

# STEP AUSTRALIA *NEWSLETTER*

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# A MESSAGE FROM THE STEP AUSTRALIA CHAIR

**W**elcome to this edition of the quarterly *STEP Australia Newsletter*.  
What a fantastic year it has been for STEP right across Australia. This year, I have personally been fortunate enough to attend at least one major event in every Australian branch. I have to say just how inspiring it is to see such high-quality events, member engagement and enthusiasm right across the country. My sincere compliments and thanks to all branches and their committees, who have arranged such high-calibre events. Since our last publication, the Queensland, Western Australia and Victoria branches have each held a highly attended and successful full-day conference. The work and efforts that go into all these events are extremely evident and I am sure they are both appreciated by and rewarding for our members.

It is also pleasing to see a small group of STEP Australia members attending and presenting at the STEP Asia Conference in Hong Kong in November. The significance of STEP and the networks your membership provides both globally and throughout the Asia-Pacific Economic Cooperation region are increasingly becoming an invaluable resource, given the many multicultural and jurisdictional matters that are becoming part of all of our professional lives.

I am also very excited to learn that it appears that all STEP Australia branch chairs will be joining me at the STEP Branch Chairs Assembly in London in early December. This is a sensational opportunity for our respective chairs to collectively attend this inspirational event and learn more about STEP, build networks and gather ideas for our branches and region. I truly believe that this will provide STEP across Australia with a very strong and enthusiastic launch into 2024. Thank you to each of these chairs, who are giving and investing this time back into our amazing organisation.

Finally, a couple of save the dates for your diaries. Our newly merged STEP Victoria-Tasmania branch will be holding its first conference in the picturesque city of Hobart on 16 February 2024. STEP Australia will also be holding its biannual Trust and Estates Conference in Melbourne on 9–10 May 2024. Both conferences are well into the planning stages and look set to be sensational events. ■



With best wishes,

**Ian Raspin TEP**  
*STEP Australia Chair*



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# Seller beware: Fraud in the information age

**BILL ROSS TEP**, PRINCIPAL, AND **ALEXANDER WOOD**, SUPERVISED TRAINEE,  
COLLAS MORO ROSS SOLICITORS

In 1955, legal academic Lionel Sheridan remarked: 'The golden age of fraud seems to have passed.' Sheridan believed that advancements such as a fast and reliable postal service, electrical telegraphs, telephones and widespread literacy had 'all helped to relegate fraud to a minor place in the catalogue of professions'.<sup>1</sup>



Although the electrical telegraph has been relegated to the annals of history, computers and the internet have brought about what is commonly referred to as the 'information age', significantly altering the landscape of the legal profession and our culture more broadly.

In the information age, fraudsters have never had it so easy.

According to the Australian Bureau of Statistics, 13.2 million Australians (65 per cent) were exposed to a scam in the 2021–22 financial year. The vast majority were exposed via phone, text message, email or online. During this period, 159,000 were victims of identity theft.<sup>2</sup>

These statistics highlight a sobering reality. On average, over 36,000 Australians are exposed to a scam every day. Countless more are exposed to scams worldwide. So, why is this relevant to trusts and estates practitioners?

## A PRACTICAL EXAMPLE

The authors' practice recently had an experience of an attempted fraud so brazen and breathtaking that it might have made Frank Abagnale Jr (of *Catch Me If You Can* fame) blush.

The client was an innocent widow seeking to sell an unencumbered block of land she had inherited from her deceased husband. The fraudster, impersonating her deceased husband, was looking to sell the property and disappear with the profit. The fraud was uncovered when an online listing popped up purporting to describe the property as sold. Understandably, the client was distraught, if not mortified.

This was hardly a covert affair. The property was advertised online, a contract prepared and a 'sold' sticker affixed, with agents and solicitors on both sides poised and ready to complete the transaction within a matter of days.

Despite the advanced stage of the scam, a flurry of telephone calls (plus a Registered Proprietor's Caveat) put an end to the sale. Lawyers are generally reluctant to receive instructions from beyond the grave.



One might be boastful of telepathic legal work but, in reality, the timing was fortuitous and blind luck intervened.

Subverting expectations that the fraudster might retreat, he persisted to claim through videoconference that he was alive and well, despite a splendid funeral and wake indicating otherwise (not to mention the death certificate and grant of probate).

