STATE DEVELOPMENT AND REGIONAL INDUSTRIES COMMITTEE

Members present:
Mr CG Whiting MP—Chair
Mr MJ Hart MP
Mr JE Madden MP
Mr JJ McDonald MP
Mr TJ Smith MP

Staff present:
Ms S Galbraith—Committee Secretary
Ms R Stacey—Assistant Committee Secretary

PUBLIC BRIEFING—INQUIRY INTO THE JUSTICE LEGISLATION (COVID 19 EMERGENCY RESPONSE—PERMANENCY) AMENDMENT BILL 2021

TRANSCRIPT OF PROCEEDINGS

MONDAY, 11 OCTOBER 2021

Brisbane

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The committee met at 10.00 am.

CHAIR: Good morning. I declare open this public briefing for the committee's inquiry into the Justice Legislation (COVID-19 Emergency Response—Permanency) Amendment Bill 2021. Thank you for your attendance today. I would like to begin proceedings by acknowledging the traditional owners of the land on which we meet today and paying my respects to elders past, present and emerging. My name is Chris Whiting; I am the member for Bancroft and chair of the committee. The other committee members with us today are: Mr Jim McDonald, deputy chair and member for Lockyer; Mr Michael Hart, member for Burleigh; Mr Jim Madden, member for Ipswich West; and Mr Tom Smith, member for Bundaberg. Mr Robbie Katter, member for Traeger, is an apology.

On 15 September 2021 the Hon. Shannon Fentiman MP, Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence, introduced the Justice Legislation (COVID-19 Emergency Response—Permanency) Amendment Bill 2021 into the Queensland parliament. On 16 September 2021 the Committee of the Legislative Assembly referred the bill to the State Development and Regional Industries Committee for consideration and report by 1 November 2021. The purpose of today's briefing is to enable committee members to clarify aspects of the bill with officials from the Department of Justice and Attorney-General. I remind committee members that officials are here today to provide factual and technical information. Any questions seeking an opinion about policy should be directed to the minister or left to debate on the floor of the House.

The committee's proceedings are proceedings of the Queensland parliament and are subject to the standing rules and orders of the parliament. Media may be present and will be subject to my direction. The media rules endorsed by the committee are available from committee staff. All those present today should note it is possible you may be filmed or photographed during proceedings. I ask officials, if you take a question on notice, to provide the information to the committee by Monday, 18 October 2021. I remind everyone to turn their mobile phones to silent mode. Finally, in line with the COVID-safe guidelines issued by the Chief Health Officer, I remind everyone to socially distance. Face masks are to be worn at all times and removed only to speak during the proceedings.

BANDARANAIKE, Ms Sakitha, Director, Strategic Policy and Legal Services, Department of Justice and Attorney-General

McKARZEL, Mr David, Executive Director, Office of Regulatory Policy, Liquor, Gaming and Fair Trading, Department of Justice and Attorney-General

RIVERA, Mr Riccardo, Principal Legal Officer, Strategic Policy and Legal Services, Department of Justice and Attorney-General

ROBERTSON, Mrs Leanne, Assistant Director-General, Strategic Policy and Legal Services, Department of Justice and Attorney-General

THOMSON, Ms Victoria, Deputy Director-General, Liquor, Gaming and Fair Trading, Department of Justice and Attorney-General

TUBOLEC, Ms Melinda, Principal Legal Officer, Strategic Policy and Legal Services, Department of Justice and Attorney-General

CHAIR: I now welcome officials from the Department of Justice and Attorney-General. I invite you to make an opening statement, after which committee members will have questions for you.

Ms Thomson: Thank you for the opportunity today to brief the committee on the Justice Legislation (COVID-19 Emergency Response—Permanency) Amendment Bill 2021. The department has already provided some briefing material to the committee in relation to the amendments in the bill. As you know, I am joined at the table by my departmental colleagues, who are available to take questions during the proceedings.

The bill makes permanent certain temporary measures that were put in place in the justice portfolio during the COVID-19 emergency that are due to expire on 30 April 2022. The bill permanently implements certain reforms in the Justice Legislation (COVID-19 Emergency Response—Documents and Oaths) Regulation 2020, which I will refer to as the documents reforms. The documents reforms modernise the way that important legal documents are created by embracing digital technology to provide new and alternative pathways for document execution, in addition to the ordinary physical approach. These reforms improve access to justice, reduce costs for the delivery of legal services, reduce transaction costs, increase the efficient conduct of transactions and boost economic productivity.

