



Queensland

*COVID-19 Emergency Response Act 2020*

*Oaths Act 1867*

*Powers of Attorney Act 1998*

*Property Law Act 1974*

*Succession Act 1981*

# Justice Legislation (COVID-19 Emergency Response— Documents and Oaths) Regulation 2020

**Current as at 4 December 2020**

## **Repeal/Expiry Information**

This legislation expires on the COVID-19 legislation expiry day—see section 27.

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Queensland

# Justice Legislation (COVID-19 Emergency Response—Documents and Oaths) Regulation 2020

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# Justice Legislation (COVID-19 Emergency Response—Documents and Oaths) Regulation 2020

## Part 1 Preliminary

### 1 Short title

This regulation may be cited as the *Justice Legislation (COVID-19 Emergency Response—Documents and Oaths) Regulation 2020*.

### 2 Declaration that regulation is made under COVID-19 Emergency Response Act 2020, ss 8 and 9

This regulation is made under the *COVID-19 Emergency Response Act 2020*, sections 8 and 9.

### 3 Dictionary

The dictionary in schedule 1 defines particular words used in this regulation.

### 4 References to witnesses, signatories and substitute signatories

(1) In this regulation—

- (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 declaration—
- (a) the witness is 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) the signatory is the person who makes or gives an oath or affirmation for the person’s affidavit or declaration before the affidavit or declaration is made.

## 5 Special witnesses

- (1) A *special witness*, for a document, is a person who is—
- (a) an Australian legal practitioner; or
  - (b) a justice or commissioner for declarations approved by the chief executive under subsection (2); or
  - (c) 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
  - (d) a notary public; or
  - (e) a person mentioned in subsection (3) for the document.

*Note—*

See sections 14 and 16 for further provision about special witnesses.

- (2) The chief executive may approve a justice or commissioner for declarations to be a special witness for this regulation if the chief executive is satisfied the justice or commissioner for declarations is an appropriate person for witnessing documents under this regulation.
- (3) For subsection (1)(e), a person is also a special witness for a document if—



- (a) for a will or a document altering, revoking or reviving a will—the will or document is prepared by the public trustee and the person is an employee of the public trustee; or
  - (b) for another document—the document is prepared by the public trustee and the person is a justice or commissioner for declarations who is an employee of the public trustee.
- (4) In this section—  
*law practice* see the *Legal Profession Act 2007*, schedule 2.

## Part 2 Wills

### 6 Application of part

- (1) This part provides for modified requirements or arrangements, under the *Succession Act 1981* or another law, for making, signing and witnessing wills, or documents that alter, revoke or revive a will.
- (2) A reference in this part to a will is taken to include a reference to a document altering, revoking or reviving a will.

### 7 Presence by audio visual link

A requirement under the *Succession Act 1981* 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 will is taken to be satisfied if—

- (a) the witness, signatory, substitute signatory or other person is present by audio visual link; and
- (b) the making, signing or witnessing of the will is carried out in accordance with part 4.

## **8 Dis-application of Succession Act 1981, s 10(5)**

The *Succession Act 1981*, section 10(5) does not apply in relation to a will made, signed or witnessed under this regulation.

# **Part 3 Enduring documents**

## **9 Application of part**

- (1) This part provides for modified requirements or arrangements, under the *Powers of Attorney Act 1998* or another law, for making, signing and witnessing enduring documents, or documents that revoke all or part of an enduring document.
- (2) In this part—
  - (a) a reference to an enduring document is taken to include a reference to a document revoking all or part of an enduring document; and
  - (b) a reference to making, signing or witnessing an enduring document is taken to include a reference to making, signing or witnessing of a certificate forming part of the enduring document.

## **10 Presence by audio visual link**

- (1) A requirement under the *Powers of Attorney Act 1998* 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 enduring document is taken to be satisfied if—
  - (a) the witness, signatory, substitute signatory or other person is present by audio visual link; and
  - (b) the making, signing or witnessing of the enduring document is carried out in accordance with part 4.
- (2) A certificate under the *Powers of Attorney Act 1998*, section 44 or 49 stating that a person appeared to have

capacity necessary to make an enduring document may be made on the basis of the person making the certificate observing the person by audio visual link.

