

COVID-19 Emergency Response Bill 2020

Wills, Enduring Powers of Attorney and Advance Health Directives

The spread of the coronavirus COVID-19 has undoubtedly touched all of us one way or another. It will come as no surprise that our Wills & Estates department have been inundated with enquiries and requests for Wills and Enduring Powers of Attorney to be prepared on an urgent basis. The recent changes to the movement of residents between the Queensland and New South Wales border, increased shutdowns and isolation restrictions have made the logistics of seeing client's face to face even more difficult especially those who are most vulnerable to the virus.

On 22 April 2020 the Queensland Government passed the *COVID-19 Emergency Response Bill 2020* as a step towards addressing the legislated requirements for estate planning documents such as Wills, Enduring Powers of Attorney and Advance Health Directives to be signed as original paper documents and witnessed by authorised people. The Bill contemplates that regulations will be made in relation to the requirements under current legislation for the physical attendance of witnesses for certain documents and to temporarily facilitate the witnessing of documents by audio-visual link.

As at today's date those regulations have not yet been published. However, it is anticipated that the regulations will address the witnessing of signatures, certification of matters by witnesses and the verification of identity of persons signing documents.

The Cabinet Explanatory Notes suggest that the regulations will apply to Wills, Powers of Attorney including Enduring Powers of Attorney, Advance Health Directives, Statutory Declarations and Deeds and will make use of "a range of communication technologies".

It should be noted that on 22 April 2020, the Supreme Court of Queensland published Practice Direction Number 10 of 2020, which is pertinent to the witnessing of Wills by audio-visual link. Subject to the conditions below, the Practice Direction empowers a Registrar of the Court with the Court's power to dispense with the requirement under the *Succession Act 1981* (QLD) that to execute a valid Will, the witnesses must physically be in the presence of a testator when they sign their Will.

For the Registrar to dispense with that requirement, satisfactory evidence must be produced that:-

- the Will was drafted by a solicitor, or a solicitor is one of the witnesses or person supervising the execution of the Will;
- the deceased intended the document to take immediate effect as their Will (or as an alteration or revocation of their Will);
- the testator executed the Will in the presence of at least one witness by way of audio-visual link;
- the witnesses were able to identify the document executed; and
- the reasons for the testator being unable to execute the Will in the physical presence of two witnesses in the usual way was due to COVID-19.

At this stage, the Practice Direction only applies to Wills executed between **1 March 2020 and 30 September 2020**.

While this change will be most beneficial during the pandemic, we caution our client's against preparing their own "Coronavirus Will" and having it witnessed using their mobile phone. We strongly recommend that you contact **Jasmine Rath** of our Wills and Estate Department on **(07) 5538 2277** if you are interested in discussing and/or updating your estate planning documents and will be sure to keep you informed as more information comes to light.

We wish you all the best during this time and encourage our clients to keep informed as the government announces more mitigation measures to continue to slow the spread of the virus."