When all the evidence was gathered and presented to police, they showed little interest. Perhaps as fraud in the information age goes, this was just another grain of sand on the beach.

## WHERE TO FROM HERE?

Fraud is hardly new to the legal profession. The *Statute of Frauds*<sup>3</sup> was enacted by the English Parliament in 1677, introducing signing requirements for certain legal documents, and the law as it relates to fraud has developed in leaps and bounds since.<sup>4</sup> Despite this, the law does not exist in a vacuum and proactive steps must be taken to avoid complacency. Interestingly, Australian states have only moved to make identity fraud a specific offence relatively recently. In 2007, Queensland became the second jurisdiction in Australia, after South Australia, to make identity fraud a crime in its own right. The reasoning behind this was explicitly due to a rise in identity fraud driven by information technology.<sup>5</sup>

For better or worse, the fraudster of today has little in common with con artists like Charles Ponzi or Frank Abagnale Jr. They operate in a digital world, where the only reliable defence is diligence, diligence and more diligence.

Some wisdom on this point can be found in the words of late businessman and Intel Corporation CEO Andrew Grove: 'Success breeds complacency. Complacency breeds failure. Only the paranoid survive.'

The final word: do not be afraid to exercise a healthy degree of cynicism. Your client may thank you later. ■

<sup>1</sup> L. A. Sheridan, 'Fraud and Surprise in Legal Proceedings' (1955) 18(5) *The Modern Law Review* 29 <sup>2</sup> Australian Bureau of Statistics, *Personal Fraud, 2021–22 financial year* (Catalogue No 4528.0, 22 February 2023), [bit.ly/3FovkTr](https://bit.ly/3FovkTr) <sup>3</sup> (29 Cha. 2. C. 3) <sup>4</sup> H. E. Willis, 'The Statute of Frauds – A Legal Anachronism' (1928) 3(6) *Indiana Law Journal* 427 <sup>5</sup> Kerry Shine, 'Queensland outlaws identity fraud' (Media Release, 14 March 2007), [bit.ly/3LKQy2P](https://bit.ly/3LKQy2P)

# Post-pandemic use of electronic signatures and remote witnessing in succession planning

KIMBERLEY MARTIN TEP, DIRECTOR, WMM LAW

Despite technological change in many areas of the law, the concept of signing (and witnessing) succession-planning documents electronically, for many, remains absurd. In recent times, however, and definitely during the COVID-19 pandemic (the Pandemic), the question 'Can I sign my documents electronically or online?' has become increasingly common. Unfortunately, the legal answer in almost all Australian jurisdictions is 'no' or 'not without incurring a lot of legal expenses to have it recognised'.

There are exceptions:

- Victoria, which (as of 26 April 2021) has permanent widespread electronic signature and remote witnessing legislation for all succession-planning documents.
- New South Wales, which (as of November 2021) has permanent remote witnessing legislation, but expressly excludes the use of electronic signatures for succession-planning documents.
- Queensland, which (as of 30 April 2022) has legislation that permits the use of electronic signatures and remote witnessing for limited succession-planning documents.

Otherwise, all other Australian jurisdictions continue to prevent the use of electronic signatures and remote witnessing for all succession-planning documents, and their execution remains a very formal process (pen and wet ink, and physically present witnesses).

Despite much hesitation, it is clear that a new era has dawned, and it is likely that succession-planning legislation that permits the use of electronic signatures and remote witnessing in succession-planning documents will continue to spread throughout Australia and become the 'new normal'.

## LEGISLATION PRIOR TO THE PANDEMIC

Legislation in each Australian jurisdiction provides for 'simple' electronic signatures, with the effect that they have the same legal status as handwritten signatures if both parties agree to the use of electronic signatures.<sup>1</sup>

Prior to the Pandemic:

- All Australian jurisdictions provided that electronic signatures could not validly be used to sign (or witness) succession-planning documents including wills, powers of attorney (POA) and healthcare documents.<sup>2</sup>
- Key Commonwealth legislation, such as the *Corporation Act 2001*, did not allow the use of electronic signatures.



## CURRENT STATUS OF LEGISLATION ACROSS AUSTRALIA

During the Pandemic and (if it can be said) after the Pandemic, Australian states and territories responded in different ways. Unsurprisingly, the federal government and the state governments in each state and territory took a different path, and where changes were made they were not uniform.