#### **11 Advance health directive certificate may be signed by particular nurses**

(1) The *Powers of Attorney Act 1998*, section 44(6) and (7) apply as if a reference to a doctor included a reference to a nurse practitioner.

(2) 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.

#### **12 Protection for persons unaware of invalidity**

A reference in the *Powers of Attorney Act 1998*, section 99(1) to a certificate of a witness includes a reference to a certificate of a witness made under the *Powers of Attorney Act 1998*, section 44(4) or (5) in relation to an enduring document made in accordance with this regulation.

## **Part 3A Affidavits**

#### **12A Application of part**

This part provides for modified requirements or arrangements for making, signing and witnessing affidavits under the *Oaths Act 1867* or another law.

#### **12B Presence by audio visual link**

A requirement under the *Oaths Act 1867* 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; and
- (c) the making, signing or witnessing of the affidavit is carried out in accordance with part 4.

## **12C Affidavit may be made in form of electronic document and electronically signed**

- (1) An affidavit may be made in the form of an electronic document, and may be electronically signed, if it is made, signed and witnessed in accordance with part 4.
- (2) An affidavit may be made in the form of an electronic document by or for a person even without consent to the making of it in that form from a witness or any other person.
- (3) An affidavit may be electronically signed by a person even without consent to the signing in that way from any other person who is to sign the affidavit.

## **12D Dis-application of Oaths Act 1867, s 33**

The *Oaths Act 1867*, section 33 does not apply in relation to an affidavit made, signed or witnessed in accordance with this regulation.

## **12E 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 the *Oaths Act 1867* or another law, as modified by this regulation, 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.

## **Part 3B                      Declarations**

### **12F      Application of part**

This part provides for modified requirements or arrangements for making, signing and witnessing declarations under the *Oaths Act 1867* or another law.

### **12G      Presence by audio visual link**

A requirement under the *Oaths Act 1867* 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; and
- (c) the making, signing or witnessing of the declaration is carried out in accordance with part 4.

### **12H      Declaration may be made in form of electronic document and electronically signed**

- (1) A declaration may be made in the form of an electronic document, and may be electronically signed, if it is made, signed and witnessed in accordance with part 4.

- (2) A declaration may be made in the form of an electronic document by or for a person even without consent to the making of it in that form from a witness or any other person.
- (3) A declaration may be electronically signed by a person even without consent to the signing in that way from any other person who is to sign the declaration.

## **12I Dis-application of Oaths Act 1867, s 33**

The *Oaths Act 1867*, section 33 does not apply in relation to a declaration made, signed or witnessed in accordance with this regulation.

## **12J Who may witness declarations other than by audio visual link**

- (1) This section applies in relation to a declaration that is not witnessed by audio visual link.
- (2) Despite the *Oaths Act 1867*, section 13(1), a declaration may be taken by a person prescribed under the *Statutory Declarations Regulations 2018* (Cwlth), section 7.

# **Part 3C Oaths and affirmations**

## **12K Application of part**

- (1) This part provides for modified requirements or arrangements for oaths or affirmations under the *Oaths Act 1867* or another law.
- (2) This part applies to an oath or affirmation, however described, administered or made anywhere, including, for example, in open court.
- (3) However, this part does not apply to—
  - (a) an oath or affirmation administered or made in relation to an affidavit under part 3A or a declaration under part 3B; or

- (b) an oath of allegiance or oath of office under the *Oaths Act 1867*, part 2.

## **12L Presence by audio visual link**

- (1) A requirement under the *Oaths Act 1867* or another law for the presence of an authorised person in relation to a person's oath or affirmation is taken to be satisfied if the authorised person is present by audio visual link.
- (2) In this section—  
*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.

# **Part 3D Deeds**

## **Division 1 General**

### **12M Application of part**

- (1) This part provides for modified requirements or arrangements for making a deed, or an instrument having effect as a deed, under the *Property Law Act 1974* or a common law rule.
- (2) This part does not apply to enduring documents or general powers of attorney.

