



NEC in NSW Consultation Papers

A consultation process addressing transaction specifications, business practices and implementation arrangements for National Electronic Conveyancing (NEC) in NSW

#6: Conveyancing Reform - Concurrent Electronic and Paper Conveyancing

The Proposed Alignment of Paper Conveyancing Processes with the Comparable Electronic Process wherever possible to Facilitate and Encourage the Uptake of Electronic Conveyancing and to Deliver Efficiency Savings in the Conveyancing Industry

May 2014

About this Consultation Paper

This paper is published on behalf of the Registrar General by the Land and Property Information Division (LPI) of the NSW Office of Finance and Services. It is the most recent in a series of consultation papers, each of which identify proposed changes in conveyancing practice, risk management and systems arrangements for the settlement of real property transactions and the lodgment and registration of Registry Instruments (dealings) in NSW. The intention of the consultation is to make widely known the detail of proposed changes under consideration, and to elicit and also make widely known NSW industry participant views on the proposals. The consultation and feedback papers do not represent NSW Government policy.

In this document the term 'National Electronic Conveyancing' (NEC) has been used to describe the overall legislative and business environment for electronic conveyancing in Australia.

This consultation paper and the issues it addresses need to be considered in the context of the intention of all jurisdictions and industry participant groups to achieve a single system for NEC in Australia. This paper is part of a series of public consultation papers designed to ensure NSW-based industry requirements are considered in the design, functionality and supporting arrangements for NEC. A move towards nationally consistent conveyancing practices, regardless of the medium, is the subject of ongoing discussion among all State and Territory Land Registries.

Consultation

Stakeholders are invited to make written comments to LPI. There is no particular format that comments need to follow but you may wish to address the consultation questions listed in this paper. Unless requested not to, LPI will treat all submissions received as public documents. LPI reserves the right to make submissions (in part or in full) available to other parties and the general public.

Comments and questions about this consultation document can be provided to LPI by one of the following means:

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Letter: NEC in NSW Industry Consultation
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SYDNEY NSW 2001
or DX 17 SYDNEY

All comments should be received by 5:00 pm **20 June 2014**.

Additional copies of this paper can be downloaded in PDF file format from the LPI website at: http://necnsw.lpi.nsw.gov.au/industry_consultation/consultation_papers.

Should you have any questions please contact: (02) 9228 6834 or 8257 2940 (8:30am to 4:30pm weekdays) or either of the email addresses above.

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LPI has produced this series of consultation paper to provide general information relating to business practice, legislative and systems technology arrangements being considered in the development of a National Electronic Conveyancing for Australia and for its implementation in NSW.

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Prior Papers in this consultation series

	Title	Description
1	Client Authorisation Agreement for use of NECS (PDF 1.8 mb)	Requirements of Subscribers to obtain written authority to represent a party to a transaction in the NECS
2	Instrument Certifications (PDF 958 kb)	Nature and extent of certifications required of Certifiers signing instruments prepared using the NECS and intended for lodgment with a Land Registry
3	Digital Signing arrangements (PDF 1.9 mb)	Signing and authentication of electronic registry instruments for NECS by Certifiers using Digital Signatures, and publication of registered instruments by the Land Registry
4	Land Registry Transaction Services for Conveyancing (PDF 3 mb)	The paper addresses land title information and other services for preparation, due diligence and compliance assurance of a real property transaction for lodgment and registration by LPI.
5	CT Solution Consultation Paper (PDF 971 KB)	LPI has published a consultation paper on the Certificate of Title Solution for Concurrent Electronic and Paper Conveyancing. The consultation paper sets out a solution that both facilitates the completion of transactions electronically without additional risk for any parties and enables continued use of paper conveyancing, with or without a CT, in as convenient and reliable a manner as today.

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1. Overview

Purpose

This Consultation Paper proposes that paper and electronic conveyancing requirements be aligned as much as possible and that, as far as practicable, uniform national requirements be adopted to minimise inconsistencies between jurisdictions. Some of these proposals will require legislative or regulatory change while others may be achieved by changes in policy, practices and procedures.

New practices have been developed to cater for electronic conveyancing resulting in different practices and requirements for paper and electronic conveyancing. The development of NEC has also helped to highlight some of the legislative and practice differences between the Australian jurisdictions. The Register General's preference is to have one set of regulatory and business requirements covering both electronic and paper transactions and wherever possible to work with his colleagues in other jurisdictions and key stakeholders towards increasing National consistency in conveyancing law and practice.

Background

The Australian land registries have been working towards introduction of NEC for many years. In 2005 the jurisdictions and peak industry bodies (including the Law Council of Australia, Australian Bankers' Association, and Australian Institute of Conveyancers) together formed a National Steering Committee to oversee development of the legal framework, business practices and system requirements for a national electronic conveyancing system.

In July 2008 the Council of Australian Governments (COAG) agreed to the development and implementation of NEC, including it as one of the reforms in a National Partnership Agreement for a Seamless National Economy.

In 2010 New South Wales, in collaboration with Victoria and Queensland, formed National E-Conveyancing Development Limited, or NECDL¹, to build the online platform to deliver a NEC solution to the Australian property industry. NECDL have now developed that platform which is called Property Exchange Australia, or PEXA.

NEC is being implemented in stages. On 8 October 2013, New South Wales became the second state in Australia to go live with Release 1 of PEXA². Release 1 includes single party transactions such as standalone Discharges of Mortgage, standalone Mortgages and Refinances lodged initially by the major banks³. PEXA is now operating Release 1 successfully in Victoria, New South Wales and Queensland and will soon commence in Western Australia processing mortgage transactions.

A major expansion of NEC will begin with Release 2 which will introduce capacity to deal with multi-party transactions such as Transfers, Withdrawals of Caveat and Caveats and will open electronic conveyancing to solicitors and conveyancers and additional financial institutions. Significantly, Release 2 will also introduce capability to conduct the related financial settlement of the transaction electronically. Release 2 of PEXA will be in increments, with the first introduction of Transfers scheduled to start in New South Wales in October 2014.

However, it is anticipated that a sizeable percentage of conveyancing transactions will still be completed through paper conveyancing for some time.

¹ NECDL has since changed its name to Property Exchange Australia Ltd

² Victoria was the first state to go live with PEXA Release 1 on 18th of June 2013.

³ Additional financial institutions are progressively being added to the system.

The alignment of paper and electronic processes is proposed to:

- facilitate a smooth transition between the two mediums;
- maintain the security and benefits of the Torrens system;
- reduce complexity of practices in a concurrent paper and electronic conveyancing environment;
- reduce costs to the conveyancing industry.

These reforms are likely to be introduced in stages, though some are interdependent and will logically be introduced together. Implementation of these reforms is to be undertaken in close consultation with industry to ensure the transition to new practices and requirements is as smooth as possible and to ensure appropriate safeguards are in place before any decision on discontinuing the issue of Certificates of Title completely. Throughout this process, it is critical that industry and public confidence in the security of the Torrens land registration system is maintained.

This paper is available at <http://necnsw.lpi.nsw.gov.au/> and has been emailed to key industry bodies.

Audience

The primary audience for the paper are the industry participants in the conveyancing process – the conveyancing practitioners (solicitors and licensed conveyancers) who represent transacting parties, their insurers and those transacting parties who represent themselves (financial institutions).

