) other information prescribed by regulation for this section.

39 Insertion of new pt 4, div 3

Part 4—

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.
- (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*.
- (6) This section does not apply to a declaration lodged or deposited in the land registry or water allocations register.
- (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.

[s 39]

16D Effect of affidavit or declaration electronically signed in physical presence of witness

- (1) This section applies to an affidavit or a declaration under section 16C if—
 - (a) either—
 - (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
 - (ii) the witness confirmed the affidavit or declaration by signing the same electronic document or a true copy of the affidavit or declaration; or
 - (b) the affidavit or declaration is made using counterparts in the form of electronic documents.
- (2) If subsection (1)(a) applies and the affidavit or declaration is required to be given, produced or used for any purpose, the electronic document or true copy confirmed by the witness, or a printout of the electronic document or true copy, may be—
 - (a) given, produced or used for the purpose; and
 - (b) relied on as evidence of the affidavit or declaration.

Example for subsection (2)—

The electronic document or a true copy confirmed by the witness, or a printout of the electronic document or true copy, 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.

- (3) If subsection (1)(b) applies and the affidavit or declaration is required to be given, produced or used for any purpose—

- (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; and
- (c) the counterparts constituting the document, or a printout of the counterparts, may be—
 - (i) given, produced or used for the purpose; and
 - (ii) relied on as evidence of the affidavit or declaration.

Example for subsection (3)—

The counterparts constituting the document, or a printout of the counterparts, 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) Subsections (2) and (3) do not limit the power of a court, tribunal or other person to whom the affidavit or declaration is given for any purpose to require production of the electronic document or a true copy, or the counterparts in the form of electronic documents.

40 Insertion of new pt 6A

After part 6—

insert—

Part 6A

Audio visual links

Division 1

Preliminary

31B Definitions for part

In this part—

administer includes—

- (a) in relation to an oath or affirmation—take, receive and swear; and
- (b) in relation to a declaration—take and receive.

confirm, a document, means attest or otherwise confirm a document by signing the document.

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

make, in relation to a document, includes execute.

official version, of a document, means—

- (a) if under section 31U(2)(a) the witness confirms the document is the document signed by the signatory or substitute signatory and—
 - (i) the document is given in the form of a physical document—the document; or
 - (ii) the document is given in the form of an electronic document—the document or a printout of the document; or
- (b) if under section 31U(2)(b) the witness confirms the document is a true copy of the document signed by the signatory or substitute signatory and—
 - (i) the true copy is given in the form of a physical document—the true copy; or
 - (ii) the true copy is given in the form of an electronic document—the true copy or a printout of the true copy.

original physical version, of a document, means

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 of the document.

witness, a document, includes—

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

31C References to witnesses, signatories and substitute signatories

- (1) In this part—
 - (a) a reference to a witness in relation to a document is a reference to a person witnessing the making of the document; and
 - (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
 - (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.
- (2) Also, for an affidavit or a declaration—
 - (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

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- (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.

Division 2 Affidavits

31D Application of division

This division applies to an affidavit made, signed or witnessed under this Act or another law.

31E Presence by audio visual link

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 an affidavit is taken to be satisfied if—

- (a) the witness, signatory, substitute signatory or other person is present by audio visual link; and
- (b) the signatory's oath or affirmation for the affidavit is administered by a special witness for the affidavit or another person prescribed by regulation under section 31S; and
- (c) the making, signing or witnessing of the affidavit is carried out in accordance with division 5.

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

An affidavit may be in the form of an electronic document, and may be electronically signed, if—

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

31G Admission of affidavit not complying with requirements

- (1) This section applies in relation to a purported affidavit that does not comply with the requirements under this Act, another law or any regulation, rule of court or practice direction made, given, issued or approved under section 13A if—
 - (a) a court is satisfied compliance with the requirements in relation to the purported affidavit was not reasonably practicable; and
 - (b) the purported affidavit states the reasons why compliance with the requirements was not reasonably practicable.
- (2) The court may admit the purported affidavit in evidence in a proceeding if the court considers it is desirable in the interests of justice.

