

QLD temporary regulations allow for electronic signing of documents (including deeds) and remote witnessing

Source: [QLD legislation](#)

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Abstract:

The Queensland Government has introduced a temporary regulation, [Justice Legislation \(COVID-19 Emergency Response – Wills and Enduring Documents\) Amendment Regulation 2020 \(Regulation\)](#), which allows for the electronic signing of deeds, mortgages, general and enduring powers of attorney, statutory declarations, affidavits and wills. It also removes the requirement for deeds to be witnessed and provides for remote witnessing by audio visual link of certain other documents.

Deeds

The Regulation expressly allows for deeds to be made in electronic form and to be signed electronically by corporations and individuals (including an individual attorney signing for a corporation). It clarifies the previous uncertainty around deeds by specifically removing the requirement for a deed to be made on paper or parchment.

In addition, the Regulation allows for:

- deeds to be signed without a witness;
- deeds to be signed via split execution and in counterparts;
- corporations (including statutory corporations and foreign corporations) to sign a deed without a seal. In the case of:
 - an Australian corporation, this is consistent with section 127 of the Corporations Act;
 - a foreign corporation, it may sign a deed without applying its common seal provided that it does so in accordance with the law of the place of its incorporation; and
 - a statutory corporation, it may sign a deed without applying its common seal provided that it does so in accordance with its statute; and
- a deed to be made electronically without the consent of a counterparty.

The following requirements for deeds must be satisfied:

- be in writing and contain a statement that it is executed as a deed;
- be delivered in accordance with existing law; and
- the requirements in the electronic transactions legislation as to identity and reliability are satisfied (but as noted above, the Regulation expressly removes the requirement for a counterparty's consent).

General powers of attorney

The above requirements for deeds also apply for general powers of attorney.

A general power of attorney for a corporation may be signed without a witness.

However for a general power of attorney for an individual, any requirement under the *Powers of Attorney Act 1998* (Qld) or another law for a general power of attorney to be witnessed will still apply. In such a case only certain persons (e.g. a lawyer or Justice of the Peace) may witness and the witnessing may be done by audio visual link.

Mortgages

The Regulation allows for certain real property mortgages to be signed and lodged electronically. A mortgage that is held by a mortgagee on the same terms and conditions as the mortgage lodged



electronically (e.g. via PEXA) can be electronically signed and need not be witnessed, provided it complies with section 11 of the *Property Law Act 1974* (Qld) (which requires such instruments to be in writing).

Remote witnessing by audio visual link

The Regulation also allows for the following documents to be electronically signed and remotely witnessed by audio visual link:

- statutory declarations;
- enduring powers of attorney;
- affidavits; and
- wills.

Only certain persons (e.g. a lawyer or Justice of the Peace) may witness the signing of these documents and certain procedural requirements for audio visual witnessing must be satisfied.

Temporary effect

The changes effected by the Regulation are temporary and will expire on 31 December 2020.