



Circular	2019/01
Issued	April 2019

Consultation on the Conveyancing Rules Version 5

The Conveyancing Rules (Rules) are proposed to be changed to require mainstream dealings to be lodged electronically from 1 July 2019. The proposed new Rules also look ahead to 1 July 2020, with further mandates planned to continue the transition to electronic conveyancing.

The Rules have been released for public consultation and are available on [our website](#). We value your comments and are calling for submissions by Friday, 3 May 2019.

Background

In 2016 the NSW Government announced the transition to electronic conveyancing, with a timeline for change staged to allow participants to plan and prepare. The timeline began on 1 August 2017, with Authorised Deposit-Taking Institutions (ADIs) required to lodge their land transactions electronically. From 1 July 2018, the mandates were broadened to include standalone transfers and the take-up of electronic conveyancing accelerated. The timetable looked towards 1 July 2019, when all standard conveyancing transactions were to be lodged electronically.

The timeline is enforced through the Rules, made under section 12E of the *Real Property Act 1900*. Below is a summary of the proposed Version 5, which is planned to replace Version 4 of the Rules on 1 July 2019.

Lodgment of dealings from 1 July 2019

The mandate will focus on mainstream transactions, not just standalone dealing types. From 1 July 2019, the following dealings must be lodged electronically (if eligible to be lodged electronically) whether standalone, or in combination:

- Transfers
- Mortgages (including mortgages with justification where a name has changed)
- Discharges of mortgage
- Caveats
- Withdrawals of caveat
- Transmission applications

[Registrar General's Guidelines](#) contain more information about eligibility for electronic lodgment.

Lodgment of dealings from 1 July 2020

All dealings that can be lodged electronically must be lodged electronically, whether standalone or in combination. This will include dealings such as leases (which are currently available) plus other dealings that will become available over time, such as notices of death and changes of name. NSW Land Registry Services is widening the scope of eligible documents that can be lodged electronically and will have more dealing types available for electronic lodgment by 1 July 2020.

The Office of the Registrar General website has a [schedule](#) of dealings that can be lodged electronically, or that are planned to be made available electronically, with an estimated time for release.

What are the major changes planned for 1 July 2019?

For unrepresented parties –

- Apart from a caveat or a withdrawal of caveat lodged in paper, an unrepresented person will need a conveyancer or lawyer to lodge any mandated dealing for them. This effectively means a person will need to engage a conveyancer or lawyer to buy, sell or deal with property.
- Unrepresented parties can lodge caveats and withdrawals of caveat in paper until 1 July 2020. After that date, only a conveyancer or lawyer will be able to lodge a caveat or withdrawal of caveat on a person's behalf.

For mortgagees -

- Any combination of mortgage, discharge of mortgage and transfer will be required to be lodged electronically.

For conveyancers and lawyers –

- Any combination of mortgage, discharge of mortgage and transfer will be required to be lodged electronically.
- All transmission applications and withdrawals of caveat must be lodged electronically from 1 July 2019.
- Transactions involving simultaneous settlements will no longer be an exception to lodging electronically.

These mandates do not apply to titles that are [not eligible](#) for electronic lodgment.

Will the new mandates affect dealings dated before 1 July 2019?

No. The mandates that applied when the dealing was signed will continue to apply regardless of the date of lodgment.

For example, standalone transfers, caveats, and mortgage transactions involving non-ADIs signed before 1 July 2018 may continue to be lodged in paper.

If a dealing is undated and lodged after 1 July 2019 it will be deemed to be dated after 1 July 2019, unless evidence to the contrary is provided. In these circumstances, the new mandate requirements will apply.

Waivers and exceptions

The Registrar General intends to waive the requirement for electronic lodgment for the following scenarios:

- Where an unrepresented party is lodging a caveat or a withdrawal of caveat;
- Where land tax is payable from the proceeds of a settlement;
- Where the transaction involves a water access licence.

[New waivers](#) will be issued before 1 July 2019 to cover the above scenarios.

Of the current [Conveyancing Rules waivers](#), the Registrar General intends to let the following waivers lapse on 30 June 2019 (subject to preserving the scenarios above):

- [CR3-2018 Transfers exceptions](#) (to be replaced by an updated waiver)
- [CR4-2018 Unrepresented transfers](#)
- [CR5-2018 Unrepresented caveators](#) (to be replaced by an updated waiver)
- [CR6-2018 Unrepresented non-ADI mortgagees](#)
- [CR7-2018 Monetary Consideration exception](#)

The Rules will provide that dealings need not be lodged electronically if the Folio of the Register for the land affected by the transfer is not electronically tradeable, or if an Electronic Lodgment Network is not available and has not been available for one clear Business Day.

As well, there are certain circumstances where a dealing is not required to be lodged electronically¹:

Transfers:

- Transfers on forms other than the 01T Transfer, such as the Transfer including Easement.
- Transfers affecting more than 20 Folios of the Register.
- Transfers requiring an attachment to be registered (e.g. order of court).
- Transfers that need to be executed by a person other than the registered proprietor, such as a court officer.
- Transfers creating a life estate or estate in remainder.

Caveats:

- Caveats against a registered interest (for example, a registered lease).
- Caveats against part of the land in a Folio of the Register.
- Caveats against premises.
- Caveats requiring an attachment, such as a sketch plan.
- If there are multiple caveators and they are not represented by a single subscriber.
- Where the written consent of the registered proprietor is required for the purposes of section 74O *Real Property Act 1900*.

Mortgage transactions:

- Involving land securities located in jurisdictions where land registries are not enabled for electronic lodgment - see [Conveyancing Rules Waiver CR 1/2018 – Non ELN-Enabled Jurisdictions](#).
- Involving non-land securities which cannot be traded electronically - see [Conveyancing Rules Waiver CR 2/2018 – Non-Land Securities](#).

Submissions

Anyone wanting to comment on Version 5 of the Rules can send a written submission to org-econveyancing@finance.nsw.gov.au

Submissions must be made by 5pm on Friday 3 May 2019.

¹ These exceptions will be removed over time and announcements will be made each time that occurs. In the meantime, the scenarios listed at [Registrar General's Guidelines](#) still apply.