31H Disapplication of s 33

Section 33 does not apply in relation to an affidavit made, signed or witnessed under this division.

Division 3 Declarations

31I Application of division

This division applies to a declaration made, signed or witnessed under this Act or another law.

31J Presence by audio visual link

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—

- (a) the witness, signatory, substitute signatory or other person is present by audio visual link; and
- (b) the signatory's oath or affirmation for the declaration is administered by a special witness for the declaration or another person prescribed by regulation under section 31S; and
- (c) the making, signing or witnessing of the declaration is carried out in accordance with division 5.

31K Declaration may be in form of electronic document and electronically signed

- (1) A declaration may be in the form of an electronic document, and may be electronically signed, if—
 - (a) the witness, signatory, substitute signatory or another person in relation to the making, signing or witnessing of the declaration is present by audio visual link; and
 - (b) the declaration is made, signed and witnessed in accordance with division 5.
- (2) Subsection (1) does not apply to a declaration lodged or deposited in the land registry or water

allocations register.

- (3) To remove any doubt, it is declared that subsection (1) 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.

31L Disapplication of s 33

Section 33 does not apply in relation to a declaration made, signed or witnessed under this division.

Division 4 Oaths and affirmations

31M Application of division

- (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) However, this division does not apply to—
 - (a) an oath or affirmation administered or made in relation to an affidavit under division 2 or a declaration under division 3; or
 - (b) an oath of allegiance or oath of office under part 2.

31N Presence by audio visual link

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

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satisfied if the authorised person is present by audio visual link.

31O Disapplication of s 33

Section 33 does not apply in relation to an oath or affirmation administered or made under this division.

Division 5 Signing or witnessing documents by audio visual link

Subdivision 1 Requirements about signing documents by audio visual link

31P Persons who may be directed to sign

- (1) This section applies in relation to a substitute signatory who—
 - (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
 - (b) is directed by audio visual link to sign a document for a signatory.
- (2) The following persons are excluded from signing a document as a substitute signatory—
 - (a) a person excluded under an Act or other law from signing the document as a signatory;
 - (b) without limiting paragraph (a)—
 - (i) a person witnessing the document; or

- (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.
- (3) Also, a person may be directed by audio visual link to sign a document for a signatory only if the person is—
 - (a) an Australian legal practitioner; or
 - (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
 - (c) an employee of the public trustee.
- (4) In this section—
relation, of a person, see the *Powers of Attorney Act 1998*, schedule 3.

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

- (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.

Note—

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

- (2) The signing of the document by the substitute signatory must be witnessed by a special witness for the document.
- (3) This section does not—

[s 40]

- (a) affect any requirement under an Act or other law about the number of witnesses required or permitted to witness a document; or
- (b) authorise or permit a person who is excluded from witnessing a document under an Act or other law to witness the document.

31R Witness must observe direction and verify particular matters

- (1) This section applies if a substitute signatory is directed by the signatory by audio visual link to sign a document.
- (2) The witness for the signing of the document by the substitute signatory must—
 - (a) observe the signatory direct the substitute signatory to sign the document; and
 - (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
 - (b) authorise or permit a person who is excluded from witnessing a document under an Act or other law to witness the document.

31T General requirements for witnessing documents

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

- (a) the witness observes the signatory direct the substitute signatory to sign the document, if applicable; and
- (b) the audio visual link enables the witness to be satisfied, by the sounds and images made by the link, that the signatory or substitute signatory is signing the document; and
- (c) the witness forms the satisfaction under paragraph (b) in real time; and
- (d) the witness is satisfied that the signatory is freely and voluntarily signing the document

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or directing the substitute signatory to sign the document.