### Federal government: Corps Amendment Act

The federal government's *Corporations Amendment (Meetings and Documents) Act 2022* (the Corps Amendment Act), which came into effect on 23 February 2022 for the execution of documents and 1 April 2022 for meetings held and documents sent, made temporary Pandemic provisions allowing the use of electronic signatures to execute company documents, and technology to hold meetings, and sign and distribute meetings-related documents.

Key elements of these changes, which may provide convenience for companies operating across borders or across the considerable distances in regional Australia, include:

- Certain company and meeting-related documents, including deeds, may be signed by electronic means so long as the method of signing identifies the person and indicates their intentions.
- There is no requirement for all signatories to sign documents, including deeds, in the same form or on the same page of a document or that they sign by the same method; and documents may be executed in counterparts via any appropriate technology.
- A company may provide meeting documents including notices of meetings and notices of a resolution electronically.
- A company can hold meetings either physically (in person), partially physically and partially virtually or wholly virtually, providing the governing constitution allows for virtual meetings. If the constitution does not allow for virtual meetings, companies and registered schemes need to seek shareholder approval to amend their constitutions. Whichever method is used, it is still required that meetings give the members a reasonable opportunity to participate.
- No particular technology/process is required to be used; however, companies will need to ensure that the technology used is reasonable and allows the members who are entitled to attend the meeting, and do attend the meeting using that virtual meeting technology, as a whole, to exercise orally and



in writing any rights of those members to ask questions and make comments.

- Parties to sign a document can sign without necessarily signing the same form or using the same method.

It is important to note that companies can continue to send documents/notices, sign documents and hold meetings in the traditional physical manner.

The Corps Amendment Act provides for a review of its provisions to be conducted within two years from its implementation. If this review fails to occur, the virtual meeting amendments will cease to have effect.

### Victoria

In Victoria, the *Justice Legislation Amendment (System Enhancements and Other Matters) Act 2021* (the Victoria Act) came into effect on 26 April 2021, and made the temporary Pandemic provisions that allowed the use of electronic signatures and witnessing of documents by audio-visual link permanent.

The amendments implemented permit the following succession-planning 'documents' to be signed using an electronic signature and, if they require witnessing, for this to occur via audio-visual link:

- a will;
- a POA or an enduring power of attorney (EPA);
- a deed;
- an affidavit; and
- a statutory declaration.

Although these amendments resemble the emergency Pandemic regulations, the Victoria Act imposes stricter requirements to safeguard against misuse.

With specific reference to EPAs, the Victoria Act amends the *Powers of Attorney Act 2014*. Under the amended provisions, each witness is still required to fulfil all existing obligations, including certification requirements under s.36 of that act; however, the document can now be electronically signed and witnessed with all persons in separate spaces connected by an audio-visual link. The witnesses must observe, by audio-visual link, the principal (or directed signer) sign the document, either electronically or on hard copy (and the signature of any witnesses physically present). The witnesses must also be physically situated within Victoria.

With specific reference to wills, the Victoria Act amends the *Wills Act 1997* to add new ss.8A–8D, which prescribe a new 'remote witnessing procedure' and contemplate and provide strict conditions and procedure for the execution and alteration of a will (including those signed under direction).

Interesting components of the Victoria Act are:

- A 'special witness', who must be either an Australian legal practitioner<sup>3</sup> or a justice of the peace,<sup>4</sup> must be one of the witnesses.
- Section 8B(1) provides that '[i]f a will is executed in accordance with the remote execution procedure, the document which has been checked and signed by the special witness in accordance with section 8A(7) is the valid will'. Section 8B(4) provides that, unless recognised as an informal will or an order for rectification, '[c]ounterpart documents

do not constitute a valid will'. This effectively removes any question about which 'document' is the original will.