Because the primary audience is generally well-acquainted with the conveyancing process in New South Wales, the description of current practices is limited to only those aspects germane to the changes necessary in the future. Nevertheless, the paper aims to be as self-explanatory as possible in the interests of the widest possible understanding and feedback.

National Context

Wherever practical, nationally uniform procedures have been incorporated, to minimise inconsistencies between New South Wales and other jurisdictions.

The NEC environment envisages one or more Electronic Lodgment Network Operators (ELNO) providing Electronic Lodgment Networks (ELN) to facilitate electronic conveyancing within the terms of an Intergovernmental Agreement (IGA) among the States and Territories and an Electronic Conveyancing National Law (ECNL) providing Model Operating Requirements (MOR) for the regulation of ELNOs and Model Participation Rules (MPR) for the regulation of the Subscribers to an ELN. For information on this regulatory framework, see the Australian Registrars' National Electronic Conveyancing Council (ARNECC) website at <http://www.arnecc.gov.au/>.

Under arrangements established by COAG, Property Exchange Australia Ltd⁴ has developed the first ELN called Property Exchange Australia (PEXA). For information on PEXA, see <http://www.pexa.com.au/>.

Applying electronic conveyancing requirements to paper conveyancing - What is proposed

The Participation Rules for electronic conveyancing, agreed nationally by ARNECC and made by the Registrar General under the Electronic Conveyancing National Law (NSW), set out the

⁴ Formerly named National E-Conveyancing Development Ltd or NECDL.

requirements for verification of identity, client authorisation and certifications that apply to electronic conveyancing. The Registrar General intends to apply these same requirements, modified only as necessary, to paper conveyancing transactions.

The Participation Rules are available at <http://necnsw.lpi.nsw.gov.au/>.

Rationale for the proposal

The alignment of the paper and electronic processes is proposed because, initially at least, a solicitor, conveyancer, or mortgagee may not know if a particular transaction is going to progress in paper or electronically. The alignment of conveyancing practices will facilitate a smooth transition between the two mediums and avoid complexity and costs to the conveyancing industry in dealing with two separate processes and requirements.

Accordingly, if a transaction has been prepared with the intention that it progress electronically and it is subsequently discovered that it cannot, the solicitor or conveyancer will be able to rely on the existing Client Authorisation form to proceed in the paper environment. There will be no need to contact the client again to have paper instruments executed.

The implementation of verification of identity, client authorisation and certifications for paper conveyancing transactions will align with the requirements for electronic conveyancing transactions and allow a smooth transition between the two lodgment mediums. This is because, initially at least, a lawyer, conveyancer, or mortgagee may not know if a particular transaction is going to progress in paper or electronically. It will also give conveyancers, lawyers and mortgagees greater certainty in a paper conveyancing transaction when they deal with other parties. These safeguards will assist in maintaining the integrity of the Torrens Register, are important fraud mitigation measures and support the phasing out of paper Certificates of Title.

National Electronic Conveyancing

NEC will provide an efficient online national platform to electronically:

- prepare and sign Registry Instruments;
- settle property transactions;
- lodge instruments with land registries; and
- meet associated duty and tax obligations.

The essence of NEC is the co-operative preparation and digital signing of electronic instruments by all the parties to a transaction using an ELN and the electronic presentation of those instruments, following an electronic financial settlement if necessary, by the ELN to the State or Territory Land Registry for lodgment and registration in their Torrens Register.

NEC is being implemented in stages. Release 1 of PEXA provides functionality for major financial institutions to process Mortgages, Discharges of Mortgage and Re-finances and began in Victoria in July 2013. On 8 October 2013 NSW joined Release 1 of electronic conveyancing by registering its first electronic transaction through PEXA.

PEXA is now operating Release 1 successfully in Victoria, New South Wales and Queensland and will very soon commence processing Release 1 mortgage transactions in Western Australia.

The next major phase of NEC will begin in New South Wales in October this year with the planned expansion to include the capability to conduct Transfers of land, with the related financial settlement of the transaction also occurring electronically, and Caveats and Withdrawal of Caveats.

The parties utilising an ELN to effect transactions are called “Subscribers”. Subscribers may act for:

- themselves in transactions, generally financial institutions or government agencies, or
- clients if they are solicitors or licensed conveyancers.

Generally, mortgagees will act for themselves in using an ELN and registered proprietors will authorise a solicitor or conveyancer to represent them just as they mostly do today.

ELNs and Subscribers are regulated by the Electronic Conveyancing National Law (NSW) (ECNL) in the standards they must meet and the practices they must comply with, including the arrangements for reliable, safe and secure preparation and digital signing of electronic instruments, execution of financial settlement and the presentation of the electronic instruments to the Land Registry for lodgment and registration. The ECNL allows the Registrar General to make Operating Requirements⁵ that apply to ELN Operators and Participation Rules⁶ that apply to Subscribers.

All Subscribers, transacting parties and the Land Registry may rely on compliance with these requirements, particularly as regards the security of an ELN, the handling of electronic instruments by an ELN and their safe presentation to the Land Registry.

Subscribers are to provide specific certifications in this process as to having been properly authorised to represent a transacting party, to the accuracy and completeness of all information provided in their electronic instruments and to the proper conduct of all required procedures. All other Subscribers, transacting parties and the Land Registry are able to rely on these certifications.

This new, secure and electronic environment for the completion of transactions necessitates a change in the way the functions of the paper Certificate of Title in the conveyancing process have traditionally been provided.

⁵ See s 22 of the Electronic Conveyancing National Law (NSW)

⁶ See s 23 of the Electronic Conveyancing National Law (NSW)

2. Client Authorisations

What is proposed

The Registrar General proposes to introduce a requirement for the use of Client Authorisations for paper conveyancing transactions.

Client Authorisations have been introduced in electronic conveyancing as, where a Subscriber is engaged to represent a Client, that is, the Subscriber is a solicitor or licensed conveyancer, an unequivocal form of authorisation is necessary to authorise that Subscriber to complete the digital signing of Registry Instruments on the client's behalf and to enable legal compliance with requirements for the Land Registry to register Registry Instruments (dealings) digitally.

Accordingly, the Electronic Conveyancing National Law (NSW) provides for this authority to be given in the form of a Client Authorisation⁷. A Client Authorisation is an instrument pursuant to which a Client gives a solicitor or conveyancer authority to digitally sign and lodge for registration documents giving effect to specified conveyancing transactions.

The Client Authorisation is similar in effect to a power of attorney in that it authorises a solicitor or conveyancer to act as and on behalf of the client and bind the client to the transaction⁸. However, despite the similarities, section 11(b) of the Electronic Conveyancing National Law (NSW) specifically states that a Client Authorisation is not a power of attorney and therefore not subject to a requirement that it be registered.

It is proposed to mirror the arrangements for Client Authorisations in electronic conveyancing, modified only as necessary, for paper conveyancing transactions.

ARNECC, in consultation with industry peak bodies, recently revised the Client Authorisation form to make it more suitable for both paper and electronic conveyancing transactions. Accordingly, the Client Authorisation form included in Schedule 4 of the Model Participation Rules⁹ for electronic conveyancing will be used for both paper and electronic conveyancing transactions.