The bill would allow affidavits and statutory declarations to be witnessed over audiovisual link by a narrow cohort of special witnesses and other prescribed persons. It will also allow them to be signed electronically if witnessed in person before a special witness or other prescribed persons and made using counterparts. The bill would allow general powers of attorney for corporations, partnerships and unincorporated associations to be signed electronically in counterparts and by split execution and without a witness.

The bill displaces the common law and allow deeds to be signed electronically with the consent of all parties and permits counterparts and split execution. It provides a consistent approach to the way that various different types of corporations can sign deeds, to align with the approach in the Commonwealth Corporations Act 2001, and removes unnecessary requirements for the witnessing of an individual's execution of a deed. However, to mitigate risks of fraud and elder abuse, the bill provides that a deed which contains a power of attorney given by an individual must be a physical document that is signed in the presence of a witness unless the document is part of a commercial or other arm's-length transaction and given for the purpose of that commercial or other arm's-length transaction.

The bill also clarifies that certain mortgages made in relation to electronic conveyancing national law can be electronically signed without a witness. The bill allows nurse practitioners in addition to doctors to sign a certificate which forms part of an advance health directive stating that the person making the document appears to have capacity to make the document.

The bill contains a number of limitations and safeguards to protect against risks inherent with the use of technology and the changes to witnessing requirements. These safeguards were developed following extensive consultation with a range of stakeholders. Details of the risks and safeguards were provided in the department's briefing materials to the committee and are also detailed in the explanatory notes and the statement of compatibility for the bill.

I will now turn to the family and domestic violence reforms within the bill. The domestic and family violence reforms in the bill will enable both courts and persons affected by domestic and family violence to permanently use temporary alternative measures provided during COVID-19, with some modifications. The bill will permanently enable the option of an alternative verification process for private applications for a protection order or variation of a domestic violence order in certain urgent situations. This will allow vulnerable applicants to obtain temporary protection orders in urgent situations while maintaining appropriate safeguards, including access to domestic and family violence supports.

Amendments also continue to allow courts to conduct proceedings by audiovisual or audio link at the discretion of the magistrate. Amendments are also made to enable private parties in domestic and family violence proceedings to file documents electronically with the approval of the principal registrar. This approach allows the Magistrates Court the flexibility to expand the use of electronic filing incrementally as the court's capacity for electronic filing increases. Initially it is intended to provide for electronic filing of private applications via email in circumstances where a pandemic lockdown restricts access to court registries, noting that police applications may already be filed electronically.

The bill also extends the expiry of the Retail Shop Leases and Other Commercial Leases (COVID-19 Emergency Response) Regulation 2020 until two years after the COVID-19 legislation expiry date, which is currently 30 April 2022 unless it is sooner repealed. This will reserve any rent relief arrangements under that regulation and will allow the Queensland Small Business Commissioner to continue to provide mediation services in respect of eligible lease disputes.

I will now turn to the liquor reforms. Under the existing regulatory framework for liquor in Queensland, takeaway liquor able to be sold by licensed restaurants on a permanent basis is currently limited to one open bottle and one unopened bottle of wine for adults dining on premises. The COVID-19 takeaway liquor authorities have temporarily allowed restaurants to sell any

combination of wine, beer, cider and premixed alcohol drinks up to a maximum volume of 2.25 litres with takeaway food. In response to greater consumer demand for greater convenience and choice and being able to order a takeaway meal and accompanying alcoholic beverages in a single transaction, part 5 of the bill amends the Liquor Act to permanently retain elements of the COVID-19 takeaway liquor authority. The proposed liquor amendments in the bill provide for a takeaway licence condition that will be a permanent authorisation going into the future. This contrasts with the temporary arrangements for COVID-19 takeaway liquor authorities that were introduced in response to the extraordinary circumstances imposed on businesses by health directives due to the pandemic.

Extensive stakeholder consultation on an initial version of the amendments yielded a wide range of views in support of and opposed to the takeaway liquor proposal. Some industry and community stakeholders such as the Queensland Hotels Association, the Foundation for Alcohol Research and Education and the Queensland Coalition for Action on Alcohol raised issues regarding the potential harm caused by increased outlets for home-delivered alcohol. In particular, these stakeholders expressed concern about the potential for alcohol proliferation resulting in adverse intoxication and violence, including domestic violence. Accordingly, the amendments contained in the bill seek to minimise the potential for increased harm while providing flexibility for restaurants to sell limited takeaway liquor with takeaway meals.

