

27 February 2019



Certificates of Title: the next evolution  
Office of the Registrar General  
Mckell Building  
2-24 Rawson Place  
SYDNEY NSW 2000

Via Email: [ORG-admin@finance.nsw.gov.au](mailto:ORG-admin@finance.nsw.gov.au)

Dear Office of the Registrar General,

**RE: DISCUSSION PAPER CERTIFICATES OF TITLE: THE NEXT EVOLUTION**

We would like to take the opportunity to provide comments on the recommendations in the "Discussion Paper Certificates of title: the next evolution" released December 2018.

Landcom is a State Owned Corporation that exists to help the NSW Government unlock surplus or underutilised government-owned site or large institutional land holdings to create urban places with housing choices, community facilities, open spaces and access to services.

We work across government and with the private sector to produce quality housing and communities that deliver social, environmental and economic benefits to the people of NSW. We specifically work on strategic and complex residential projects on vacant land and established sites.

This response has been compiled by the Legal division within Landcom who have substantial expertise and practice in this area of law.

If you have any queries regarding the contents of this letter, please do not hesitate to contact, **Sandra Lee** on (02) 9841 8611.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "Sandra Lee", written over a horizontal line.

**Sandra Lee**

**General Counsel**

## **Landcom's submissions responding to proposals for discussion in 'Discussion paper: Certificate of title: the next evolution'**

### **Model 1 – The current mixed eCT and paper CT environment.**

1. What features, if any, of the existing CT environment should be retained in NSW?

The current mixed environment of both paper CTs and eCTS has a number of important features. We believe the following features should be retained in NSW:

- Unencumbered titles having paper CTs issued.
- Unrepresented parties being able to transact in paper whether the title is an eCT or paper CT.
- Certificate Authentication code (CAC) on paper CTs.

2. Are there any issues arising in the existing environment which have not been considering this discussion paper?

While it was briefly discussed in the paper Landcom would like more consideration of whether a paper CT needs to be produced at LRS to enable plans to be registered. A system should be introduced similar to when a CoRD is created for an e-conveyancing transfer transaction using the CAC. This would streamline and remove the majority of production for plan lodgements.

### **Model 2 – eCTs and CoRD Holder Consents.**

3. In a scenario where all paper CTs are converted to eCTs with a system of CoRD Holder Consents, are there any practices that should be changed or any new features that should be introduced?

We don't have any suggestions on new practices or features that should be introduced in a scenario where all paper CTs are converted to eCTS with CoRD Holder Consents.

4. Are there any issue arising in a 100% eCTs and CoRD Holder Consents that have not been considered in this discussion paper?

While briefly considered in the paper, Landcom would like more consideration of the issue that a significant amount of new costs that will be introduced if the system was converted to eCTs and CoRD Holder Consents only. An environment of 100% eCTs and CoRD holder consents would force legal representation for every transaction, causing a significant increase in cost for simple transaction such as lodgement of plans, caveats and withdrawals etc. Pexa currently holds a monopoly on the e-Conveyancing transactions and their fees are significantly higher then what it would cost to make the lodgements by paper.

While briefly considered in the paper, Landcom recommends more consideration of removing the ability to control the "right to deal" by holding the physical CT.

### **Model 3 – No eCTs or no CoRD Holder Consents.**

5. In the event there are no eCTs/CoRD Holder Consents, are there any practices that should be changed or any new features introduced?

If it was decided to remove eCTs and CoRD holder Consents a free service to monitor activity against certificates of titles should be introduced, such as Title Watch which is offered by SAILIS in South Australia. The service should provide alerts when activity is detected via email/text message to a recorded subscriber. Further, the service should allow subscribers to add titles via a name search allowing a large list of titles to be “subscribed” to at once instead of individually adding large volumes of title information.

6. Are there any issues arising from no eCTs or CoRD Holder Consents environment which have not been considered in this discussion paper?

Nil all issues have been discussed in the paper, although the fraud and mitigation should be considered more heavily.

7. What are the risks of removing transaction party consents only?

Other than the potential increase of fraud, Landcom believes this paper covers all potential risks.

### **General.**

8. Are there any other issues that should be considered in comparing the potential options for unencumbered titles beyond 1 July 2019, which have not been considered in this discussion paper?

Model one:

- CoRD Holder Consents are time consuming administratively.

Model Two:

- The Right to deal (see general section below for more detail).
- Elderly and Vulnerable people within society (see general section below for more detail).
- People whom don't speak English or English isn't their first language (see general section below for more detail).
- CoRD Holder Consents are time consuming administratively.

Model Three:

- The Right to deal (see general section below for more detail).
- Elderly and Vulnerable people within society (see general section below for more detail).
- People whom don't speak English or English isn't their first language (see general section below for more detail).

Generally:

The Right to deal is an issue that needs to be considered in comparing the potential options for unencumbered titles. Currently “right to deal” is not defined in the Real Property Act, Conveyancing Act or regulations or the model participation rules. The only guidance on the “right to deal” comes from the ARNECC guidance but it is outlined that the guide is not advice and cannot be used to override future legislation or case law. We understand that the term “right to deal” is complex but there needs to be some legal authority on the matter especially with the current move to e-Conveyancing.

Issues that may arise with elderly and vulnerable people within society needs to be considered in comparing the potential options for unencumbered titles. These groups of people at times may have limited email or phone access creating access issues to eCTS or title subscription services such as SAILS. There also may be higher risks of fraud within this group of people.

Issues that may arise with people whom don't speak English or English isn't their first language needs to be considered in comparing the potential options for unencumbered titles. These groups of people may struggle in terms of access to eCTs or title subscription services such as SAILS if it is only available in English. There also may be higher risks of fraud within this group of people.

9. Do you have a preference for a particular model and why?

Model 2 or 3: The either of the two proposed models would be Landcom's preference if the major fraud risks surrounding the right to deal and mortgage fraud are mitigated through adequate security.

Model 1: If the major fraud risks cannot be mitigated in models 2 or 3 than Landcom would prefer the current mixed model with some administrative changes. In particular the allowance of practitioners to mark invalid CTs (such as after e-conveyancing settlement) as "cancelled".