The introduction of Client Authorisation forms to paper transactions will be part of a package of interdependent reforms including Verification of Identity (VOI) and Certifications. Accordingly, a solicitor or conveyancer will need to comply with the VOI requirements whenever they enter into a Client Authorisation form. The latest draft of the Client Authorisation form is attached as Annexure A.

Rationale for proposal

The introduction of Client Authorisations in the paper as well as the electronic environment will allow a smooth transition between the two lodgment mediums. This is because, initially at least, a solicitor or conveyancer may not know whether a particular transaction is going to progress in paper or electronically.

Accordingly, if a transaction has been prepared with the intention that it proceed electronically and it is subsequently discovered that it cannot, the solicitor or conveyancer will be able to rely on the existing Client Authorisation form to proceed in the paper environment.

⁷ See s 10 of the *Electronic Conveyancing National Law (NSW)* and rule 6.3 and Schedule 4 to the Model Participation Rules, which govern the Client Authorisation form to be used for electronic conveyancing.

⁸ See s 12 of the *Electronic Conveyancing National Law (NSW)*.

⁹ See Schedule 4 of Model Participation Rules Version 2 published at www.arnecc.gov.au. Version 2 of the MPRs is in the process of being adopted in NSW to replace the current MPR s Version 1.

There will be no need to have the client execute paper instruments as the Client Authorisation gives a solicitor or conveyancer authority to do so on their Client's behalf. Similarly, should a transaction that was originally thought to be proceeding in paper be able to proceed electronically, it will be able to do so as the Client Authorisation and other complimentary measures will be in place.

How it will work

If a solicitor or conveyancer is representing a Client, they will be required to enter into a Client Authorisation with their Client. It is important to note that the Client Authorisation will not replace any retainer agreement between the Subscriber and their client. Also, there cannot be a Client Authorisation between a mortgagor and mortgagee.

The solicitor or conveyancer will be required to:

- use the approved Client Authorisation form; and
- comply with the terms of the Client Authorisation form.

The solicitor or conveyancer will also need to take reasonable steps to establish that the Client is entitled to enter into the conveyancing transaction identified in the Client Authorisation form. Reasonable steps could include obtaining some form of proof that ties the Client's identity to the land specified in the transaction to which the Client Authorisation relates.

It is proposed that where a party to a conveyancing transaction is represented by a solicitor or conveyancer all documents that currently require execution and witnessing will require a Client Authorisation or will be able to be signed on the Client's behalf by a solicitor or conveyancer pursuant to a Client Authorisation.

It is considered that limiting the scope (such as applying this reform only to the documents currently in scope for electronic conveyancing) may increase complexity for the conveyancing industry as this would require practitioners to know the varying requirements for each document. In addition this may cause problems when documents that do not require a Client Authorisation are in series with documents that do, as the practitioner would need to seek both an authorisation and signatures from the client. A similar problem would arise when a Client grants a standing authority under the Client Authorisation.

Questions:

- 2.1 Is the introduction of Client Authorisation requirements appropriate for paper conveyancing transactions? If not, why not?
- 2.2 Is it appropriate to introduce Client Authorisation forms for all instruments which currently require execution and witnessing? For which of these instruments (if any) should Client Authorisation forms not be introduced?
- 2.3 Where the use of a Client Authorisation is available for a class of instrument, should its use be made mandatory? If so:
 - what transition arrangements will be necessary; and
 - what period, if any, would be appropriate for optional use before use of a Client Authorisation becomes mandatory.

3. Verification of Identity Requirements

What is proposed

The Registrar General proposes to introduce verification of identity (VOI) requirements for paper conveyancing transactions.

Various VOI requirements already apply in NSW aside from the VOI requirements that are now in place for all electronic conveyancing transactions¹⁰. VOI requirements apply to Mortgages lodged in the paper medium¹¹ and to attesting witnesses of any dealing or caveat¹². The Registrar General proposes amending the existing VOI arrangements to apply the same requirements that apply to electronic conveyancing, modified only as necessary. The requirement to verify the identity of a signatory to a dealing will generally replace current requirements for a signature to be witnessed.

When requirements for mortgagees to identify mortgagors were introduced in 2010 it was with the understanding that those requirements would be amended to apply the same processes as for electronic conveyancing once the electronic conveyancing standard was introduced. Section 10 of this paper deals with the implementation of that proposal.

However, in NEC VOI requirements apply more widely than for just mortgagees identifying mortgagors, requiring identification by Subscribers of both clients and persons the Subscriber appoints as a Signer. It is proposed that VOI requirements apply generally adding to the existing requirement for mortgagees to identify the mortgagor a requirement for all solicitors and conveyancers to identify their clients.

It is intended that a single VOI standard, the national standard adopted and published in Schedule 8 to the Participation Rules¹³ (VOI Standard) for electronic conveyancing, will apply to all conveyancing transactions regardless of the medium.

Rationale for the proposal

The Registrar General considers that VOI is a vitally important fraud mitigation and consumer protection measure and is essential to maintain the security and benefits of the Torrens system. In addition, introducing VOI for paper transactions will align paper and electronic processes and avoid the confusion that would be inevitable if differing requirements apply depending on the role a party has in, or the medium used to complete, a conveyancing transaction.

Identity fraud is unfortunately an issue that affects many people and the community have over recent years become used to the need to identify themselves in many situations and realise that such steps, while they can appear to be a nuisance, are essential for the prevention of fraud and in many instances, are for that person's own protection.

How it will work

As far as possible the VOI requirements for paper transactions will mirror the procedures and requirements that apply in electronic conveyancing.

¹⁰ See Participation Rules Clause 6.5 and Schedule 8

¹¹ See s. 56C *Real Property Act 1900* requires mortgagees to verify the identity of mortgagors

¹² See s. 117(4) *Real Property Act 1900*

¹³ See http://www.lpi.nsw.gov.au/data/assets/pdf_file/0005/185405/NSW_MPR_Version_1_2013.pdf

Verification of Identity for Paper Conveyancing Transactions

Who must have their identity verified?

The Registrar General proposes that the following persons should have their identity verified:

- clients;
- persons appointed by conveyancers, lawyers and mortgagees to sign dealings (Signers)¹⁴ ;
- persons to whom a paper Certificate of Title is given, except for conveyancers, lawyers, authorised deposit-taking institutions (ADIs) and Subscribers to an ELN; and
- where the VOI Standard is used, any Identity Declarant.

These parties are known as ‘Persons Being Identified’ in this Consultation Paper and in the VOI Standard set out in Annexure B.

Who can verify identity?

The Registrar General proposes that the following persons can verify identity:

- solicitors;
- conveyancers;
- ADIs;
- Subscribers to an ELN operating under the Electronic Conveyancing National Law (NSW); and
- an approved agent on behalf of a party required to conduct an identity verification¹⁵.

These parties are known as ‘Verifiers’ in this Consultation Paper. As the Registrar General proposes utilising the VOI Standard set out in Schedule 8 of the Participation Rules, the term ‘Subscriber’ has been amended for paper conveyancing transactions – see the definition later in this section.

How must verification of identity be conducted?

In all instances the Verifier is required to take reasonable steps to verify the identity of the person(s). A Verifier’s decision on what constitutes reasonable steps may be influenced by various factors that when taken into account contribute to a Verifier having confidence in the person’s identity. Examples of these factors might include the length of time a Subscriber has known the person required to be identified or whether they have represented the client on previous occasions.