The bill provides for licensees of a subsidiary on-premises licence to which section 67A of the Liquor Act applies to sell 1.5 litres of wine—that is, two bottles—with a takeaway meal up to 10 pm with approval. The bill is not intended to significantly expand the scope of the takeaway liquor framework for restaurants but seeks to strike a balance between legitimate commercial interests and community interest in maintaining the risk of alcohol related harm. The bill achieves the policy intent by providing consistency between the longstanding takeaway wine allowance for customers dining on restaurant premises and the takeaway liquor available to customers purchasing takeaway meals. The proposed takeaway licence condition differs from the current temporary takeaway liquor authority by providing for a maximum of 1.5 litres of takeaway wine sold with takeaway meals, down from the current temporary 2.25 litres maximum. Further, unlike the current temporary takeaway liquor authorities, takeaway beer and premixed alcohol drinks will not be available for sale with a takeaway meal under the proposed permanent takeaway licence condition.

Allowing these products to be permanently sold with takeaway meals would expand the takeaway authorisation beyond the scope of the current longstanding provisions for on-premises diners. The definition of 'takeaway meal' provided in the bill clarifies that takeaway liquor can only be sold with food that is ordinarily eaten by a person sitting at a table with cutlery provided and is of sufficient substance as to be ordinarily accepted as a meal and is sold on the licensed premises to be consumed off the premises. The definition of 'takeaway meal' reflects the existing definition of 'meal' under the Liquor Act. This means that foods such as snacks—a packet of nuts, chips et cetera—are not sufficient to be sold with takeaway liquor.

Under the approval process proposed in the bill, restauranteurs will be able to apply to the Office of Liquor and Gaming Regulation for a variation of their licence permanently authorising the sale of takeaway wine with a takeaway meal. As part of this process, restauranteurs will need to establish systems for the responsible service of takeaway liquor. The bill provides that any approval is subject to conditions the commissioner for liquor and gaming determines necessary to ensure the responsible service of alcohol. Examples of these conditions are provided in the bill. Conditions on the approval are also able to be imposed, amended or revoked to minimise the risk of harm in the community. Finally, under the transitional arrangements proposed in the bill, any restauranteur eligible for the COVID-19 temporary takeaway liquor authority prior to the commencement of the new provisions will be able to apply for the permanent takeaway licence condition without paying the application fee for a variation of licence until 1 July 2022.

Chair, thank you again for the opportunity to brief the committee on the bill. We are very happy to take any questions of the committee.

CHAIR: I will start with the documents reform. Obviously this is a large part of the bill. I note that in your briefing you described it as something that will greatly improve access to justice, because there will be more capability to execute documents day to day. This is probably the crux of the legislation. Even though you have briefly described it, can you expand on how that increases access to justice?

Ms Tubolec: Primarily, the amendments to the Oaths Act in the bill will improve access to justice by allowing documents to be more easily made during the course of day-to-day life. No longer will it be necessary to travel to a JP to physically sign the documents before them or to attend before your lawyer's office. It means that you can make these documents without the inconvenience of travel,

taking time away from your work or personal commitments. It also will reduce the cost of the delivery of legal services. That is a benefit for legal practices as well as consumers themselves. The legal stakeholders have been very keen to have these documents reforms permanently made because of the improvements it has made to access to justice.

The other reforms in the bill in relation to general powers of attorney and deeds will deliver a lot of efficiencies—probably not as much as access to justice issues. The primary reforms that deliver improved access to justice are those that amend the Oaths Act.

CHAIR: Certainly, for working people or people in rural and regional Queensland it can be a barrier: 'I have to give up part of my day to travel and or find someone to come and do this.' I can understand that. We noted in your briefing paper the changes that have commenced in Victoria. One thing that occurred to me is that clearly there will be a lot of national changes. How will we get consistent reforms in this area? Can someone perhaps describe how that is happening?

Ms Tubolec: There are two bodies of work happening at the national level at the moment. The federal government has set up a Modernising Document Execution Working Group, led through the Council on Federal Financial Relations. That is primarily looking at statutory declarations and deeds reforms—not the other document types at this stage. They are two very different types of documents. Deeds tend to be commercial in nature, by and large. The focus of those reforms is about delivering efficiencies. Statutory declarations are used for many different purposes, be it interactions with government or interactions among private parties, and are used in the justice system itself. They can often be used in court and tribunal proceedings. They have very different factors that need to be considered in law reform.

In the committee's briefing note we refer to two papers prepared by the Council on Federal Financial Relations. There was a consultation paper released by the working group for national consultation that is currently underway, being led by the federal Department of the Prime Minister and Cabinet. Those consultations have just come to a close. There was also an accompanying paper by the Australian National University. It went back to basic principles on the reason for those original paper based requirements and some of those historical requirements for the formalities of making those documents. They are very thorough and comprehensive and are definitely worth a look. That will lead to a lot of national reforms going through in the future. Once the consultation process closes, there will be a final proposal brought through the Council on Federal Financial Relations potentially looking at national consistency. Again, that is just statutory declarations and deeds at this stage.