### **12N How deed is made generally**

- (1) An instrument takes effect as a deed if the instrument—
- (a) is in writing; and
  - (b) contains a conspicuous statement that the instrument is a deed; and
  - (c) is signed in accordance with this part; and

- (d) is delivered in accordance with the *Property Law Act 1974*, section 47.
- (2) An instrument 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.

## **120 Deed may be made in form of electronic document and electronically signed**

- (1) An instrument that is to have effect as a deed may be made in the form of an electronic document and may be electronically signed.
- (2) An instrument that is to have effect as a deed may be made in the form of an electronic document by or for a person even without consent to the making of it in that form from another signatory or any other person.
- (3) An instrument that is to have effect as a deed may be electronically signed by a person even without consent to the signing in that way from any other person who is to sign the deed.

## **Division 2                      Signing of instrument to have effect as a deed**

### **12P      Signing by individual generally**

An instrument that is to have effect as a deed for an individual may be signed by the individual personally or by the individual's agent, whether or not the agent is appointed under seal.



## 12Q Signing by corporation generally

- (1) An instrument that is to have effect as a deed for a corporation may be signed by—
  - (a) 2 directors of the corporation; or
  - (b) 1 director and 1 secretary of the corporation; or
  - (c) for a corporation that has only 1 director who is also the only secretary of the corporation—that director; or
  - (d) a lawfully authorised agent or attorney of the corporation, whether or not the agent or attorney is appointed under seal.
- (2) Also, for a statutory corporation, the instrument may be signed by a person, or in a way, authorised by the Act under which the corporation is established, incorporated or registered.
- (3) Further, for a corporation that is not incorporated under an Australian law, the instrument may be signed by a person, or in a way, authorised by the law of the place in which the corporation is incorporated.
- (4) An instrument that is to have effect as a deed for a corporation may be signed in accordance with this section whether or not the seal of the corporation is used.
- (5) An instrument signed for a corporation by an agent or attorney under subsection (1)(d) has the same effect as an instrument signed for a corporation under subsection (1)(a), (b) or (c).
- (6) This section does not limit the ways in which an instrument that is to have effect as a deed for a corporation may be signed for the corporation.
- (7) In this section—

**attorney**, for a corporation, means an attorney for the corporation under—

  - (a) a deed; or
  - (b) a general power of attorney.

## **12R Signing counterpart or true copy**

- (1) An instrument that is to have effect as a deed for an individual or a corporation may be signed by or for the individual or corporation by signing a counterpart or true copy of the instrument.
- (2) For subsection (1), the counterpart or true copy signed by a person need not include the signature of any other person who is to sign the instrument.

*Example—*

If an instrument is signed for a corporation by 1 director and 1 secretary, the director may sign 1 counterpart and the secretary may sign another counterpart. The counterpart signed by each person does not need to include the signature of the other person.

- (3) Also, 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 instrument about the method used for electronically signing the instrument.

## **12S No witness required**

An instrument that is to have effect as a deed may be signed in accordance with this division whether or not in the presence of a witness.

## **Division 3 Other provision**

### **12T Deposit of deed in land registry**

- (1) This section applies to a deed made under this part that is proposed to be deposited in the land registry for either of the following purposes—
  - (a) in support of another instrument lodged or deposited in the land registry;
  - (b) for registration, enrolment or recording under the *Property Law Act 1974*, section 241(1).

- (2) If the deed is made in counterparts, each counterpart must be deposited in the land 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 in accordance with subsection (4) must be deposited in the land 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.

## Part 3E                      General powers of attorney

### 12U    Application of part

- (1) This part provides for modified requirements or arrangements, under the *Powers of Attorney Act 1998* or another law, for making a general power of attorney, or a document revoking a general power of attorney.
- (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.

## **12V No witness required for corporations**

A general power of attorney for a corporation may be made whether or not in the presence of a witness.

## **12W Presence by audio visual link for individuals**

A requirement under the *Powers of Attorney Act 1998* 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 general power of attorney for an individual is taken to be satisfied if—

- (a) the witness, signatory, substitute signatory or other person is present by audio visual link; and
- (b) the making, signing or witnessing is carried out in accordance with part 4.