- Section 8B(2) provides that, for the purposes of the remote witnessing procedure, '[t]he place of execution of a will executed in accordance with the remote execution procedure is the place where the testator is located at the time the will is executed'. Some have interpreted this as allowing the will-maker and witnesses to be in entirely different places or countries; however, given that s.8A(3) expressly provides that '[a]ll elements of the remote execution procedure must be carried out on the same day and **within Victoria**' (emphasis added), the author does not agree. If the will-maker, ordinary witness or special witness are not within Victoria when the will is executed, the remote witnessing procedure is likely not available to them and the will is unlikely to comply with the new laws.
- Section 8C provides that '[a]n audio visual recording of the execution of a will by remote execution procedure may be made only if all of the parties to the procedure consent to a recording being made'. It also confirms that '[t]he making of a recording or the failure to make a recording referred to in subsection (1) does not affect the validity of the will executed by the remote execution procedure or the use of that procedure'.

### New South Wales

In New South Wales, the *Electronic Transactions Amendment (Remote Witnessing) Act 2021* came into effect in November 2021 and made the temporary Pandemic provisions in Part 2B of the *Electronic Transactions Act 2000* (the Electronic Act) that allowed the witnessing of documents by audio-visual link permanent.

The Electronic Act now permits the witnessing of the following succession-planning 'documents' to occur by audio-visual link:

- a will;
- a POA or EPA;
- a deed or agreement;
- an enduring guardianship appointment;
- an affidavit, including an annexure or exhibit to the affidavit; and
- a statutory declaration.

Audio-visual link is defined as technology that enables '[c]ontinuous and contemporaneous audio and visual communication between persons at different places, including video conferencing'. When witnessing documents over audio-visual link, the witness must also take care to verify the identity of the signatory and be satisfied that it is them signing the document, they are freely and voluntarily making the document and the document is the same as the one they are signing as a witness if signing a counterpart.

There are certain criteria that must be met to satisfactorily witness a document remotely, a witness must:

- observe the person signing the document in real time;
- confirm that they witnessed the signature by either signing a counterpart or a scanned copy of the signed document. Either way, the witness must sign as soon as practicable after witnessing the signing of the document; ►

- be reasonably satisfied that the document they sign is the same document, or a copy of the document, that they have observed the signatory sign; and
- endorse the document with a statement specifying the method used to witness the signature (for example, audio-visual link) and that the document was witnessed in accordance with s.14G of the Electronic Act.

In New South Wales, a document may be witnessed via audio-visual link even if the signatory, witness or both are outside of its jurisdiction, so long as the document is made or required to be signed under an act or law of New South Wales or the governing laws for the document are the New South Wales laws.

The position in New South Wales relating to electronic signing has not changed with the implementation of the remote witnessing procedures. This means that electronic signatures are not possible for wills, EPAs, enduring guardianship appointments, affidavits and statutory declarations. Even though audio-visual link witnessing is now possible for those documents, wet ink signatures are still required.

### Queensland

In Queensland, the *Justice and Other Legislation Amendment Act 2021* (the Qld Act) came into effect on 30 April 2022 and made a number of the temporary Pandemic provisions in the *COVID-19 Emergency Response Act 2020* permanent.

The amendments implemented by the Qld Act permit the following succession-planning 'documents' to be signed using an electronic signature, and if they require witnessing, for this to occur via audio-visual link:

- General POAs for businesses, which can now be signed using electronic signature, in counterparts, and without a witness.
- Affidavits and statutory declarations, which can be signed using electronic signature, in counterparts,<sup>5</sup> and are required to be witnessed by a 'special witness'<sup>6</sup> who can be present in person or via audio-visual link.
- Deeds, which can now be signed using electronic signature, in counterparts, and without a witness.
- Particular mortgages.

Audio-visual link is defined as '[f]acilities that enable reasonably contemporaneous and continuous audio and visual communication between persons at different places and includes videoconferencing'.<sup>7</sup>

Importantly, the temporary laws that were previously in place allowing wills, EPA documents and advance health directives to be witnessed remotely have expired. Accordingly, these documents must now be executed on paper and in the physical presence of the required witnesses.

### Australian Capital Territory, Tasmania, South Australia, Western Australia and the Northern Territory

Despite some jurisdictions introducing temporary Pandemic provisions that allowed remote witnessing of documents, each of the Australian Capital Territory, Tasmania, South Australia, Western Australia and the Northern Territory presently do not allow succession-planning documents (including wills, POAs, enduring guardianships, medical appointments and deeds) to be executed using electronic signature and/or to be witnessed remotely.