The other reforms that are happening at the Commonwealth level are primarily to do with amendments to the Corporations Act. There was a recent amendment to the Corporations Act to make permanent some documents reforms that allowed corporations to execute documents electronically, and there is another exposure draft of a bill that is currently out for consultation. The documents reforms in our bill aim to mirror the corporations amendments as much as possible at that time, although because of the release date of the exposure draft they do not reflect the exposure draft just yet. There may be some future reforms that may happen, obviously at the discretion of government.

Mr HART: I point out that my interests register shows that I am a shareholder in a brewery on the Gold Coast, so I will avoid asking questions about beer in particular and limit my questions to more general matters to do with the liquor reforms. Is a company that purely does takeaway food and does not have an onsite location able to sell alcohol?

Ms Thomson: No. This is about a business that has a licence for on-premises consumption where their principal activity is the provision of a meal—a meal is defined in the bill as eating food where ordinarily you sit at a table and use cutlery to eat—and it is ordinarily provided for on-premises consumption by the diners in that environment.

Mr HART: The government has not given any consideration to allowing purely takeaway companies to provide alcohol as part of their service?

Ms Thomson: This bill is purely aimed at licensees that currently have a subsidiary on-premises licence for serving alcohol. There is no consideration within this bill to go broader than that.

Mr HART: What about age limits for people who may be picking up a takeaway? I assume they have to be over 18 to pick up anything that contains alcohol as a part of the takeaway?

Ms Thomson: As members will know from reading through the information that has already been provided, initially it was as of right. We have now moved to an approval process which reflected some of the concerns from stakeholders in relation to how you control certain aspects of the provision of alcohol. That will allow us to go through the approvals process. We will make sure that the

businesses applying have some systems in place—for example, to verify the age of the person purchasing the alcohol. When the bill goes through the process in the House, our intention is to provide guidance to the industry about what sorts of systems we think would be suitable for those restaurants to verify that the alcohol they are selling is to people over the age of 18.

Mr HART: Do they have those systems in place now?

Ms Thomson: Because restaurants can sell alcohol for on-premises consumption, they are required to do things like responsible service of alcohol training. That would be an extension of that into the takeaway environment.

Mr HART: In relation to the document reforms, I am wondering if it a good idea to do this now. I think it is a good idea, mind you. Why was it not a good idea to do this 10 years ago? I am trying to get a sense of the problems that may have existed that no longer exist that allow us to do it now?

Ms Tubolec: You are right: the way these important legal documents are made has been around for hundreds of years. The types of documents we are dealing with now—affidavits, statutory declarations and deeds—are considered to be very solemn documents. A lot of the practices and procedures that have been around for centuries have evolved because they are so important and are seen to be the most solemn act that a person can engage in contractually, whether it be property or personal rights and so on. Those protections have been built in to the legal profession for so long.

As you know, technology has evolved significantly in recent times. Through COVID we have had the opportunity to embrace technology very rapidly. The temporary measures were very well received by business and the community alike. They were developed with some very brief consultation. Now, through the development of this bill, we have been able to delve into those in a lot more detail. We are doing extensive consultation with stakeholders to try to make sure we strike the appropriate balance in moving from those legacy, old historic requirements to the way that modern business operates to allow electronic execution of documents.

You asked why we did not do this earlier. Our briefing material, the explanatory notes and statement of compatibility highlight some of the risks in making these documents. There are three key risks. One is that executing documents electronically is a very big departure from some longstanding legal practice. Electronic signatures can involve a whole range of different processes using computers nowadays. The approach in the bill has been to embrace some practices that have been adopted for contracts and so on through the Electronic Transactions (Queensland) Act and to bring that to the fore to allow those types of executions to be used. It also puts in place some safeguards, because this is new territory and there may be issues that might arise in the future, particularly for affidavits and statutory declarations. The bill includes a safeguard to allow methods of electronic signature to potentially be narrowed in the future, if needed. It does that by allowing rules of court and practice directions to be made as well as a regulation to be made that could potentially narrow maybe unacceptable methods of electronic signature that really should not be used for those types of documents in the future as we see this going forward.

For deeds, because they are a different type of document to affidavits and statutory declarations, there is a safeguard that allows parties to control their own risks through engagements with other parties by having a consent mechanism for methods of electronic execution. If somebody wants to sign a deed by typing a name in a document, the other parties need to consent to that method of execution. That is consistent with the way that contracts are executed under the Electronic Transactions (Queensland) Act as well.