## **12X No sealing required**

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

## **12Y General power of attorney may be made in form of electronic document and electronically signed**

- (1) A general power of attorney may be made in the form of an electronic document and may be electronically signed.
- (2) A general power of attorney may be made in the form of an electronic document by or for a person even without consent to the making of it in that form from a witness or any other person.
- (3) A general power of attorney may be electronically signed by a person even without consent to the signing in that way from any other person who is to sign the general power of attorney.

## **12Z Signing by corporation generally**

- (1) A general power of attorney for a corporation may be signed by—
  - (a) 2 directors of the corporation; or
  - (b) 1 director and 1 secretary of the corporation; or
  - (c) for a corporation that has only 1 director who is also the only secretary of the corporation—that director; or
  - (d) a lawfully authorised agent of the corporation, whether or not the agent is appointed under seal.
- (2) 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.
- (3) 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.
- (4) A general power of attorney may be signed in accordance with this section whether or not the seal of the corporation is used.
- (5) An instrument signed for a corporation by an agent under subsection (1)(d) has the same effect as an instrument signed for a corporation under subsection (1)(a), (b) or (c).
- (6) This section does not limit the ways in which a general power of attorney for a corporation may be signed for the corporation.

## **12ZA Signing counterpart or true copy**

- (1) This section applies if 2 or more persons are to sign a general power of attorney for a corporation.
- (2) A person signing the general power of attorney for the corporation may sign a counterpart or true copy of the general power of attorney.

- (3) For subsection (2), the counterpart or true copy signed by a person need not include the signature of any other person who is to sign the general power of attorney.
- (4) Also, 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.

### **12ZB Lodgement or deposit of general power of attorney in land registry**

- (1) This section applies to a general power of attorney made under this part that is proposed to be lodged or deposited in the land registry for a purpose.
- (2) If the general power of attorney is made in counterparts, each counterpart must be lodged or deposited in the land 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 in accordance with subsection (4) must be lodged or deposited in the land 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) Subsection (6) applies if—
- (a) a printed copy of the general power of attorney or counterpart is lodged or deposited under subsection (3); and
  - (b) the principal signed the general power of attorney in paper form (the *principal's original document*).
- (6) The registrar of titles may require the principal's original document to be given to the registrar for lodgement or depositing with the printed copy lodged or deposited under subsection (3).

## Part 3F Particular mortgages

### 12ZC Application of part

- (1) This part provides for modified requirements or arrangements for the making of particular mortgages under the *Property Law Act 1974* or another law.
- (2) However, this part does not apply in relation to a mortgage that is an instrument to which part 3D applies.

### 12ZD Mortgages lodged electronically

- (1) This section applies in relation to a mortgage 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 and conditions as the lodged mortgage; and

- (ii) complies with the *Property Law Act 1974*, section 11.
- (2) 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.
- (3) Subsection (2) applies regardless of whether the document mentioned in subsection (1)(b)—
  - (a) was signed by or for the mortgagor in the presence of a witness; or
  - (b) was electronically signed by or for the mortgagor.

## **Part 4    Signing or witnessing documents by audio visual link**

### **Division 1    Requirements about direction given to substitute signatory**

#### **13                          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) for a will—an executor or beneficiary of the will, or a relation of the executor or beneficiary; or
  - (ii) for an enduring document—the attorney of the principal for the enduring document, or a relation of the attorney; or
  - (iii) a person witnessing the document; or
  - (iv) 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 an Australian legal practitioner or an employee of the public trustee.
- (4) In this section—  
*relation*, of a person, see the *Powers of Attorney Act 1998*, schedule 3.

## **14 Signing in physical presence 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.
- (2) The signing of the document by the substitute signatory may be witnessed by only—
  - (a) a special witness; or
  - (b) 2 or more witnesses, at least 1 of whom is a special witness.
- (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.

*Note—*

See section 16 in relation to the signing of a document by a substitute signatory to be witnessed by audio visual link.

## **15 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) Each 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 13 to be a substitute signatory for the document; and
  - (c) take reasonable steps to verify the identity of the signatory; and
  - (d) be satisfied that the signatory is freely and voluntarily directing the substitute signatory to sign the document.