Note—

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

31U Confirmation of signed document by witness

- (1) A person who witnesses a document by audio visual link must confirm the document as soon as practicable after witnessing it, which may or may not be the day on which the document is witnessed.
- (2) The person may confirm a document as the document witnessed by the person only if the person is satisfied the document—
 - (a) is the document signed by the signatory or substitute signatory; or
 - (b) is a true copy of the document signed by the signatory or substitute signatory; or

Examples for paragraph (b)—

- a scanned copy of a signed document sent electronically to the witness
 - a printout of an electronically signed document sent to the witness
- (c) is a counterpart for the document signed by the signatory or substitute signatory.

Note—

Affidavits and declarations in the form of electronic documents may be electronically signed—see sections 31F (for affidavits) and 31K (for declarations).

- (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*.

31V Action after witness confirms document

- (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.

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

- scanning the document and emailing the scanned copy to the person
- giving a hard copy printout of the document to the person

- (2) In this section—

give includes—

- (a) give by electronic means; and
(b) give by allowing online computer access;
and

Example for paragraph (b)—

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

- (c) give by post.

relevant person, for a document, means—

- (a) the signatory for the document; or
(b) a person to whom the signatory directs the document, true copy or counterpart be given.

Note—

A person to whom the signatory directs the document, true copy or counterpart be given may be or include the witness for the document.

Subdivision 3 Other provisions

31W When document starts to be effective

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

31X Presumptions

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

- (a) the validity of the document, to the extent it is made, signed or witnessed under this part;
- (b) the eligibility of a witness to witness the document;
- (c) the eligibility of a substitute signatory to sign the document at the direction of the signatory;
- (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.

31Y Documents made using official and original physical versions

- (1) This section applies to a document, or a true copy of a document—

- (a) that is confirmed by a person as the document witnessed by the person under section 31U(2)(a) or (b); and
- (b) given to a relevant person for the document under section 31V(1).

Note—

For a document made using counterparts, see section 31Z.

- (2) If the document is made using an original physical version, the signatory for the document must ensure the original physical version of the document is kept.
- (3) 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 approve a rule or practice direction that states a minimum period for which an original physical version of a document that is filed or admitted into evidence in a proceeding is to be kept.
- (4) To remove any doubt, it is declared that—
 - (a) a signatory for a document does not commit an offence against this Act or another Act only because the signatory fails to ensure the original physical version of the document is kept under subsection (2) or (3); and
 - (b) the official version of a document is not invalid only because the signatory fails to ensure the original physical version of the document is kept under subsection (2) or (3).
- (5) Subject to any requirement under any law, once the witness gives the document or true copy to the relevant person, there is no requirement to keep any version of the document confirmed by the

[s 40]

witness that has not been given to the relevant person.

- (6) If a document made, signed or witnessed in accordance with this part is required to be given, produced or used for any purpose, the official version of the document may be—
- (a) given, produced or used for the purpose; and
 - (b) relied on as evidence of the document.

Example for subsection (6)—

The official version of 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.

- (7) This section does limit the power of a court, tribunal or other person to whom a document is given for any purpose to require production of the original physical version of the document.

31Z Documents made using counterparts

- (1) This section applies to a document that is made using counterparts if a counterpart—
- (a) is confirmed by a person as the counterpart witnessed by the person under section 31U(2)(c); and
 - (b) is given to a relevant person for the document under section 31V(1).
- (2) The counterpart confirmed by the witness for the document must be kept with the counterpart signed by the signatory or substitute signatory.
- (3) The counterparts together constitute the document.
- (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 original physical 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.

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

- (1) Section 41, heading, ‘take’—

[s 41]

omit, insert—

witness

- (2) Section 41, ‘taken’—

omit, insert—

witnessed

- (3) Section 41(1)—

insert—

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

- (4) Section 41(1)—

insert—

Note—

See also section 13E and part 6A for requirements for witnessing an affidavit by audio visual link.