The other ways we have modernised this are in relation to allowing documents to be witnessed over audiovisual links. That is using videoconferencing technology, where witnesses are not physically present. The risks associated with that are usually that it is harder to assess identity of a person over videoconference. It is harder to assess a person's capacity or legal understanding of the document they are signing. It is harder to assess factors such as undue influence and coercion, which play a big factor in elder abuse and domestic violence.

The bill includes safeguards that were developed in consultation with stakeholders to narrow the witnesses who can witness over audiovisual link. Currently, to witness a document in person it can be any JP or any lawyer. The bill narrows it to what we call a 'special witness'. A special witness needs to be somebody who is a current legal practitioner. That means they are covered by insurances and obviously are subject to professional education and training. It can be approved JPs and commissioners for declarations, who are approved by the director-general of our department, and various other witnesses that are spelled out in section 12 of the Oaths Act in the bill.

Those particular categories of witnesses are more likely to be astute to the risks of witnessing over audiovisual link and are probably more likely to have an ongoing professional relationship with the person who has made the document. Particularly for the lawyers, they are more likely to have

taken the instructions and prepared the document and therefore have had multiple interactions. They have had all the education and training to be astute to elder abuse and so on. That control mechanism is one of the key safeguards built into the bill to protect against that.

Mr HART: Does the government have any software, an app or something that it may be relying on or that is possibly under construction to make this possible, or are you going to use a third-party app?

Ms Tubolec: No, there is no process in place to establish a specific app. In fact, the bill adopts a technology-neutral approach in terms of the facilities that can be used because technology is very rapidly evolving. It uses language that talks about the characteristics of the technology. For example, in describing the audiovisual link it talks about how the witness needs to be satisfied from the sights, sounds and images that the person has signed the document. That is meant to accommodate different types of technology that might have screen-sharing facilities as well as the video link. It is more about the subjective conclusion that the witness needs to draw through using that technology. It also uses technology-neutral language in terms of the methods of electronic signature that can be used, because we do not want to go down the path of adopting certain platforms at this stage. There is no process in place to accredit certain platform providers or anything at this stage.

You will note on that question, though, that is one of the thoughts that has been prompted in that Commonwealth consultation paper in terms that maybe there could be different accreditation systems set up potentially at the national level for different methods of electronic signature. That probably is an evolving space. Certainly that is not contemplated in this bill and we have accommodated that in the bill to be neutral in that space.

Mr SMITH: In relation to the liquor amendments, the delivery of a meal and the 1.5 litres of alcohol, will the delivery driver have to be 18 and have an RSA?

Ms Thomson: If it is put through a delivery company; otherwise, people could pick up as well with their takeaway and take it out of the premises. We will be putting the guidelines together that will focus on the needs of the systems that are put in place in relation to delivery drivers.

The other thing to bring to the committee's attention is that the government has already made a commitment to examine the efficacy of the regulatory environment for online alcohol sales, which would include things like delivery drivers. That is a government election commitment for this term. We expect to be starting that work in the early part of the year. When the bill goes through these processes we will be looking at the guidance and the guidelines that we put out to the industry so that the applicants know what systems the commissioner expects as part of their application process.

Mr McKarzel: At this point there is no obligation for a driver to have done responsible service of alcohol training. At the moment, the obligation in the act relates to those who are serving alcohol on premises. Having said that, as Victoria just explained, the government will be looking holistically at the home delivery environment and looking at the potential for regulatory changes to make sure the act and the regulatory framework keep up with the changes in consumer preference in terms of delivery.

Mr SMITH: If I own an establishment and I hire a 17-year-old to do my deliveries and alcohol is being delivered, is that 17-year-old in breach of the law in terms of delivering alcohol?

Mr McKarzel: I can make two points. Firstly the driver, assuming they are 18 and going back to your previous question, will be encouraged to do an RSA and we will encourage licensees to make sure the driver has done an RSA. Whether or not there is an obligation imposed will be for the next round of reforms next year. Having said that, there is still a legal obligation on that driver not to provide alcohol to somebody who is under the age of 18.

Coming back to your question about onsite and whether or not the onsite licensee employs a 17-year-old driver, this is not an as-of-right authorisation for takeaway liquor. Individual licensees will need to get a condition on their licence, and the act provides for a series of requirements before the commissioner can grant that condition. One of those is that they have systems in place that will ensure harm minimisation and obviously that there are no potential breaches in their procedures in terms of breaching the act. It is open to the department—again, this will all fall out of the application process—to ensure that you cannot be a 17-year-old delivering alcohol, and a breach of those conditions or those procedures, which we as the department would approve before we give you the condition, will lead to you potentially losing the authorisation or being penalised for it.

