

STATE DEVELOPMENT AND REGIONAL INDUSTRIES COMMITTEE

Report No. 14, 57th Parliament, November 2021

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

QUEENSLAND GOVERNMENT RESPONSE

INTRODUCTION

On 15 September 2021, the Honourable 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 (Bill) into the Legislative Assembly.

The policy objective of the Bill is to make 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.

After introduction, the Bill was referred to the State Development and Regional Industries Committee (the Committee) for consideration.

On 1 November 2021, the Committee tabled its report (No. 14, 57th Parliament) in relation to the Bill.

The Queensland Government response to the recommendations made by the Committee is provided below.

RESPONSE TO RECOMMENDATIONS:

Recommendation 1 -

The Committee recommends the Bill be passed.

Queensland Government response:

The Government thanks the Committee for its consideration of the Bill and notes the Committee's recommendation that the Bill be passed.

The Government supports this recommendation.

Recommendation 2 -

The Committee recommends that the Minister, in the second reading speech, explain the benefits of utilising regulations to determine standards of acceptable methods of electronic signature.

Queensland Government response:

The Government accepts this recommendation.

The Bill adopts a technology-neutral approach with respect to electronic signatures, consistent with the approach taken under the *Electronic Transactions (Queensland) Act 2001* (Electronic Transactions Act).

For affidavits and statutory declarations, new section 1B of the *Oaths Act 1867* (Oaths Act) (inserted by clause 35 of the Bill) defines an “accepted method”, for electronically signing an affidavit or statutory declaration, as a method that:

- (a) identifies the signatory for the document and the signatory’s intention in relation to the contents of the document; and
- (b) is either—
 - (i) as reliable as appropriate for the purpose for which the document is signed, having regard to all the circumstances, including any relevant agreement; or
 - (ii) proven in fact to have fulfilled the functions described in paragraph (a), by itself or together with further evidence.

The Bill allows for a regulation to be made under the Oaths Act, and for rules of court or practice directions to be made about affidavits and statutory declarations filed or admitted into evidence in a proceeding, to specify the methods of electronic signature that can or cannot be used for affidavits and statutory declarations. Any regulation made would prevail over any rules of court or practice direction to the extent of an inconsistency.

The Bill similarly allows a regulation to be made under the *Powers of Attorney Act 1998* (inserted by clause 46 of the Bill) to specify or limit the acceptable methods of electronic signature for general powers of attorney made for businesses.

The Minister intends to explain the benefits of utilising regulations to determine acceptable methods of electronic signature in the second reading speech, including that regulations (if made) would provide: a consistent approach for all affidavits and statutory declarations; certainty and clarity; and would allow for any unreliable methods to be excluded (if necessary).

Recommendation 3 -

The Committee recommends that further reforms be considered to address the execution of deeds by the State.

Queensland Government response:

The Government accepts this recommendation.

The Government notes the submissions made by the Queensland Law Society and other legal stakeholders which indicate there is uncertainty as to whether the Crown can execute deeds in accordance with the modernised framework under the both the *Justice Legislation (COVID-19 Emergency Response—Documents and Oaths) Regulation 2020* (DO Regulation) and the Bill.

The policy intent of the DO Regulation and the Bill is to enable Government, as well as businesses and the community, to benefit from the reforms in the Bill so that a lawfully authorised person for a Government department, agency or statutory body can execute deeds in the same way as other entities.

The Government will move amendments to Part 8 of the Bill (Amendment of the *Property Law Act 1974*) during consideration in detail to:

- clarify that a body politic (i.e. the State of Queensland) can execute deeds under the new modernised framework; and
- validate any deeds that may have been executed by the State under the DO Regulation.

Recommendation 4 -

The Committee recommends that further reforms be considered to address the execution of deeds by partnerships in cases where an individual is not appointed by a deed.

Queensland Government response:

The Government acknowledges the Committee's recommendation that further reforms be considered as part of this Bill to address the execution of deeds by partnerships in cases where an individual is not appointed by a deed.

Partnerships are a collection of individuals given legal recognition as a firm. Section 5(1) of the *Partnership Act 1891* provides that partnership is the relation which subsist between persons carrying on a business in common with a view of profit.

The common law provides that a person authorised to sign a deed on behalf of a partnership needs to be appointed by a deed signed by ALL of the partners in the partnership.

Proposed new section 46G of the *Property Law Act 1974* (PLA) in the Bill allows an individual to sign a deed on behalf of a partnership. The section expressly states that it does not limit or otherwise affect another law or instrument that requires or permits a document executed on behalf of a partnership to be executed in a certain way.

This effectively means that a person signing a deed for a partnership under new section 46G of the PLA must be authorised to do so under a deed signed by ALL of the partners in the partnership.

Certain legal stakeholders have suggested that the Bill should be amended to allow an individual to sign a deed for a partnership, whether or not that individual was appointed by deed.

This would substantially alter the way that deeds are ordinarily executed within a partnership framework. The common law rule ensures that a person acting on behalf of a partnership in executing a deed is duly authorised to do so. The removal of this requirement could introduce significant risk for partnerships. Such a change is beyond the scope of the Bill, which is to make permanent certain temporary

measures that were put in place in the Justice portfolio during the COVID-19 emergency.

However, the Government will further explore whether changes should be made to address the issue raised.

Recommendation 5 -

The Committee recommends that the Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence consider amending the Bill, to provide the option of allowing 1.5 litres of either wine, beer, cider or pre-mixed drinks, to be sold with a takeaway meal.

Queensland Government response:

The Government has given careful consideration to the Committee's recommendation and determined not to amend the Bill to provide for 1.5 litres of beer and pre-mixed alcoholic drinks to be sold with a takeaway meal. The proposed limit contained in the Bill of 1.5 litres of takeaway wine only with a takeaway meal was determined after extensive consultation. The decision is based on the existing, longstanding provisions for adults dining on restaurant premises to purchase one opened and one unopened bottle of takeaway wine, while also having regard to the harm minimisation objectives of the *Liquor Act 1992*.

Recommendation 6 -

The Committee recommends that the Minister, in the second reading speech, clarify measures that will support the responsible service of alcohol by restaurants and cafes selling alcohol with takeaway meals.

Queensland Government response:

The Government supports this recommendation and acknowledges the Committee's concern for the responsible service of alcohol (RSA). The second reading speech will clarify restaurateurs applying for the takeaway liquor condition will be required to ensure they have adequate systems in place to ensure RSA prior to any approval being given. Systems will be required to ensure liquor isn't ordered by or supplied to minors. Existing RSA requirements in relation to the service of takeaway liquor to minors and unduly intoxicated persons will be aligned with the new takeaway liquor condition. This includes the power for the Commissioner for Liquor and Gaming to impose conditions on restaurants operating under the new permanent licence condition to ensure takeaway wine is served responsibly and address any problems that might arise.