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

### **16 Witnesses must be or include special witness**

- (1) A document may be witnessed by audio visual link only if—
  - (a) the witness is a special witness for the document; or
  - (b) if there are 2 or more witnesses—at least 1 of the witnesses is a special witness for the document.
- (2) 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.

## **17 General requirements for witnessing documents**

- (1) A document may be witnessed by audio visual link only if—
  - (a) if applicable, the witness observes the signatory direct the substitute signatory to sign the document; 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 signatory or substitute signatory signs each page of the document; and
  - (e) the witness is satisfied that the signatory is freely and voluntarily signing the document or directing the substitute signatory to sign the document.
- (2) Subsection (1)(d) does not apply to an affidavit or a declaration.

## **18 Witness must verify particular matters**

A person who witnesses a document by audio visual link 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 document.

## 19 Confirmation of signed document by witness

- (1) A person who witnesses a document by audio visual link 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 hard copy of a signed electronic document printed by the witness
- (c) if the document is an affidavit or a declaration made using counterparts—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 12C (for affidavits) and 12H (for declarations).

- (2) The person must confirm the document—
- (a) as soon as practicable after witnessing it, which may or may not be the day on which the document is witnessed; and
  - (b) by signing each page of the document.
- (3) Subsection (2)(b) does not apply to an affidavit or a declaration.
- (4) 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*.

## 20 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 or a true copy of the document—
  - (a) if the document is to be confirmed by another witness—to the other witness; or
  - (b) otherwise—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) If a certificate under section 21 has been signed for the document, the certificate or a true copy of the certificate must accompany the document or a true copy of the document given under subsection (1).

- (3) In this section—

**give** includes—

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

*Example for paragraph (b)—*

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

**relevant person** means—

- (a) for a will or document altering, revoking or reviving a will—the testator of the will or a person to whom the testator directs the will or document be given; or
- (b) for an enduring document or a document revoking all or part of an enduring document—the principal for the enduring document or a person to whom the principal directs the enduring document or document be given; or
- (c) for an affidavit or declaration—the person making the affidavit or declaration or a person to whom that person directs the affidavit or declaration be given; or

- (d) for a general power of attorney or a document revoking a general power of attorney—the principal for the general power of attorney or a person to whom the principal directs the general power of attorney be given.

## **Division 3                      Other provisions**

### **21                      Certificate by special witness**

- (1) This section applies to a special witness who—
  - (a) witnesses, in the special witness’ physical presence, a substitute signatory sign a document after the direction to sign the document is given by audio visual link; or
  - (b) witnesses a signatory or substitute signatory sign a document by audio visual link.
- (1A) However, this section does not apply in relation to an affidavit or a declaration.
- (2) The special witness must sign a certificate stating—
  - (a) that the document was signed and witnessed during the relevant period; and
  - (b) that the document was signed and witnessed in accordance with this regulation; and
  - (c) the steps the witness took to verify the identity of the signatory; and
  - (d) if a substitute signatory signed the document—
    - (i) the identity of the substitute signatory; and
    - (ii) a description of the direction given by the signatory to the substitute signatory; and
  - (e) if a substitute signatory was directed by the signatory by audio visual link to sign the document—the grounds on which the witness is satisfied the substitute signatory is permitted under section 13 to be a substitute signatory for the document; and

- (f) the process followed for signing and witnessing the document; and
  - (g) that the special witness is a special witness; and
  - (h) whether an audio visual recording was made under section 26 of the signing or witnessing of the document; and
  - (i) any other matters the special witness considers relevant to the signing or witnessing of the document.
- (3) If 2 or more special witnesses witness a document by audio visual link—
- (a) only 1 certificate is required under subsection (2); and
  - (b) only 1 special witness is required to sign that certificate.
- (4) A certificate signed under subsection (2) must be kept with the document.
- (5) In this section—
- relevant period* means the period starting on the commencement and ending when the COVID-19 emergency period ends.