Ms Thomson: When we put out our guidelines, to be informed by the debate in front of this committee and in the House, we will be very much taking an education focus and making sure that, as I say, restaurants understand what is expected of them in terms of the systems they should be

putting in place. We are very fortunate that we can connect with the licensees directly because they are already licensed. I think it is important that there is that direct information and education channel from us as a regulator to people who are interested in adding this to their business model.

Mr SMITH: Relating to the applications made for temporary violence orders and around the word 'urgent', that is pertaining to COVID situations where the applicant is in lockdown or has to self-isolate. Can it relate to matters of urgency where an applicant may have a disability or is unable to get transport, being in a rural or regional centre, or is it only pertaining to COVID matters?

Ms Bandaranaike: Are you referring to the reform around the alternative verification process?

Mr SMITH: Yes.

Ms Bandaranaike: The idea of the permanent reforms in relation to that is where there is a private application for a protection order or a variation of a domestic and family violence order and it is urgent in the sense that they need a temporary protection order and they are unable to access a JP, a commissioner of declarations or a lawyer and before the respondent is served. It is really limited in the permanent reforms to those situations where the applicant needs a temporary protection order before the respondent is served.

Mr McDONALD: I can see how we are playing catch-up with consumer driven interest. I think COVID has taught us to keep people safe and to put in place trade restrictions on organisations and fitting that with the regulatory balance. I can see the challenges you are having. I have two questions. My first question relates to the liquor issues with 18- and 17-year-olds. I am sure that Dan Murphy's does not advertise for 18-year-old delivery drivers. I think we are letting regulation get in the way of somebody doing a job, not selling their alcohol. My other question relates to JPs. Should I declare an interest as I am a JP (Qual)?

CHAIR: It does not hurt.

Mr McDONALD: With videoconferencing and all of the video platforms, we have had that technology for years and COVID has given us the ability to activate those things. Why should there be a special qualification for a JP (Qual), particularly as some of them are very well trained and solemn in their duties, to allow for a videoconference in this new world? Can we first go to the question about the 17- and 18-year-olds? I am sorry for the double questions, but it is all related.

Mr McKarzel: It is a balancing act, as you said. The process that we will go through next year will holistically look at the whole home delivery and takeaway environment. We would have to at least take into consideration the fact that there are may be delivery drivers who are under 18 and how we manage that and whether that is consistent with the Liquor Act and whether, as a matter of policy, it ought to happen. There will be, I suspect, quite significant varying views on it. We will have to work through that and government will have to land on a decision one way or the other.

Probably the closest analogy would be in a family pub, where the 17-year-old son might be working in that establishment but they are under supervision directly. The issue with a delivery driver is that the end of the transaction is remote; they are delivering it. We will have to consider and weigh up the pros and cons. There will be significant consultation right across the industry and also with the various interest groups that have a view on alcohol related harm.

Mr HART: I know for a fact that there are under-18-year-old drivers delivering alcohol and alcohol is being left at people's doors.

Ms Thomson: Yes.

Mr HART: There is a big disparity between what you are looking at bringing in and what presently happens and you need to consider that.

Mr McKarzel: Yes, absolutely.

Ms Thomson: Noted. I think the other thing to remember is that this is with a meal. Leaving alcohol only at the door—

Mr HART: There is no meal.

Mr McKarzel: That is right.

Ms Thomson: That is correct, whereas this is with a meal.

Mr HART: Which is worse.

Mr McKarzel: Yes.

Ms Thomson: People are expecting it. They have phoned up. They are wanting their food. It is a substantial transaction in terms of the cost. Therefore, there is a high expectation, I think. I think the regulator can be fairly comforted that the person will be home to receive it. Again, part of the process will be about what systems are in place to ensure the person you are supplying to is over the age of 18. I think that is an absolutely critical part of this process of approval.

Mr McDONALD: Can we get the answer regarding the justices of the peace?