- (5) Section 41—

insert—

(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.

- (6) Section 41(3)—

omit.

- (7) Section 41(1A) and (2)—

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

- (8) Section 41—

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

42 Insertion of new s 44

After section 43—

insert—

44 Regulation-making power

- (1) The Governor in Council may make regulations under this Act.
- (2) A regulation may be made about the making, signing and witnessing of affidavits and declarations.

43 Insertion of new pt 8

After part 7—

insert—

**Part 8 Transitional provisions
for Justice and Other
Legislation
Amendment Act 2021**

45 Definitions for part

In this part—

amending Act means the *Justice and Other Legislation Amendment Act 2021*.

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

[s 43]

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 apply in relation to the document as if the amending Act had not been enacted.

Part 7 Amendment of Powers of Attorney Act 1998

44 Act amended

This part amends the *Powers of Attorney Act 1998*.

45 Amendment of s 12 (Execution of powers of attorney)

(1) Section 12(1)—

insert—

Notes—

- 1 See the *Property Law Act 1974*, part 6, division 1 in relation to a document containing a power of attorney that takes effect as a deed.
- 2 See the *Property Law Act 1974*, section 46A in relation to a power of attorney given by an individual under a deed.

(2) Section 12(2)—

insert—

Note—

See also part 3A.

46 Insertion of new ch 2, pt 3A

Chapter 2—

insert—

Part 3A General powers of attorney for businesses

24A Definitions for part

In this part—

accepted method, for electronically signing a

[s 46]

general power of attorney, means—

- (a) a method prescribed under section 24G; or
- (b) if no method is prescribed, and subject to a regulation prescribing under section 24G a method that is not an accepted method for electronically signing a general power of attorney, a method that—
 - (i) identifies the signatory for the document and the signatory's intention in relation to the contents of the document; and
 - (ii) is either—
 - (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
 - (B) proven in fact to have fulfilled the functions described in subparagraph (i), by itself or together with further evidence.

business—

- (a) means—
 - (i) a corporation; or
 - (ii) a partnership under the *Partnership Act 1891*, section 5; or
 - (iii) another unincorporated association; but
- (b) does not include an enterprise carried on by a sole trader.

corporation includes—

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

(c) a statutory corporation.

counterpart, for a document, see section 24B.

document means any record of information however recorded and includes—

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

electronically sign, a document, means sign the document using an accepted method.

electronic document means—

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

general power of attorney means a general power of attorney made under this Act.

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

make, in relation to a document, includes execute.

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.

[s 46]

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.

witness, a document, includes witness the signing of the document.

24B 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
 - (b) if a common seal is fixed to the document—the seal.

24C Application of part

- (1) This part applies in relation to a general power of attorney for a business.
- (2) A reference in this part to a general power of attorney is taken to include a reference to a document revoking a general power of attorney.
- (3) If a provision of this part is inconsistent with any other provision of this Act, the provision of this part prevails to the extent of the inconsistency.

24D Relationship with other laws

- (1) If there is an inconsistency between this part and any other law in relation to a general power of attorney, this part prevails to the extent of the inconsistency.
- (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*.

24E No sealing required

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

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

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.

24G Accepted method for electronically signing general power of attorney

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.

24H Execution by corporation

- (1) A corporation may execute a general power of attorney, without using a common seal, if the document is signed by—
 - (a) 2 directors of the corporation; or

[s 46]

- (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; 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

[s 46]

at different places and includes videoconferencing.

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

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

24I Execution by partnership or unincorporated association

- (1) An individual may execute a general power of attorney on behalf of a partnership or unincorporated association by signing the general power of attorney.
- (2) An individual may sign a general power of attorney under subsection (1) whether or not in the presence of a witness.
- (3) If an individual signs a general power of attorney under subsection (1), the individual must sign the general power of attorney in a way that indicates the person is executing the general power of attorney on behalf of the partnership or unincorporated association.
- (4) This section does not limit or otherwise affect another law or instrument that requires or permits a general power of attorney executed on behalf of a partnership or unincorporated association to be executed in a particular way.