As with the electronic conveyancing provisions, compliance with the VOI Standard will be deemed to constitute taking reasonable steps for the purposes of the proposed VOI requirements

If the VOI Standard is not followed, and the identity of the identified party is questioned, a Verifier may need to establish that the steps that were taken were reasonable under the particular circumstances applying at the time the identification was undertaken.

Regardless of whether the VOI Standard is used or not, a Verifier or their agent must undertake further steps where the Verifier or their agent knows or ought reasonably to know that:

- any identity document is not genuine; or
- any photograph on an identity document is not a reasonable likeness of the Person Being Identified; or
- if it would otherwise be reasonable to do so.

¹⁴ Signers will be appointed by solicitors and conveyancers to sign dealings pursuant to a Client Authorisation.

¹⁵ It is anticipated that there will be organisations that will provide identification services as agents providing an alternative to parties conducting the client identification themselves.

Supporting evidence and document retention

Any material supporting VOI, or a copy where appropriate, must be retained for at least seven years from the date of lodgment of the instrument concerned.

Certifications

Please refer to Section 5 of this Consultation Paper on Certifications.

A conveyancer or lawyer will be required to provide a certification that they have taken reasonable steps to verify the identity of the party they represent and that they have retained any supporting evidence.

For a mortgage, a mortgagee will be required to provide a certification that they have taken reasonable steps to verify the identity of the mortgagor and that they have retained the supporting evidence.

Self-represented parties

See Section 8 of this Consultation Paper for the proposed requirements for self-represented parties.

Verification of Identity for Paper Conveyancing Transactions

For a paper conveyancing transaction the following definitions replace those in the VOI Standard in the Participation Rules.

Client Authorisation means a document that is in the form required by the Registrar General by which a party to a paper conveyancing transaction authorises a Subscriber to do one or more things on the party's behalf.

Conveyancing Transaction has the meaning given to it in the ECNL

Person Being Identified means:

- (a) each of the Subscriber's Signers, prior to the initial allocation of the authority to act as a Signer; and
- (b) where the Subscriber is a mortgagee, and the mortgagor (in its capacity as mortgagor) does not have a Representative (a solicitor or conveyancer) acting for them in the mortgage, each mortgagor or their agent at or before the signing of the mortgage or the variation of mortgage; and
- (c) where the Subscriber represents a mortgagee, and the mortgagor (in its capacity as mortgagor) does not have a Representative, each mortgagor or their agent at or before the signing of the mortgage or the variation of mortgage; however, the Subscriber or the Subscriber Agent need not take reasonable steps to verify the identity of each mortgagor or their agent if the mortgagee has already taken reasonable steps to verify the identity of each mortgagor or their agent; and
- (d) for a transfer of mortgage, where the Subscriber is the transferee or where the Subscriber represents the transferee, each mortgagor or their agent who signed the mortgage sought to be transferred; and

- (e) each Client the Subscriber intends to represent or each of their Client Agents at or before the signing of the Client Authorisation; and
- (f) where the Subscriber gives a paper Certificate of Title to any other Person who is not a Subscriber to an ELN, a Representative or an ADI, that Person prior to providing the paper Certificate of Title; and
- (g) where the VOI Standard is used, any Declarant at the face-to-face in-person interview with the Subscriber or the Subscriber Agent.

Signer means a Person authorised by the Subscriber to sign, and where it is required, certify, Documents on behalf of the Subscriber. In NSW a Signer must be an Australian Solicitor or a Licensed Conveyancer where the Subscriber is acting for a client.

Subscriber means an ADI, a legal or conveyancing firm or an Australian Solicitor or a Licensed Conveyancer

Questions

- 3.1 Is it reasonable to introduce VOI requirements for paper conveyancing transactions? If not, why not?
- 3.2 Is the proposed list of Verifiers appropriate? Are there any other categories of persons who should have the authority to verify identity?
- 3.3 Are there any other situations where VOI should be required?
- 3.4 Is the proposed seven year period for retention of documents appropriate? If not why not, and what would be an appropriate period?

4. Certifications

What is proposed

The Registrar General proposes to broaden and align the current Certifications under section 117 of the *Real Property Act 1900* (NSW) with the Certifications required for electronic conveyancing, modified only as necessary for paper conveyancing transactions.

Rationale for proposal

The reforms being proposed will align the requirements for electronic and paper conveyancing transactions and compliment the introduction to paper conveyancing of VOI requirements and Client Authorisations. The broadening of the Certifications will give solicitors, conveyancers, and mortgagees greater certainty when they deal with other parties in conveyancing transactions. Relying parties and the Registrar General can have confidence in and rely on the Certifications provided.

How it will work

Solicitors, conveyancers, and mortgagees will be required to provide the Certifications similar to those set out in Schedule 3 to the MPRs.

For Certifications required for self-represented parties please see section 11 of this consultation paper.

Proposed Certifications for the five most common conveyancing transactions; being a Discharge of Mortgage, Mortgage, Transfer, Caveat and Withdrawal of Caveat are set out in Annexure C.

Questions:

- 4.1 Do you believe it is reasonable to broaden the Certifications required for paper transactions to align with those required for electronic transactions? If not, why not?
- 4.2 Are the proposed persons who can give Certifications appropriate? Are there any other categories of persons who should have the authority to give Certifications?

5. Priority Notices

What is proposed

The Registrar General proposes to introduce Priority Notices as an added safeguard that will assist in protecting parties' interests when moving towards an electronic environment and the current requirement to issue and produce a Certificate of Title is abolished. Amendments will be made to the *Real Property Act 1900* (NSW) to allow for the introduction and use of Priority Notices.

A Priority Notice is a notification of the intended registration of a specified dealing(s) with land, which is lodged with the Registrar General. Once recorded a Priority Notice will temporarily prevent the registration of other dealings with the subject land (with some exceptions).

A Priority Notice is different from a Caveat in that a Caveat prohibits the registration of certain dealings pending the perfection of a claimed estate or interest in land whereas a Priority Notice gives priority to the registration of a specified unregistered dealing. Accordingly, a party to a conveyancing transaction may lodge either a Priority Notice or a Caveat, but not both.

Priority Notices (or settlement notices) can currently be lodged in Tasmania and Queensland. Other Australian jurisdictions are also considering their introduction.

It is proposed to introduce Priority Notices in NSW after the implementation of Release 2 of electronic conveyancing. It is expected that Priority Notices will be widely adopted in NSW and will provide an important risk mitigation measure that will be crucial to consideration of phasing out the issue of Certificates of Title. They will also address risks highlighted by the High Court in *Black v Garnock* [2007] HCA 3 in paper conveyancing¹⁶.

Rationale for proposal

The objectives for introducing Priority Notices include:

- providing greater certainty to the transaction for which priority is reserved;
- alerting interested parties who search the Register to the fact that an intended dealing or transaction is pending; and
- assisting in fraud prevention as details of a pending transaction will appear on a search of the Register and thus increase the likelihood of a fraud being detected.

It is expected that parties gaining an estate or interest in land will seek to protect that estate or interest to the full extent possible by lodging a Priority Notice and therefore the use of Priority Notices will become an integral consideration in prudent conveyancing practice.

How it will work

The following is an outline of how it is proposed that Priority Notices will work.