Ms Tubolec: In relation to why not every JP or commissioner of declarations can witness documents over audiovisual link, there are a number of factors that led to that policy decision. That was through extensive consultation with legal stakeholders. A number of them are practical. Not every JP has access to that technology and does need to have some training as to how to use the technology and also how to change the way they witness over AV link. It has been suggested that it takes a different type of skill set to be able to assess a person's capacity or their mental understanding of the document and be astute to the risks of witnessing over AV link. As you know through your JP role, in assessing whether somebody is being forced into making that document you usually need to isolate the client and ask them questions such as, 'Is somebody forcing you to do this?' You are unable to do that as effectively over AV link. You do not know what is happening off camera. There is certain extra training that is needed to accompany those reforms if you are going to have a JP witness them over AV link. Some of the other things are IT equipment, record-keeping requirements—like keeping a video file, storage and retention requirements—and those sorts of things for the process. Other factors are in terms of the safeguards that go hand in hand with all the training for all the risks outlined in the statement of compatibility.

Mr McDONALD: The legal fraternity has the process to see legal practitioners doing the service and not those who are JP (Qual). Was the Queensland Justices Association consulted with regard to that?

Ms Tubolec: Yes, Justices of the peace were consulted in the temporary reforms as well as in the development of the bill and all these reforms were broadly supported by all legal stakeholders and the JP stakeholders as well.

Mr MADDEN: Thank you very much, everyone, for coming in today. I will follow the lead of my fellow committee members. I am a former lawyer and I am a Comm. Dec. To begin with, I want to clarify what this bill does not apply to. As I read it, it does not apply to enduring powers of attorney.

Ms Tubolec: Correct.

Mr MADDEN: It does not apply to wills?

Ms Tubolec: Correct.

Mr MADDEN: It does not apply to Family Court documents such as applications for consent orders?

Ms Tubolec: Correct, yes.

Mr MADDEN: Being a former owner of a law practice with securities out the back full of all sorts of documents, I am well aware that there are long-established requirements where if you witness a will where somebody is illiterate you must write certain things on the affidavit. In a security section, how will a person differentiate between a document that has been signed and a document that has been signed by electronic execution of documents? I will give you an example: an affidavit. How will that affidavit look different? What words are required and anything else?

Ms Tubolec: Just to understand the question, there are reforms in the bill that change the execution requirements, and that might be in the jurat at the back of the affidavit as well as particular information that is included in there. Is your question specifically about how a substitute signatory signs?

Mr MADDEN: That might be a better way to deal with it. If you have an electronic signature that looks exactly like a normal signature, how will the reader of the affidavit know that is an electronic signature as opposed to a real signature?

Ms Tubolec: In terms of the process that needs to be followed if somebody cannot sign physically themselves and so they ask somebody to sign physically or electronically—

Mr MADDEN: No, I am not asking about that. I am simply asking: when you pick up that document and you have an electronic signature as opposed to a real signature, what words or what things attach to that document to tell the reader that is an electronic signature as opposed to a real signature?

Ms Tubolec: There needs to be a statement in the affidavit that indicates that it has been electronically signed, and if it has been signed by a substitute signatory there also needs to be a statement to indicate that that has occurred. The document reforms in the bill have gone beyond what we did for COVID and they require all affidavits to require particular information as well, so the witness needs to include some information so you can ascertain what law firm they have worked for, what position they hold, and there are other particular statements that need to be included in there to indicate the process that has been followed if it has been witnessed over AV link as well.

Mr MADDEN: When you say 'included in there', are you referring to the body of the affidavit or are you referring to something attached to the affidavit?

Ms Tubolec: In the body. It says that it needs to be included in the document. I can point you to the section. They are all in the amendments to the Oaths Act in part 4. The amendments to part 4 of the Oaths Act in the bill are broader than just when they are witnessed over AV link. They will extend to a document regardless of whether it is witnessed over AV link or in person and regardless of whether it has been signed physically or electronically. Those requirements are set out in the new division 2. Sections 13B, 13C, 13D and 13E of the Oaths Act set out particular information that now needs to be included in the affidavit itself where relevant. If it has been signed electronically, it needs to have a statement saying it has been signed electronically.

Mr MADDEN: Getting back to what I originally said, when it is an illiterate person there are particular words you must put in the affidavit to indicate you are witnessing the document and the person has read the document and you accept that they have read the document—or is it just that you must indicate in the document that it is an electronic execution of documents but there are no specific words?

Ms Tubolec: The particular requirements that you are talking about are generally set out in the UCPR at the moment; they are not in the Oaths Act. The UCPR has a specific requirement that says where a person is illiterate they have had the document read to them and therefore the witness includes a particular statement to say that that is what has happened.

Mr MADDEN: I am not talking about an illiterate person; I am talking about what words are put in—forget about literacy; that was just an example—to indicate the document was signed with an electronic signature.

Ms Tubolec: It includes a statement to say that it has been signed electronically.

Mr MADDEN: It just has to be a general statement?