### Recognition of 'foreign' electronic documents and documents witnessed remotely

Practitioners must not forget that many jurisdictions<sup>8</sup> have legislation that recognises foreign wills,<sup>9</sup> foreign EPAs and foreign deeds. It is entirely foreseeable that such legislation would recognise wills, EPAs and deeds executed using electronic signature and/or remote witnessing in a jurisdiction that allows them. For example, any of the following could engage a practitioner (in a jurisdiction that does not currently allow the use of electronic signatures and/or remote witnessing) to assist them to obtain a grant of probate or a reseal, to assist with property matters, and/or to act generally:

- an executor (appointed under the terms of a valid will that was signed using electronic signature and/or remotely witnessed);
- an attorney (appointed under the terms of a valid EPA that was signed using electronic signature and/or remotely witnessed); and/or
- a trustee (appointed under the terms of a valid deed that was signed using electronic signature and/or remotely witnessed).

### CONCLUSION

Although not formally recognised in many jurisdictions, the use of electronic signatures and remote witnessing in succession planning is here, and as a result of the Pandemic they are more relevant than ever. It is inevitable that the use of electronic signatures and remote witnessing will continue. Practitioners should be prepared for this, and should begin to adapt.

Those who adapt and embrace technology in their practices will have a competitive advantage and will lead the future. Like the move to online and app-based banking, those who refuse to adapt may be left behind, or will be forced to play catch-up in the near future when technology in document execution becomes a competitive necessity. ■

<sup>1</sup> Revised Explanatory Memorandum, *Electronic Transaction Bill 1999* (Cth); *Electronic Transactions Act 2000* (Tas), *Electronic Transactions (Victoria) Act 2000* (Vic), *Electronic Transactions Act 2001* (ACT), *Electronic Transactions Act 2000* (NSW), *Electronic Transactions Act 2001* (Qld), *Electronic Transactions (Northern Territory) Act 2000* (NT), *Electronic Transactions Act 2000* (SA) and *Electronic Transactions Act 2011* (WA). Also, see *Electronic Transactions Act 1999* (Cth) sch.1. <sup>2</sup> *Electronic Transactions Act 2000* (Tas), *Electronic Transactions (Victoria) Act 2000* (Vic), *Electronic Transactions Act 2001* (ACT), *Electronic Transactions Act 2000* (NSW), *Electronic Transactions Act 2001* (Qld), *Electronic Transactions (Northern Territory) Act 2000* (NT), *Electronic Transactions Act 2000* (SA) and *Electronic Transactions Act 2011* (WA). Also, see *Electronic Transactions Act 1999* (Cth) sch.1. <sup>3</sup> An Australian legal practitioner means an Australian lawyer who holds a current Australian practising certificate. <sup>4</sup> The justice of the peace must be appointed under s.7 of the *Honorary Justices Act 2014* (Vic). <sup>5</sup> Note: counterparts cannot be used where the document is being physically signed in the physical presence of a witness. <sup>6</sup> A special witness is one of the following: an Australian legal practitioner; a government legal officer who is an Australian lawyer who witnesses documents in the course of their government work; a notary public; or a justice of the peace or a commissioner of declarations employed by the law practice that prepared the document. <sup>7</sup> See s.1B, *Oaths Act 1867* (Qld); and s.24H(9), *Powers of Attorney Act 1998* (Qld). <sup>8</sup> See *The Convention on the Conflict of Laws Relating to the Form of Testamentary Dispositions* and the European Succession Legislation. For specific examples, see: England and Wales: *Wills Act 1963* (UK); Australia: Part 5 *Wills Act 2008* (Tas), s.17 *Wills Act 1997* (Vic), Division 6 *Succession Act 1981* (Qld), Part 2.4 *Succession Act 2006* (NSW), Part 3 *Wills Act 1936* (SA), Part VII *Wills Act 1970* (WA), Part 5 *Wills Act 2000* (NT), and Part 2A *Wills Act 1968* (ACT); and South Africa: s.3 *Wills Act 1953* (South Africa). <sup>9</sup> Note: legislation differs widely.