Priority Notices will be optional

It is proposed that the lodgment of Priority Notices will be optional, at the discretion of the party intending to lodge a dealing or transaction. A decision can be made on a case-by-case basis about whether it would be prudent to lodge a Priority Notice.

While a Priority Notice may be lodged in respect of any dealing (including a plan), their use is expected to be primarily for transactions involving a settlement.

¹⁶ Note that much of the risk highlighted in *Black v Garnock* [2007] HCA 31 is addressed in electronic conveyancing by use of automated checking of the Register prior to settlement and more importantly by making lodgment and settlement part of the same process and eliminating the gap between settlement and lodgment.

Lodging a Priority Notice

It is proposed that a Priority Notice can be lodged by a person (or that person's attorney, solicitor or conveyancer) who has contracted to deal with the registered proprietor of the land or an estate or interest in the land (or a person entitled to deal with the land, estate or interest).

As with existing legislation on Caveats and legislation in other jurisdictions it is intended to have a provision that the Registrar General need not be satisfied that the person lodging a Priority Notice is entitled to do so.

The majority of Priority Notices will be lodged electronically by solicitors, conveyancers and mortgagees. Consideration is being given to limiting lodgment of paper Priority Notices to self-represented parties, who may need to provide identity documentation to the Land Registry prior to acceptance for lodgment.

No Notification of Lodgment of a Priority Notice

It is not proposed that notification of the lodgment of a Priority Notice will be given to any party, including the registered proprietor.

Application of a Priority Notice

It is proposed that the ability to lodge a Priority Notice will extend to all dealing types, although in practice the majority of priority notices are expected to relate to transfers and mortgages.

A Priority Notice will give priority to the registration or recording of the intended dealing(s) identified in the Priority Notice. Any dealing(s) lodged after the Priority Notice, but before the dealing(s) set out in the Priority Notice, will be processed after the dealing(s) set out in the Priority Notice. The Priority Notice will not affect processing of dealing(s) lodged in registrable form before the Priority Notice.

A Priority Notice will operate for a specified period, proposed to be 60 days. During this period the Priority Notice will prevent registration, but not lodgment, of most other dealing(s) affecting an estate or interest in land.

It is proposed that a Priority Notice will not prevent the Registrar General registering, noting, recording, or giving effect to:

- Dealings that are lodged prior to the Priority Notice;
- Dealings that are the subject of the Priority Notice;
- Dealings that are consented to by the lodging party of the Priority Notice;
- 'Priority' type dealings such as Caveats, Court Orders and Writs;
- Statutory Charges, Statutory Orders or Statutory Authorisations.

As stated above, the recording of a Caveat will not prevent the recording of a Priority Notice. Nor will a Priority Notice prevent the recording of a Caveat or another Priority Notice.

A Priority Notice can only be lodged in respect of a whole parcel of land, that is, against the whole of the land in a title or against a separately transferrable parcel within an Auto-Consol Title.

Period of Effectiveness

It is proposed that Priority Notices will be effective for 60 days from the date of lodgment in line with provisions already in place in Tasmania and Queensland, and proposed in South Australia and Victoria. After a Priority Notice expires it will be removed and have no further effect.

Where the 60 day period is insufficient, a second Priority Notice may be registered. However, the second Priority Notice will have effect only from its lodgment date and will not “inherit” the priority of its predecessor. Accordingly, conflicting dealings lodged in registrable form prior to the second Priority Notice will be registered on expiry of the first Priority Notice.

Another option under consideration is likely to be available in South Australia. Under this proposal, a Priority Notice will be able to be extended one time only for a period of 30 days. Unlike lodging a second full Priority Notice the extension will operate to extend the priority of the original notice.

A Priority Notice will cease to have effect once the 60 day period has lapsed and will be removed from the Register.

Content of a Priority Notice

The details that will be required to be included in a Priority Notice are:

- Land Title reference (folio identifier);
- dealings in order for which priority is being reserved;
- associated dealings, where applicable;
- parties receiving the interest, where applicable; and
- lodging party contact details (these are needed for consents but in the case of online lodgment these will be populated on the notice automatically).

To ensure the most effective protection of priority, the details contained in the Priority Notice need to be as complete and accurate as possible as they will not be able to be amended. If necessary the Priority Notice can be withdrawn and a new Priority Notice lodged in its place.

In instances where the Priority Notice details are inaccurate, the following actions may be taken:

- for small discrepancies, the dealings identified in the Priority Notice may be registered and given priority over other dealings lodged but unregistered due to the existence of the Priority Notice;
- for large discrepancies that could be held to be a different interest, the dealings identified in the Priority Notice may not be given priority if there are prior lodged and unregistered dealings. Depending on the circumstances, the dealings may be requisitioned to obtain further information.

Information to be Displayed on the Register

Active Priority Notices are recorded on a Register Search either in the notations section or in the Second Schedule. Withdrawn, expired, completed or cancelled Priority Notices may be shown on a Historical Search if the decision is taken to record them in the Second Schedule.

However, if Priority Notices are treated as an administrative interest and only recorded in the notations section they will not be shown on a Historical Search. Copies of Priority Notices will be available as a searchable product.

Provision for Removal of Priority Notice by Registrar General

It is proposed that the Registrar General will have discretionary power to cancel a Priority Notice. An aggrieved person who is impacted by the Priority Notice will be able to apply to the Registrar General, who will then call on the lodging party of the Priority Notice to provide evidence of the pending transaction.

A court removal process will also be allowed for in legislation.

When Priority Notices will Cease to Have Effect

The Priority Notice will cease to have effect once:

- it has expired; or
- the dealings the subject of the Priority Notice are registered; or
- the Priority Notice is withdrawn by the lodging party; or
- the Priority Notice is cancelled by the Registrar General (whether by application to the Registrar General or by a Court Order).

Civil Liability

Civil liability provisions will be included in the *Real Property Act 1900* (NSW) to allow an affected person to take action against a person who wrongfully or without reasonable cause lodges a Priority Notice or refuses or neglects to withdraw a Priority Notice.

Supporting Evidence

No supporting evidence will be required or accepted with the lodgment of a Priority Notice. Supporting evidence may be requested by the Registrar General if required, for example to investigate whether a Priority Notice should be cancelled or remain on the Register.

Lodgment of Multiple Priority Notices

The lodgment of multiple Priority Notices over the same title will be dealt with in order of lodgment.

Registration of Dealings Lodged Following a Priority Notice

Where a Priority Notice is recorded and subsequent dealing(s) not the subject of the Priority Notice are lodged, those dealing(s) will remain unprocessed (unless they fall into one of the exception categories listed above) until the Priority Notice no longer has effect. If at that stage the dealing can be registered it will be processed. If it can no longer be registered, it will be rejected.

Questions

- 5.1 Should Priority Notices be optional? If not, why not?
- 5.2 Should Priority Notices extend to all dealing types or only to transfers and mortgages?
- 5.3 Is the list of dealings that are not affected by a Priority Notice outlined above appropriate? If not, what should be added to or removed from the list?
- 5.4 Is 60 days the appropriate period of time for a Priority Notice? If not, what should that period be?
- 5.5 Should Priority Notices be able to be extended? If so:
 - For how long?
 - Should the extension give priority over a dealing lodged prior to the extension?