Ms Tubolec: Yes. It does not say, 'You must use these exact words.'

Mr MADDEN: Sorry for not making myself clearer. That is what I was getting at. This is to assist fellow lawyers like the gentlemen sitting at the back of the room when they do affidavits—what we will need to do in the future.

Ms Tubolec: Yes. As I said, it is in 13B, which is the jurat of the affidavit. That gives the information that needs to now be included.

Mr MADDEN: In answer to the member for Lockyer you said that not all JPs and Comm Decs will be able to do this. What you really meant was that they can do it after they have done some training. Will you require a certificate from my fellow JPs and Comm Decs? Will they have to do a course? Is that how it is going to be done?

Ms Tubolec: Our JP branch does the authorisation process. They have recently extended. Originally during COVID we had eight JPs who were employed within the JP branch who witnessed documents using the remote witnessing service. That has recently been expanded. I think they have just authorised another 10 JPs in the community and offered some training to those. When they get that they get a formal authorisation under the Oaths Act by the director-general of our department to witness documents in those ways.

Mr MADDEN: That is your usual online training?

Ms Tubolec: No, it is separate, specific training for this.

Mr McDONALD: What is UCPR?

Ms Tubolec: Uniform Civil Procedure Rules.

CHAIR: The Small Business Commissioner during COVID-19 was a very important mediation service. Was giving the Small Business Commissioner powers of determination beyond mediation explored?

Mr Rivera: That is a matter for the Department of Employment, Small Business and Training where the Small Business Commissioner sits. The amendment in this bill will extend the operation of the commercial leases regulation which provided the Small Business Commissioner with some powers to do the mediation. Any additional jurisdiction or authority or powers for that Small Business Commissioner is a matter for the department.

Mr HART: I know you have given us a breakdown of interjurisdictional changes around COVID, but how is something going to be solved if it comes up transacting between states? Will that be dealt with under a regulation? How will that be fixed?

Ms Tubolec: The question is how you deal with documents where the parties are across jurisdictions. That will depend on what state the document is used in. For a deed, usually the deed will specify the jurisdiction that the deed relates to. It will have a clause that 'this is made in the state of Queensland', in which case it does not matter where the person is when they execute the document as long as they comply with the requirements. You might be in Western Australia and execute a deed via DocuSign. As long as you have complied with the requirements of the Property Law Act as amended by the bill then it is executed.

Mr HART: We like to talk about unintended consequences here. If there is an unintended consequence of these changes, how will that be rectified? Is there something in the bill that allows that to be rectified by regulation or is the legislation going to need to be changed again? It is a bit hypothetical; I accept that.

Ms Tubolec: It depends on what type of issue comes up. As I said, the bill sets up a number of regulation-making facilities in the future to expand on things. We set up facilities to make a regulation to confine or narrow down the methods of electronic signature, so that is contemplating what might happen in the future. It also allows additional witnesses to be prescribed to witness, either in person or over audiovisual link, or to sign a document electronically if witnessed over audiovisual link. There are mechanisms to do that through those regulation-making facilities, but anything else, depending on what you are talking about, would probably need to go through the normal legislative process.

Mr HART: I think there is one final question that needs to be answered around nurse practitioners. What special training or qualification are they going to have to have to sign off on advance health directives?

Ms Tubolec: The question is about the nurse practitioner arrangement that allows a nurse practitioner to assess the capacity of a person making an advance health directive, and that is the amendment to the Powers of Attorney Act in the bill. The qualification that is allowed to witness these documents is nurse practitioner. It is very well defined. It is not like the JP scenario that we were talking about where you go through an additional approval process. Anybody who is a nurse practitioner as defined under the usual health legislation would now be capable of assessing the capacity of a person. A nurse practitioner, if I can just read the qualifications that have been provided, is an advanced practice nurse endorsed by the Nursing and Midwifery Board of Australia. They have completed a masters level program and have the equivalent of three years, which is about 5,000 hours, of full-time experience at a clinically advanced nursing practice level. Nurse practitioners can practise independently and are authorised to autonomously manage complete episodes of care for people with a variety of health needs. That is a very specific qualification. It is not just nurses; they are a much higher level of nursing care.

Mr HART: They cannot do that now, can they?

Ms Tubolec: They cannot witness advance health directives at the moment under normal law, but they can under the temporary arrangements that are still ongoing.

CHAIR: The time allocated for the briefing has now expired. We do not have any questions on notice. Thank you all for your attendance at today's briefing. Transcripts of these proceedings will be available on the committee's webpage in due course. I declare the briefing closed.

The committee adjourned at 10.56 am.