

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

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

1 Clause 1 (Short title)

Page 10, lines 4 and 5, ‘*Justice Legislation (COVID-19 Emergency Response—Permanency) Amendment Act 2021*’—
omit, insert—

Justice and Other Legislation Amendment Act 2021

2 Clause 2 (Commencement)

Page 10, lines 7 and 8—
omit, insert—

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.

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

Page 17, lines 13 to 16—
omit, insert—

Justice and Other Legislation Amendment Act 2021

4 After clause 25

Page 21, after line 17—
insert—

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*.

5 Clause 33 (Insertion of new pt 12, div 23)

Page 25, lines 5 to 8—

omit, insert—

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2021**

6 Clause 35 (Amendment of s 1B (Definitions))

Page 28, lines 26 to 28—

omit, insert—

section 31B.

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

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

Page 40, line 3, after ‘document’—

insert—

or a true copy of the affidavit or declaration

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

Page 40, line 7—

omit, insert—

(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—

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

Page 40, lines 15 to 35—

omit, insert—

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.

10 Clause 40 (Insertion of new pt 6A)

Page 41, lines 19 to 22—

omit, insert—

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;
- (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.

11 Clause 40 (Insertion of new pt 6A)

Page 52, after line 13—

insert—

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.

12 Clause 40 (Insertion of new pt 6A)

Page 53, line 13—

omit, insert—

31Y Documents made using official and original physical versions

13 Clause 40 (Insertion of new pt 6A)

Page 53, line 24 to page 54, line 2—

omit, insert—

- (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

14 Clause 40 (Insertion of new pt 6A)

Page 54, lines 18 to 20—

omit, insert—

- (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.

15 Clause 40 (Insertion of new pt 6A)

Page 55, line 15, ‘originating version’—

omit, insert—

original physical version

16 Clause 43 (Insertion of new pt 8)

Page 57, lines 18 to 22, ‘Justice Legislation (COVID-19 Emergency Response—Permanency) Amendment Act 2021’—

omit, insert—

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2021**

17 Clause 43 (Insertion of new pt 8)

Page 57, lines 25 to 27, ‘*Justice Legislation (COVID-19 Emergency Response—Permanency) Amendment Act 2021*’—

omit, insert—

Justice and Other Legislation Amendment Act

2021

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

Page 59, line 8—

omit, insert—

(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)—

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

Page 69, lines 5 to 9, ‘Justice Legislation (COVID-19 Emergency Response—Permanency) Amendment Act 2021’—

omit, insert—

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

Page 69, lines 12 to 14, ‘*Justice Legislation (COVID-19 Emergency Response—Permanency) Amendment Act 2021*’—

omit, insert—

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2021*

21 Clause 51 (Replacement of ss 44–46)

Page 74, lines 11 to 15—

omit.

22 Clause 51 (Replacement of ss 44–46)

Page 75, lines 21 to 25—

omit.

23 Clause 51 (Replacement of ss 44–46)

Page 76, lines 30 to 33—

omit, insert—

- (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.

24 Clause 51 (Replacement of ss 44–46)

Page 78, line 9, ‘A corporation’—

omit, insert—

Subject to subsection (2A), a corporation

25 Clause 51 (Replacement of ss 44–46)

Page 78, line 10, ‘common’—

omit.

26 Clause 51 (Replacement of ss 44–46)

Page 78, line 24, ‘A corporation’—

omit, insert—

Subject to subsection (2A), a corporation

27 Clause 51 (Replacement of ss 44–46)

Page 79, after line 6—

insert—

(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.

28 Clause 51 (Replacement of ss 44–46)

Page 79, lines 7 to 10, from ‘subsection (2)’ to ‘if’—

omit, insert—

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

29 Clause 51 (Replacement of ss 44–46)

Page 79, lines 17 to 20—

omit.

30 Clause 51 (Replacement of ss 44–46)

Page 79, lines 21 and 22, from ‘Further’ to ‘be’—

omit, insert—

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

31 Clause 51 (Replacement of ss 44–46)

Page 80, after line 18—

insert—

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.

32 Clause 51 (Replacement of ss 44–46)

Page 81, after line 12—

insert—

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
 - (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.

33 Clause 51 (Replacement of ss 44–46)

Page 81, lines 14 to 19—

omit, insert—

- (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.

34 Clause 51 (Replacement of ss 44–46)

Page 81, after line 25—

insert—

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

35 Clause 55 (Insertion of new pt 26)

Page 84, line 22, ‘provision’—

omit, insert—

and validating provisions

36 Clause 55 (Insertion of new pt 26)

Page 84, lines 23 to 27, ‘Justice Legislation (COVID-19 Emergency Response—Permanency) Amendment Act 2021’—

omit, insert—

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37 Clause 55 (Insertion of new pt 26)

Page 86, after line 1—

insert—

**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.

(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.

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

Page 86, line 10—

omit.

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

Page 86, lines 27 and 28—

omit.

40 After clause 56

Page 86, after line 28—

insert—

**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.

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—

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.

41 Long title

Long title, from ‘the *Liquor Act 1992*’ to ‘*Property Law Act 1974*’—

omit, insert—

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

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