6. Phasing out Certificates of Title

What is proposed

The Registrar General proposes to stop issuing Certificates of Title when safeguards including VOI, Client Authorisation, changes to Certifications and Priority Notices are implemented.

Legislative amendment will be required to the *Real Property Act 1900* (NSW) to support this change by removing the right a registered proprietor or registered mortgagee currently has to request the issue of a Certificate of Title¹⁷.

Rationale for the proposal

Currently, the Registrar General allows registered first mortgagees who are Subscribers to electronic conveyancing to elect not to have a Certificate of Title issued on registration of an electronically lodged mortgage. Instead, a note is recorded on title stating the party who holds Control of the Right to Deal with the land, (namely the registered first mortgagee). This is expected to be extended in the future to allow eligible first mortgagees to elect not to hold Certificates of Title following the registration of any dealing. The current practice of issuing a paper Certificate of Title, and producing that Certificate to the Registrar General to enable the registration of most transactions, is incompatible with an electronic form of conveyancing.

Certificates of Title have historically played the following roles:

- *Authentication*: while the Certificate of Title is NOT an identity document it has been used as a means of identifying the relinquishing party in a transaction;
- *Evidence of entitlement*: possession of the Certificate of Title is used as evidence of a right to deal with the land;
- *Passing of interest*: passing control of the Certificate of Title from one party to another at the time of settlement (as a form of baton) protects the interest of the acquiring party between settlement and registration by ensuring that another dealing transferring that estate or interest does not gain priority (and also prevents multiple sales of the land); and
- *Confirmation of registration*: the issue of a Certificate of Title acts as confirmation of registration of the conveyancing instrument.

While possession of the Certificate of Title may be treated as evidence of ownership and hence the right to deal, it does not prove that the person transacting with the property is the person named in the Register as the registered proprietor (or otherwise entitled to deal); it only shows that the person has access to the Certificate of Title. Despite the inherent weakness of relying on Certificates of Title, the perception of their importance in a conveyancing transaction is seen to contribute to the mitigation of fraudulent transactions.

Fraudulent transactions have been entered into by parties who have dishonestly obtained or improperly used genuine Certificates of Title and, prior to introduction of advanced security features in Certificates of Title, there were instances of forged Certificates of Title.

Any proposal to discontinue the issue and use of Certificates of Title in the conveyancing process must deal with the perceived role that the Certificate of Title has in the prevention of fraud and ensure that sufficient alternate arrangements are in place to maintain community confidence in the security of conveyancing and the Torrens Register.

Use of the Certificate of Title to identify the transacting party, and as evidence of their right to deal with the land, is therefore inappropriate. The Registrar General is consequently proposing that parties have their identity formally verified according to the VOI Standard and that their right to deal with the land should be established by other means.

¹⁷ See section 33(5) of the *Real Property Act 1900*.

Priority Notices will prevent the registration of inconsistent dealings with the land and will therefore replace the “baton” role of Certificates of Title.

Additionally, there will likely be an alternative means of confirming registration after Certificates of Title are abolished.

How it will work

Removal of Certificates of Title

It is proposed that the requirement for the Registrar General to issue and for registered proprietors to produce Certificates of Title will be removed. Additionally, all existing Certificates of Title will be deemed to have no legal effect.

Prior to the removal of Certificates of Title, consultation will occur to ensure that all those who deal with property, as well as the public generally, understand the changes. Those who have equitable mortgages secured by way of depositing the Certificate of Title with the mortgagee, and also parties to contracts or arrangements dependant on Certificates of Title, will therefore have sufficient opportunity to make the necessary arrangements to protect their interests.

As they will no longer have any legal effect, Certificates of Title may be disposed of by any person having one in their possession, or retained by owners for commemorative purposes.

Additional Safeguards

It is considered that the reforms proposed in this paper, particularly with regard to the standardisation of VOI and the introduction of Priority Notices will provide the necessary safeguards to provide the Registrar General, industry and the public with the confidence to allow the removal of Certificates of Title.

Currently, lodging parties in paper transactions cannot be readily authenticated. However, Priority Notices for both paper and electronic transactions will be lodged with a requirement that solicitors and conveyancers verify the identity of their clients and their right to enter into the dealings listed in the Priority Notice¹⁸.

Questions:

- 6.1 Do the proposed safeguards outlined in this consultation paper adequately replace the role of the Certificate of Title?
- 6.2 Are there any other options that should be considered?
- 6.3 What safeguards need to be in place prior to discontinuing the issue of Certificates of Title?
- 6.4 Should Certificates of Title of some sort continue to be issued to registered proprietors but have a purely commemorative role, that is, no legal standing in the conveyancing process?

¹⁸ See part 10 of this paper for arrangements for self-represented parties.

7. Consents by Mortgagees to Conveyancing Transactions

What is proposed

Currently, mortgagees routinely require as a condition of the mortgage that the mortgagor must obtain their consent to any dealing with the land registered during the currency of the mortgage. Also, mortgagees are required to sign plans affecting land that is subject to a mortgage.

In NSW the mortgagee's right to enforce this consent provision, effectively by refusing to produce the relevant Certificate of Title to allow registration of the subsequent dealing, is recognised in the case of *Hypac Electronics Pty Ltd (In Liq) v Registrar-General* [2005] NSWSC 1213.

Section 96(2) of the *Conveyancing Act 1919* gives the mortgagor of Torrens title land a right to have the title produced by the mortgagee to allow registration of authorised dealings. Prior to the *Hypac* decision it was considered that "authorised dealings" meant dealings authorised under the Torrens system of land transactions, ie, as virtually equivalent in meaning to a registrable dealing. However, in the *Hypac* case Hamilton J ruled that authorised dealing "ought to receive the interpretation that the dealing is permitted or not forbidden as between the mortgagor and the mortgagee." Further, His Honour went on to say that the "requirement for authorisation applies whether the transaction involved is voluntary or compelled."

In the majority of cases the consent of mortgagees is both sought and given. In practice a mortgagee's consent is provided by producing the Certificate of Title to LPI to enable registration of a subsequent dealing.

The Registrar General proposes that when Certificates of Title are no longer issued, the current consent requirement should be replaced with one of the alternatives outlined below.

OPTIONS

Legislation will provide that any subsequent dealing with an estate or interest:

- 1) Continue with the current process for electronic CoRD consents to be provided where no Certificate of Title is issued; or
- 2) Remove the requirement for mortgagees to consent prior to registration of dealings with land subject to a mortgage.

If the second option is adopted there are two sub options:

- a) Registered interests are binding on the mortgagee despite consent not having been provided; or
- b) Any subsequent dealing will not be binding on a mortgagee if the mortgagee has not consented to the instrument in writing and that the mortgagee may apply for the removal of such a dealing where it is proved to the Registrar General's satisfaction that no written consent was provided.

Rationale for the proposal

The Registrar General prefers Option 2(a) or Option 1. Option 2 (b) is not acceptable as it introduces a form of deferred indefeasibility for interests registered without the written consent of a mortgagee. This option would also require a complicated process for requests by a mortgagee in possession or selling upon default to remove interests not consented to, notices to affected parties and appeals to the Court where there is conflict about the provision of consent.