Example—

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

24J Requirement for signatory

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

- (a) the person's full name;
- (b) the person's office or designation in relation to the business.

24K Signing counterpart or true copy

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

24L Lodgement or deposit of general power of attorney in registry

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

[s 47]

under subsection (4) must be lodged or deposited in the registry for the purpose.

- (4) For subsection (3), the printed copy must be certified as a true copy of the original general power of attorney or counterpart—
- (a) on the last page of the printed copy; and
 - (b) by 1 of the following persons—
 - (i) 1 of the signatories;
 - (ii) a lawyer;
 - (iii) a justice;
 - (iv) a commissioner for declarations;
 - (v) a notary public;
 - (vi) a trustee company under the *Trustee Companies Act 1968*;
 - (vii) a stockbroker.
- (5) In this section—
- registry** means—
- (a) the land registry; or
 - (b) the water allocations register under the *Water Act 2000*.

47 Amendment of s 44 (Formal requirements)

- (1) Section 44(6) and (7), after ‘doctor’—
- insert—*
- or nurse practitioner
- (2) Section 44—
- insert—*
- (9) 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.

48 Insertion of new ch 9, pt 5

Chapter 9—

insert—

**Part 5 Transitional provisions
for Justice and Other
Legislation
Amendment Act 2021**

176 Definitions for part

In this part—

amending Act means the *Justice and Other Legislation Amendment Act 2021*.

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

**177 Repealed regulation continues to apply to
general power of attorney in particular
circumstances**

- (1) This section applies in relation to a document that is a general power of attorney 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

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- (b) immediately before the commencement—
 - (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.

[s 49]

49 Amendment of sch 3 (Dictionary)

Schedule 3—

insert—

accepted method, for electronically signing a general power of attorney, for chapter 2, part 3A, see section 24A.

business, for chapter 2, part 3A, see section 24A.

corporation, for chapter 2, part 3A, see section 24A.

counterpart, for a document, for chapter 2, part 3A, see section 24B.

document, for chapter 2, part 3A, see section 24A.

electronically sign, a document, for chapter 2, part 3A, see section 24A.

electronic document, for chapter 2, part 3A, see section 24A.

general power of attorney, for chapter 2, part 3A, see section 24A.

information, for chapter 2, part 3A, see section 24A.

make, in relation to a document, for chapter 2, part 3A, see section 24A.

physical document, for chapter 2, part 3A, see section 24A.

seal, of a corporation, for chapter 2, part 3A, see section 24A.

sign, a document, for chapter 2, part 3A, see section 24A.

statutory corporation, for chapter 2, part 3A, see section 24A.

witness, a document, for chapter 2, part 3A, see

section 24A.

Part 8 Amendment of the Property Law Act 1974

50 Act amended

This part amends the *Property Law Act 1974*.

51 Replacement of ss 44–46

Sections 44 to 46—

omit, insert—

Subdivision 1 Preliminary

44 Definitions for division

In this division—

accepted method, for electronically signing a document, means a method that—

- (a) identifies the signatory for the document and the signatory's intention in relation to the contents of the document; and
- (b) is either—
 - (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
 - (ii) proven in fact to have fulfilled the functions described in paragraph (a), by itself or together with further evidence; and

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(c) is consented to by each other signatory to the document.

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.

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

counterpart, for a document, see section 45.

document means any record of information however recorded and includes—

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

electronically sign, a document, means sign the document using an accepted method.

electronic document means—

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

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.

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

46 Division does not apply to enduring documents

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

46A Application of division to powers of attorney

- (1) Despite anything in this division, each of the following documents made by an individual must

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be a physical document that is signed by the individual in the presence of a witness—

- (a) a general power of attorney under the *Powers of Attorney Act 1998*;
 - (b) a power of attorney given under a deed.
- (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—
- (a) the document is part of a commercial or other arms-length transaction; and
 - (b) the power of attorney is given for the purpose of the commercial or other arms-length transaction.