## **21A Jurat of affidavit**

- (1) This section applies in relation to an affidavit made, signed or witnessed under the modified requirements or arrangements under this regulation.
- (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) that the affidavit was made, signed and witnessed in accordance with this regulation;
  - (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

## **21B Statement in declaration**

- (1) This section applies in relation to a declaration made, signed or witnessed under the modified requirements or arrangements under this regulation.
- (2) The signatory must ensure the declaration states the following matters—
- (a) that the declaration was made, signed and witnessed in accordance with this regulation;
  - (b) 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;
  - (c) 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



## 22 When document starts to be effective

- (1) A document made, signed and witnessed in accordance with this regulation 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.

## 23 Presumptions

In a proceeding, the following must be presumed in relation to a document made, signed or witnessed in accordance with this regulation, 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 in accordance with this regulation;
- (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;
- (e) that a matter stated in a certificate purporting to be signed by a special witness under section 21 for the document is true and correct.

## 24 Official and originating versions of document

- (1) This section applies to a document, or a true copy of a document, that is given to a relevant person for the document under section 20(1)(b).
  - (1A) However, this section does not apply to an affidavit or declaration that is made using counterparts.
- (2) If the document or true copy is given in paper form, the document or true copy is the *official version* of the document.

- (3) If the document or true copy is given electronically, a print out of the document or true copy is the *official version* of the document.
- (4) If the official version of the document is not the version of the document that was physically signed by the signatory or substitute signatory (the *originating version*), the originating version must be kept with the official version.
- (5) If a document made, signed or witnessed in accordance with this regulation 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.

*Examples for subsection (5)—*

- 1 If, under an Act, a person is required to produce a will, the official version of the will may be produced to satisfy the requirement.
  - 2 The official version of an enduring power of attorney may be given to a bank or other entity, and relied on by the bank or other entity, as evidence of the enduring power of attorney.
- (6) Subsection (5) does not limit the power of a court to require production of the originating version of the document in a proceeding.

## **25 Lodgement or deposit of document in land registry**

- (1) This section applies if an official version of a document is lodged or deposited in the land registry.
- (2) The certificate signed under section 21 for the document must be lodged or deposited with the official version.
- (3) The registrar of titles may require the originating version of the document to be given to the registrar for lodgement or depositing with the official version.

## **25A Affidavits or declarations made using counterparts**

- (1) This section applies to an affidavit or declaration that is made using counterparts.

- (2) The counterpart confirmed by the witness for the affidavit or declaration must be kept with the counterpart signed by or for the signatory for the affidavit or declaration.
- (3) The counterparts mentioned in subsection (2) together constitute the affidavit or declaration.
- (4) If an affidavit or declaration made using counterparts is required to be given, produced or used for any purpose, the counterparts constituting the affidavit or declaration may be—
  - (a) given, produced or used for the purpose; and
  - (b) relied on as evidence of the affidavit or declaration.

## **26 Audio visual recording of signing or witnessing of document**

- (1) An audio visual recording of the signing or witnessing of a document may only be made 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.

## **Part 5 Expiry of regulation**

### **27 Expiry**

This regulation expires on the COVID-19 legislation expiry day.

## Schedule 1 Dictionary

### section 3

***administer***, in relation to an oath or affirmation, includes take and receive.

***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).

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

***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.

***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, means a copy of the document that—

- (a) includes the entire contents of the document; and
- (b) may be signed by a person without the signatures of the other persons who are to sign the document.

***direct***, in relation to a document, includes instruct.

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

**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 a method—

- (a) that identifies the signatory for the document and the signatory's intention in relation to the contents of the document; and
- (b) that 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.

**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).

**enduring document** means an enduring document under the *Powers of Attorney Act 1998*.

**general power of attorney** means a general power of attorney under the *Powers of Attorney Act 1998* or another law.

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

**make**, in relation to a document, includes execute.

**mortgage** means a mortgage under the *Property Law Act 1974* or another law.

**official version**, of a document, see section 24(2) and (3).

**originating version**, of a document, see section 24(4).

**registrar of titles** means the registrar of titles under the *Land Title Act 1994*.

**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**, in relation to an electronic document, includes electronically sign.

**special witness**, for a document, see section 5.

**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.

**will** means a will under the *Succession Act 1981*.

**witness**, a document, includes—

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