

SUCCESSION LAW

Succession law legislation update

10 July 2020



By [Christine Smyth](#)



Here is a summary of COVID-related legislation permitting audio-visual witnessing of wills and enduring documents across Australia:

Queensland

[COVID-19 Emergency Response—Documents and Oaths\) Regulation 2020](#) under the *COVID-19 Emergency Response Act 2020* (applicable 15 May – 31 December 2020)

See also Supreme Court [Practice Direction 10 of 2020 – Informal Wills/COVID-19](#) (applicable 1 March – 30 September 2020)

For wills, see Part 2, sections 6-8.

For enduring documents, see Part 3, sections 9-12.

Wills and enduring documents require one of the witnesses to be a special witness (see section 5):

- Australian legal practitioner
- Justice of the Peace working in law practice
- specially approved Justice of the Peace
- employee of Public Trustee Office.

Wills and enduring documents require a separate special witness certificate (see sections 20-21)

New South Wales

[Electronic Transactions Amendment \(COVID-19 Witnessing of Documents\) Regulation 2020](#) under the *Electronic Transactions Act 2000* (applicable 22 April – 23 October 2020)

For wills and enduring documents, see Part 1, sections 1-4.

No change to witness qualification

Document must have witness special endorsement, see section 2.

Victoria

[COVID-19 Omnibus \(Emergency Measures\) \(Electronic Signing and Witnessing\) Regulations 2020](#) (applicable 12 May – 25 October 2020)

(Statutory rule as made – Statutory Rule Number 34/2020)

For wills, see part 5, sections 39-45.

For enduring documents, see Part 4, Division 3, sections 23-26.

No change to witness qualification.

Requires witness special endorsement:

For wills, section 4.

For enduring documents, section 24.

South Australia

[COVID-19 Emergency Response \(Section 17\) Regulations 2020](#) under the *COVID-19 Emergency Response Act 2020* (applicable to gazetted date; if none, six months from date of commencement – 9 April 2020)

No remote witnessing.

Section 17 of the Act does not apply to a requirement that a person be physically present to witness the signing, execution, certification or stamping of a document or to take any oath, affirmation or declaration in relation to a document.

Tasmania

[COVID-19 Disease Emergency \(Miscellaneous Provisions\) Act \(No.2\) 2020](#) (cessation date by ministerial declaration) No remote witnessing – not referenced.

Western Australia, Northern Territory, Australian Capital Territory – not applicable.

NOTE: None of the COVID-related legislation makes any change to witnessing requirements for Superannuation Binding Death Benefit forms as set out in *Superannuation Industry (Supervision) Regulations 1994* (Cth) regulation 6.17A. Note that the trust deed for the fund governs the witnessing requirements.

Voluntary assisted dying

On 21 May 2020, in response to the parliamentary Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee tabling its report number 34 on voluntary assisted dying, the Queensland Government referred the report to the Queensland Law Reform Commission to make further recommendations and prepare draft legislation. The commission must table its report by 1 March 2021. See the [terms of reference](#) or [make a submission](#).

Powers of Attorney national register

On 19 March 2020, the Law Council of Australia provided [a submission](#) to the Attorney-General's Department relating to the use of enduring power of attorneys.

By a [media release](#) dated 15 June, the Attorney General's Department confirmed that a national Powers of Attorney Register will be progressed at the upcoming Council of Attorneys-General meeting on 27 July.

Christine Smyth is a former President of Queensland Law Society, a QLS Accredited Specialist (succession law) – Qld, a QLS Senior Counsellor and Consultant at Robbins Watson Solicitors. She is an executive committee member of the Law Council Australia – Legal Practice Section, Court Appointed Estate Account Assessor, and member of the Proctor Editorial Committee, STEP and Deputy Chair of the STEP Mental Capacity SIG Committee.