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

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.

- (3) To remove any doubt, it is declared that—
- (a) subsection (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; and
 - (b) 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.
- (4) This section applies subject to section 46G.
- (5) In this section—
- individual* includes an individual in the individual's capacity as a sole trader.

46B Execution of documents under other Acts

This division does not affect the way in which documents are validly executed under the *Land Act 1994* or the *Land Title Act 1994*.

Subdivision 2 General rules

46C How deed is made generally

- (1) A document takes effect as a deed if the document—
 - (a) is in writing; and
 - (b) contains a clear statement that the document is a deed; and
 - (c) is executed under this division; and
 - (d) is delivered in accordance with section 47.
- (2) A document takes effect as a deed under subsection (1) even if—
 - (a) it is not written on paper or parchment; or
 - (b) it is not an indenture or stated to be an indenture; or
 - (c) it is not sealed or stated to be sealed.

46D Deed may be in form of electronic document and electronically signed

A document that is to have effect as a deed may be in the form of an electronic document and may be electronically signed.

46E Execution by individual

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

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

46F Execution by corporation

- (1) Subject to subsection (2A), a corporation may execute a document that is to have effect as a deed, without using a seal, if the document is signed by—
- (a) 2 directors of the corporation; or
 - (b) 1 director and 1 secretary of the corporation; or
 - (c) for a proprietary company that has 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) Subject to subsection (2A), a corporation with a common seal may execute a document that is to have effect as a deed 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.
- (2A) 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 another document under which the corporation is established, incorporated or registered.
- (3) For subsection (2), or 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—
- (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.
- (5) 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.
- (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.

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.

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 attorney for the partnership or unincorporated association.
- (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.

Example—

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.

46GA Execution by the State

- (1) 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.
- (2) The person may sign the document under subsection (1) without using a seal and whether or not in the presence of a witness.
- (3) If a seal is used to execute a document that is to have effect as a deed for the State, the fixing of the seal to the document is taken to have been witnessed by a person who is authorised to witness the fixing of the seal if—
 - (a) the person observes the fixing of the seal by audio visual link; and
 - (b) the person signs the document; and

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- (c) the document includes a statement that the person observed the fixing of the seal by audio visual link.
- (4) This section is subject to section 46F(2A).
- (5) This section does not limit the State's powers or legal capacity under another law.
- (6) In this section—
State includes a public sector unit and any other entity that represents the State.

46H Signing counterpart or true copy

- (1) 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.
- (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.
- (3) In this section—
person includes a partnership, an unincorporated association and the State.

52 Amendment of s 47 (Delivery of deeds)

Section 47(1)(b)—

omit, insert—

- (b) in another form under this subdivision;

53 Insertion of new ss 53A and 53B

After section 53—

insert—

53A Deposit of deed in registry

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

registry means—

[s 54]

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

53B Protection for third parties

- (1) A person may assume that a document has been duly executed by a corporation if—
 - (a) the document appears to have been signed under section 46F(1); or
 - (b) both of the following apply—
 - (i) the common seal of the corporation appears to have been fixed to the document under section 46F(2);
 - (ii) the fixing of the common seal as mentioned in subparagraph (i) appears to have been witnessed under section 46F(2).
- (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.

54 Insertion of new s 78A

After section 78—

insert—

78A Mortgages lodged electronically

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

- (b) the mortgagee holds a document that grants a mortgage by the mortgagor that—
 - (i) is on the same terms as the lodged mortgage; and
 - (ii) complies with section 11.
- (2) However, this section does not apply in relation to a mortgage that is a deed.
- (3) If the mortgage is required to be given, produced or used for any purpose, the document mentioned in subsection (1)(b) may be—
 - (a) given, produced or used for the purpose; and
 - (b) relied on as evidence of the mortgage.
- (4) Subsection (3) applies regardless of whether the document mentioned in subsection (1)(b)—
 - (a) was signed by or for the mortgagor or mortgagee in the presence of a witness; or
 - (b) was electronically signed by or for the mortgagor or mortgagee.