It is proposed that the consent of the mortgagee should not be required as consent requirements can be cumbersome and incompatible with the efficiencies gained through electronic conveyancing and removal of the Certificate of Title requirements for all parties, including mortgagees. Also, first registered mortgagees are already afforded priority and protection of their interest against subsequent interests by legislation. The Registrar General considers that the requirement to obtain the first mortgagee's consent would unnecessarily reduce the benefits of electronic conveyancing and the removal of Certificates of Title.

How it will work

Transactions such as second mortgages, leases or subdivisions of land will be able to be lodged without the production of the Certificate of Title or a form of consent being obtained from the first mortgagee.

Any consent provisions in mortgages would be enforced outside of the registration system.

Questions:

- 7.1 Does removal of the practice of producing the Certificate of Title, without any additional form of consent from a prior interest holder, simplify existing processes?
- 7.2 Will mortgagees continue to be adequately protected? If not, why not?
- 7.3 Do you believe that the proposed changes simplify existing processes relating to consents? If not, why not?

8. Common Mortgage Form

What is proposed

A nationally consistent Mortgage form is currently being developed. The Registrar General proposes to have a single Mortgage form for registration of all mortgages whether lodged electronically or in paper.

This form will either be signed by both the Mortgagor and the Mortgagee, or alternatively a process similar to that applying in NEC will apply. That is, the Mortgagor will not sign the Mortgage presented for registration but the Mortgagee or their representative will certify that they hold a valid mortgage from the mortgagor, on the same terms as the Mortgage lodged.

Legislative amendment will be required to introduce this proposal.

Rationale for the proposal

The ability to present a Mortgage for registration without the Mortgagor's signature but the inclusion of an additional certification will simplify the process for the registration of Mortgages and align all paper and electronic mortgages lodged for registration.

The rationale for adopting this in paper conveyancing is that, initially at least, a conveyancer, solicitor or mortgagee may not know if a particular transaction is going to progress in paper or electronically and thus the same form can be used for both purposes.

How it will work

The Mortgagee or their representative may lodge a Mortgage for registration without the Mortgagor's signature. The Mortgagee or their representative will need to hold as evidence and provide a certification to the effect that they hold a Mortgage signed by the Mortgagor on the same terms as the Mortgage presented for registration. Some limitations will apply for self-represented private Mortgagees.

Questions

- 8.1 Do you believe that it is a good idea to remove the Mortgagor's signature from the Mortgage form presented for registration? If not, why not?
- 8.2 Should the option to lodge a Mortgage without the Mortgagor's signature but with a certification by the Mortgagee that it holds a valid Mortgage from the Mortgagor, on the same terms as the Mortgage presented for registration be available to any Mortgagee?
- 8.3 If not, what is an appropriate limitation, for example, limit the option to APRA regulated mortgagees?

9. Mortgagee provisions

National VOI requirements are already in place for electronic conveyancing transactions including a requirement for Subscribers to identify their clients and Mortgagees to identify the Mortgagor.

Also, section 56C of the *Real Property Act 1900* requires Mortgagees to take reasonable steps to identify the identity of the Mortgagor regardless of whether the Mortgage is processed electronically or in paper. It also gives the Registrar General power to cancel a Mortgage if he or she is of the opinion that a Mortgagee has failed to comply with this requirement and the execution of the Mortgage involved fraud.

When this requirement was introduced on 1 November 2011, Mortgagees were allowed to temporarily continue to identify Mortgagors using procedures developed for compliance with the *Commonwealth Anti-Money Laundering and Counter-Terrorism Financing Act 2006* pending finalisation of the National VOI Standard for electronic conveyancing that was, at the time, still being developed. This accommodation was made to allow movement from AMLCTF to the new National VOI Standard without the cost and disruption of changing systems to comply with a temporary requirement.

The National VOI Standard has now been finalised and is set out in the Participation Rules made under the Electronic Conveyancing National Law (NSW).

The *Real Property Regulation* is being amended to apply the National VOI Standard for the purposes of section 56C from 1 September 2014 so that the same requirements apply whether the Mortgage is lodged electronically or on paper.

Consideration is also being given to requiring that a stand-alone Discharge of Mortgage, that is a Discharge that is not lodged as part of another transaction, be lodged by the Mortgagee. This requirement would only be introduced after Certificates of Title are completely removed and there is no requirement for the discharging mortgagee to deliver a Certificate of Title.

This will be more efficient than the current process used by many financial institutions, whereby the Certificate of Title and Discharge of Mortgage are often handed to the registered proprietor with an expectation that the registered proprietor will lodge the documentation for registration. The requirement would ensure that Discharges of Mortgage are recorded on the title for the land affected.

10. Self-represented Parties

What is proposed

Self-represented parties will also need to have their identity verified. A self-represented party is a party (other than a financial institution) who is not represented by a lawyer or conveyancer in a paper conveyancing transaction. The Registrar General proposes to introduce VOI requirements for self-represented parties at the same time as VOI generally (see Part 3 of this paper) and is looking at two options as to how this can be achieved.

Self-represented parties will need to have their identity verified and either:

- provide the required supporting evidence and Certifications with the real property documents at lodgment: or
- have their identity verified and the execution of their paper conveyancing transaction witnessed by an authorised verifier.

Client Authorisations have no relevance to self-represented parties as they only apply when a solicitor or conveyancer is representing a client.

Rationale for the proposal

A small volume of paper conveyancing transactions are undertaken by individuals on their own behalf. Transactions typically submitted by self-represented parties include survivorship applications, caveats and withdrawals of caveat. The proposed changes are required to ensure consistency and minimise the risk of fraudulent or unauthorised paper conveyancing transactions being registered.

How it will work

Option 1

A self-represented party will need to have his/her identity verified in accordance with the VOI Standard set out in Annexure B. As per the standard they will be required to lodge the supporting evidence with the real property document for verification by the Registrar General.

A self-represented party will need to make the following Certifications:

- that they are the person identified on the instrument;
- that they have obtained and attached the prescribed document verifying their identity;
- that they have the legal authority to enter into the transaction; and
- that they have taken reasonable steps to ensure that the registry instrument or document is correct and complies with relevant legislation and any prescribed requirement.

Option 2

A self-represented party will need to have his/her identity verified and the execution of their paper conveyancing transaction witnessed by an authorised verifier. The authorised verifier will be required to provide an identity certification (consistent with paragraph 9 of the VOI Standard - Use of a Subscriber Agent), which will then need to be lodged with the paper conveyancing transaction documents.

For example, in a Notice of Death, the applicant (the surviving proprietor) will be required to have his/her identity verified, execute the Notice and have it witnessed by the authorised verifier, obtain an identity certification from the authorised verifier and present the certification to the Registrar General when lodging the Notice of Death.

Questions:

- 10.1 Are the proposed requirements for self-represented parties reasonable? If not, why not?
- 10.2 Will the proposed requirements for self-represented parties assist conveyancers and solicitors in dealing with self-represented parties? If not, why not?
- 10.3 Which of the two options do you prefer? Why?
- 10.4 Are there any other requirements that should be placed on self-represented parties? If so, what?
- 10.5 Who should be authorised verifiers for the purpose of verifying the identity of self-represented parties?

11. Powers of Attorney to Effect Transactions with Land

What is proposed

The Registrar General proposes to introduce VOI requirements for principals of powers of attorney as a pre-requisite to the registration of a Power of Attorney. A Power of Attorney is required to be registered where it is used to execute any memorandum, dealing or other instrument affecting land¹⁹.

