



15 April 2020

Mrs Elizabeth Heenan  
Chair – Elder Law and Succession Committee  
Law Society of Western Australia

**By email only:**

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Dear Mrs Heenan

### **Signing of Wills and other Documents during COVID-19 Pandemic**

I write on behalf of the STEP Western Australia Policy Sub Committee to you in your capacity as chair of the Elder Law and Succession Committee.

You will require no introduction to STEP WA; as a member, regular presenter and frequent attendee at STEP WA events you will be broadly familiar with the composition and objectives of our organisation.

The Policy Sub Committee was formed earlier this year. Its purpose is to focus on issues of relative importance to trust and estate practice and to bring them to the attention of those in a position to make a positive difference. The advent of the sub-committee has been timely given the coronavirus outbreak has brought several issues of particular interest to trust and estate planners into sharp relief.

One such issue concerns the signing (or more particularly witnessing) of Wills and other documents; there being a divergence between the social distancing measures which we must all now abide and the witnessing requirements set out in legislative instruments such as the *Wills Act* and the *Guardianship and Administration Act*. (The resulting conundrum is not limited to local practitioners as the following article attests: <https://www.bbc.com/news/business-52215141>).

In light of present circumstances, it seems to us that such witnessing requirements should be reviewed and that consideration should be given to a potential relaxation of them. With that in mind the STEP WA Policy Sub Committee is considering what submissions we might make and to whom we might make them.

One suggestion that we are aware of is to permit witnessing remotely by video, modifying the “in the presence of” requirement under s.8 of the *Wills Act 1970* (WA). Another is to permit “signing” by use of an electronic signature.

At first blush, one might respond to such suggestions by pointing to Part X of the Wills Act. A testator can make an informal will. The Court already has a discretion to validate an informal will.

However, proving an informal will is more complicated, time consuming and expensive, and incurs a disproportionate amount of the Court’s time compared with a will that meets the formal requirements.

It has come to our attention that the Elder Law and Succession Committee has also taken an interest in this topic with a view to making submissions of its own.

We write to you to enquire as to the progress that has been made by your committee in relation to these matters. Has your committee formed a view or taken a position on this issue?

Is there any way that the STEP WA Policy Sub Committee might be able to assist? Do you consider a joint effort would add weight to any such submissions and if so then should our respective committees *join forces* for that purpose?

Do not hesitate to contact me (Jonathan Haeusler) if you have any queries. I look forward to hearing from you.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'J. Haeusler', with a large, stylized flourish extending upwards and to the right.

**Jonathan Haeusler**  
**Committee Member**  
**STEP Western Australia**