55 Insertion of new pt 26

After section 360—

insert—

Part 26

**Transitional and
validating provisions
for Justice and Other
Legislation
Amendment Act 2021**

**360A Deed signed by different signatories before
and after commencement**

- (1) This section applies to a deed if—

[s 55]

- (a) an individual or corporation signed the deed before the commencement; and
 - (b) another individual or corporation signs the deed after the commencement.
- (2) The individual or corporation signing the deed after the commencement may electronically sign the deed under section 46D.
 - (3) For subsection (2), the requirement under section 44, definition *accepted method*, 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.
 - (4) Also, subsection (2) applies whether or not the individual or corporation who signed the deed before the commencement electronically signed the deed.
 - (5) To remove any doubt, it is declared that the repealed regulation applied to the individual or corporation signing the deed before the commencement.

Note—

Former section 12O(2) of the repealed regulation did not require the consent of another person to electronically signing the deed.

- (6) In this section—

corporation means a corporation as defined under section 44.

repealed regulation means the repealed *Justice Legislation (COVID-19 Emergency Response—Documents and Oaths) Regulation 2020* as in force from time to time before the commencement.

360B Execution of deed by corporation sole or State after commencement of Justice Legislation (COVID-19 Emergency Response—Wills and Enduring Documents) Amendment Regulation 2020

- (1) This section applies in relation to the execution of the following documents—
 - (a) a document that is to have effect as a deed for a corporation sole signed, during the transition period, by a person, or in a way, authorised by the Act or another document under which the corporation is established, incorporated or registered;
 - (b) a document that is to have effect as a deed for the State signed, during the transition period, by a person authorised to execute the document.
- (2) The execution of the document is taken to be, and always to have been, as valid as if the new provisions were in effect during the transition period.
- (3) Without limiting subsection (2)—
 - (a) anything done under or in relation to the document is, and was, as valid as if the new provisions had been in effect during the transition period; and
 - (b) the rights and liabilities of all persons under or in relation to the document are taken to be, and to have been, for all purposes the same as if the new provisions had been in effect during the transition period.
- (4) Despite the *COVID-19 Emergency Response Act 2020*, section 5, if this section is inconsistent with the *Justice Legislation (COVID-19 Emergency Response—Documents and Oaths) Regulation 2020*, this section prevails to the extent of the inconsistency.

[s 56]

(5) In this section—

new provisions means—

- (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’.

transition period means the period—

- (a) starting on the commencement of the *Justice Legislation (COVID-19 Emergency Response—Wills and Enduring Documents) Amendment Regulation 2020*; and
- (b) ending immediately before the commencement of this section.

56 Amendment of sch 6 (Dictionary)

Schedule 6—

insert—

accepted method, for electronically signing a document, for part 6, division 1, see section 44.

consent, for part 6, division 1, see section 44.

copy, of an electronic document, for part 6, division 1, see section 44.

counterpart, for a document, for part 6, division 1, see section 45.

document, for part 6, division 1, see section 44.

electronically sign, a document, for part 6, division 1, see section 44.

electronic document, for part 6, division 1, see section 44.

information, for part 6, division 1, see section 44.

physical document, for part 6, division 1, see section 44.

seal, of a corporation, for part 6, division 1, see section 44.

secretary, of a corporation, for part 6, division 1, see section 44.

sign, a document, for part 6, division 1, see section 44.

Part 8A **Amendment of Queensland Building and Construction Commission Act 1991**

56A Act amended

This part amends the *Queensland Building and Construction Commission Act 1991*.