# Introducing...

**NATALIE SILVESTER TEP**, DIRECTOR, LEGALLY GIFTED LAWYERS

## Tell us about you and your firm

I am the Legal Practitioner Director of Legally Gifted Lawyers. I'm an accredited specialist in succession law (Qld) and have a Master of Applied Law (Wills and Estates) obtained through the College of Law. I sit on the STEP Queensland Committee, the STEP Queensland Limited Board and the Queensland Law Society (the Law Society) Succession Law Policy Committee; and I am Chair of the Law Society's Specialist Accreditation Advisory Committee: Succession Law. I am based in Emerald, Central Queensland, and started my firm in early 2023 to provide specialist succession-law services to my local regional area. I am also the founder and co-admin of the Queensland Succession Law Ladies Facebook group and a mentor in the STEP Australia Mentorship Programme.



## What does winning the STEP Excellence Award mean to you?

Winning the award really means the STEP community's recognition of the contribution I have made to the STEP community. I'm very proud to have won the award. Having my contributions recognised is like a pat on the back for a job well done and definitely helps my motivation in continuing the work that I do.

## What would you say to a young person thinking of a career in trusts and estates?

Trusts and estates is such an interesting area of law. It is diverse because we need to have an understanding of all different areas of law depending on our clients' needs and depending on the intricacies of an estate administration. It is never boring and you learn something new every day. Our clients have some pretty amazing life stories as well.

## You have made a significant contribution to STEP and your profession, why would you encourage others to do the same?

The STEP community is a wonderful community. Being able to contribute to the education of other practitioners, change to the succession landscape (i.e., through legislation/policy development) and being a part of the STEP Australia Mentorship Programme are really great ways to give back to the community that has been so generous to me.

## What would you say to someone looking to join STEP?

If you are looking at joining STEP then I say go for it. STEP, to me, means community and being a part of something special. Education events are informative and provide practical solutions but double as opportunities to network with like-minded professionals. I have made many friends being involved in the STEP community. It really is a supportive environment and the more the merrier! ■



ADVISING FAMILIES ACROSS GENERATIONS

**STEP VICTORIA-TASMANIA CONFERENCE 2024**



**16 February 2024**  
The Henry Jones Art Hotel

Pre-conference networking event on Thursday 15 February 2024, followed by a full-day conference and closing reception on Friday 16 February 2024

Email: [stepaustralia@step.org](mailto:stepaustralia@step.org)



ADVISING FAMILIES ACROSS GENERATIONS

**STEP SOUTH AUSTRALIA TRUST SYMPOSIUM 2024**



**8 March 2024**  
Hilton Adelaide

**Presenters:** His Honour Judge Paul Slattery, William Johns TEP, Bernie Walrut TEP, Dr Sylvia Villios and Richard Ross-Smith TEP, Carolyn Sparke KC TEP

**Panel Discussion:** Donna Bengie TEP, Gaet Aiellano TEP and Tim Donlan TEP, facilitated by Simon Ower KC TEP

Register: [www.trybooking.com/CLELP](http://www.trybooking.com/CLELP)



ADVISING FAMILIES ACROSS GENERATIONS

**STEP AUSTRALIA NATIONAL TRUSTS AND ESTATES CONFERENCE 2024**



**The Life Cycle of a Trust**

**Attend in person or virtually**



**8-10 May 2024**  
The Langham, Melbourne



Register now





## EVENTS AND RESOURCES

### STEP AUSTRALIA WEBSITE

Keep up-to-date with news, events and national initiatives by visiting the STEP Australia website.

You can find out more about STEP's advocacy work, upcoming events and conferences, industry news, the latest webinars on demand and national newsletters. You can also access our members' technical resource library and see what's happening with our international connections.



[www.stepaustralia.com](http://www.stepaustralia.com)

**STEP**  
ADVISING FAMILIES ACROSS GENERATIONS

## WEB LINKS AND CONTACTS



View the full events programme at  
[www.stepaustralia.com/events](http://www.stepaustralia.com/events)

We welcome all STEP members to attend events hosted by other branches.

For more information on the STEP Australia events calendar, or to register your interest to be a speaker at STEP Australia events, contact Dior Locke at [dior.locke@step.org](mailto:dior.locke@step.org)

Can't make an event? Many speakers provide a paper for members. Get in contact to find out more.

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### STEP AUSTRALIA NEWSLETTER COMMITTEE

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OR EXPRESSIONS OF INTEREST TO DIOR LOCKE AT [DIOR.LOCKE@STEP.ORG](mailto:DIOR.LOCKE@STEP.ORG)