56B Amendment of s 72 (Power to require rectification of building work and remediation of consequential damage)

Section 72(2A)—

omit, insert—

(2AA) A regulation may prescribe a period within which the commission must make the direction.

(2A) If a period is prescribed under subsection (2AA), the commission must make the direction during the prescribed period.

[s 56C]

56C Insertion of new sch 1, pt 18

Schedule 1—

insert—

Part 18 Transitional and validation provisions for Justice and Other Legislation Amendment Act 2021

85 Definition for part

In this part—

validation period means the period—

- (a) starting at the beginning of the day on 11 November 2019; and
- (b) ending at the end of the day on 9 November 2021.

Notes—

- 1 The *Building Industry Fairness (Security of Payment) Act 2017*, section 281 commenced on 11 November 2019.
- 2 The *Queensland Building and Construction Commission (Rectification of Building Work) Amendment Regulation 2021* commenced on 10 November 2021.

86 Application of amended section 72

Section 72, as amended by the *Justice and Other Legislation Amendment Act 2021*, is taken to have applied from the start of the validation period.

87 Validation of particular directions to rectify or remedy

- (1) This section applies in relation to a direction made, or purportedly made, under section 72(2) during the validation period.
- (2) It is declared that the direction is, and always has been, as valid as it would have been if the 35-day period had been prescribed by regulation under section 72(4) throughout the validation period.
- (3) Also, subsection (4) applies if the period stated in the direction for rectifying building work or remedying consequential damage ended on a day that was—
 - (a) between 28 and 34 days after the day the direction was made, as stated in the direction; or
 - (b) later than 35 days after the day the direction was made, as stated in the direction.
- (4) It is declared that the direction is, and always has been, as valid as it would have been if the period stated in the direction had complied with the 35-day period.
- (5) Without limiting subsection (2) or (4), any action, or purported action, taken in reliance on the direction is taken to be as lawful and valid as it would have been if the matters mentioned in the subsection had effect.

Example of action, or purported action, taken in reliance on the direction—

the grant, under section 72B, of an extension of the period for compliance with the direction

- (6) This section does not limit the operation of section 76 of this schedule in relation to matters provided for under a policy mentioned in that section.
- (7) In this section—

[s 56C]

35-day period means the period prescribed under section 72(4) by the *Queensland Building and Construction Commission Regulation 2018*, section 53A.

Note—

Section 53A was inserted by the *Queensland Building and Construction Commission (Rectification of Building Work) Amendment Regulation 2021*.

88 Extension of time for giving directions

- (1) This section applies if, during the suspension period—
 - (a) the limitation period for giving a direction to rectify or remedy building work ended; and
 - (b) the commission did not give the direction.
- (2) Despite section 72A(4), the limitation period for giving the direction is taken to end on the day that is 7 days after the commencement.
- (3) In this section—

limitation period, for giving a direction to rectify or remedy building work, means the period, mentioned in section 72A(4), of 6 years and 6 months after the building work to which the direction relates.

suspension period means the period—

- (a) starting at the beginning of the day on 3 November 2021; and
- (b) ending at the end of the day on 9 November 2021.

Part 9 Repeal

57 Repeal

The following regulations are repealed—

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

Part 10 Minor and consequential amendments

58 Legislation amended

Schedule 1 amends the legislation it mentions.

Schedule 1 Minor and consequential amendments

section 58

Children’s Court Rules 2016

1 Rule 85(3)(d), note—

omit, insert—

Note—

For persons who may take an affidavit, see the *Oaths Act 1867*, parts 4 and 6A.

Forestry Act 1959

1 Section 61RV(1)(b), ‘Property Law Act 1974, section 46’—

omit, insert—

Property Law Act 1974, section 46F

Guardianship and Administration Act 2000

1 Section 45(4), ‘Property Law Act 1974, section 46’—

omit, insert—

Property Law Act 1974, section 46F

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