A principal, in relation to a power of attorney, means the person giving the power.

Rationale for the proposal

VOI of the principal of a power of attorney is an important fraud mitigation strategy and is essential to ensure that the use of Powers of Attorney does not become a weak point in the process and attract fraudulent transactions.

How it will work

The reform will apply to Powers of Attorney made after the commencement date of the reform and where the Power is to be used to effect a transaction with land.

Principals will need to have their identity verified in accordance with the VOI Standard set out in the Participation Rules made under the Electronic Conveyancing National Law (NSW) outlined in Annexure B. Evidence of the verification of identity, in the form of a certificate by the identifier, will need to be provided to the Registrar General at the time the Power of Attorney is lodged for registration in the General Register of Deeds.

¹⁹ See s. 52 *Powers of Attorney Act 2003*

12. Miscellaneous Amendments

Caveat national and electronic addresses for service

It is proposed to expand the options for an address for service of notices on a caveator to include national and electronic options.

A caveator will be required to specify for the purposes of the service of notices in relation to the caveat—

- (a) an address in Australia;
- (b) a number for a facsimile machine in Australia;
- (c) a way of receiving notices electronically (for example, an email address).

Annexure A – Client Authorisation form

The Client Authorisation form appears on the next 2 pages.

CLIENT AUTHORISATION

When this form is signed, the Subscriber is authorised to act for the Client in a Conveyancing Transaction or Conveyancing Transactions.

Subscriber Reference: _____

CLIENT DETAILS	CLIENT 1	CLIENT 2	
	NAME	_____	_____
	ACN/ARBN	_____	_____
	ADDRESS	_____	_____

TRANSACTION DETAILS	AUTHORITY TYPE <input type="checkbox"/> SPECIFIC AUTHORITY <input type="checkbox"/> STANDING AUTHORITY <input type="checkbox"/> BATCH AUTHORITY <small>(details of transactions to be provided below)</small> <small>AUTHORITY EXPIRATION DATE: __/__/__</small> <small>(details to be attached)</small> <small>or on revocation.</small> <small>(details to be attached when available)</small>		
	CONVEYANCING TRANSACTION(S) 1	CONVEYANCING TRANSACTION(S) 2	
	PROPERTY ADDRESS	_____	_____
	LAND TITLE REFERENCE(S) <small>(and/or property description)</small>	_____	_____
	TRANSACTION TYPE(S) <input type="checkbox"/> TRANSFER <input type="checkbox"/> MORTGAGE <input type="checkbox"/> CAVEAT <input type="checkbox"/> PRIORITY/ SETTLEMENT NOTICE <input type="checkbox"/> DISCHARGE/ RELEASE OF MORTGAGE <input type="checkbox"/> WITHDRAW CAVEAT <input type="checkbox"/> OTHER	<input type="checkbox"/> TRANSFER <input type="checkbox"/> MORTGAGE <input type="checkbox"/> CAVEAT <input type="checkbox"/> PRIORITY/ SETTLEMENT NOTICE <input type="checkbox"/> DISCHARGE/ RELEASE OF MORTGAGE <input type="checkbox"/> WITHDRAW CAVEAT <input type="checkbox"/> OTHER	
SPECIAL INSTRUCTIONS	_____		

CLIENT AUTHORISATION AND SIGNING	CLIENT 1 / CLIENT AGENT 1	CLIENT 2 / CLIENT AGENT 2
	<p>I CERTIFY that:</p> <p>(a) I am the Client or Client Agent; and</p> <p>(b) I have the legal authority to instruct the Subscriber in relation to the Conveyancing Transaction(s); and</p> <p>(c) If I am acting as a Client Agent that I have no notice of the revocation of my authority to act on behalf of the Client.</p> <p>I AUTHORISE the Subscriber to act on my behalf, or where I am a Client Agent to act on behalf of the Client, in accordance with the terms of this Client Authorisation and any Participation Rules and any Prescribed Requirement to:</p> <p>(a) sign Documents on my behalf as required for the Conveyancing Transaction Type; and</p> <p>(b) submit or authorise submission of Documents for Lodgement with the relevant Land Registry; and</p> <p>(c) authorise any financial settlement involved in the Conveyancing Transaction(s); and</p> <p>(d) do anything else necessary to complete the Conveyancing Transaction(s).</p>	
	CAPACITY: _____ DATE / / PRINT NAME: _____ <div style="text-align: right; margin-top: 20px;"> SIGN HERE </div>	CAPACITY: _____ DATE / / PRINT NAME: _____ <div style="text-align: right; margin-top: 20px;"> SIGN HERE </div>

SUBSCRIBER DETAILS AND SIGNING	SUBSCRIBER	SUBSCRIBER AGENT (if used)	
	NAME	_____	_____
	ABN/ACN/ARBN	_____	_____
	ADDRESS	_____	_____
	<p>I CERTIFY that reasonable steps have been taken to ensure that this Client Authorisation was signed by each of the Persons named above as Client or Client Agent.</p>		
DATE / / PRINT NAME: _____ <div style="text-align: right; margin-top: 20px;"> SIGN HERE </div>	DATE / / PRINT NAME: _____ <div style="text-align: right; margin-top: 20px;"> SIGN HERE </div>		

Terms of this Client Authorisation

1. What is Authorised

The Client authorises the Subscriber to act on behalf of the Client in accordance with the terms of this Client Authorisation and any Participation Rules and any Prescribed Requirement to:

- (a) sign Documents on the Client's behalf as required for the Conveyancing Transaction Type; and
- (b) submit or authorise submission of Documents for Lodgement with the relevant Land Registry; and
- (c) authorise any financial settlement involved in the Conveyancing Transaction(s); and
- (d) do anything else necessary to complete the Conveyancing Transaction(s).

The Client acknowledges that the Client is bound by any Documents required in connection with a Conveyancing Transaction that the Subscriber signs on the Client's behalf in accordance with this Client Authorisation.

2. Mortgagees

Where:

- (a) the Subscriber represents the Client in the Client's capacity as mortgagee and
- (b) the Client represents to the Subscriber that the Client has taken reasonable steps to verify the identity of the mortgagor.

the Client indemnifies the Subscriber for any loss resulting from the Client's failure to take reasonable steps to verify the identity of the mortgagor

3. Revocation

This Client Authorisation may be revoked by either the Client or the Subscriber giving notice in writing to the other that they wish to end this Client Authorisation.

4. Privacy and Client Information

The Client consents to the Subscriber disclosing to the Duty Authority, the ELNO, the Land Registry and the Registrar any information relating to the Client that is required to complete a Conveyancing Transaction, including the Client's Personal Information.

5. Applicable Law

This Client Authorisation is governed by the law in force in the Jurisdiction in which the Property is situated. The Client and the Subscriber submit to the non-exclusive jurisdiction of the courts of that place.

6. Meaning of Words Used in this Client Authorisation

In this Client Authorisation, capitalised terms have the meaning set out below:

Australian Legal Practitioner has the meaning given to it in the relevant legislation for the Jurisdiction.

Batch Authority means an authority for the Subscriber to act for the Client in a batch of Conveyancing Transactions described in a schedule attached to this Client Authorisation.

Capacity means the role of the Client Agent (for example an attorney or a director of a company).

Caveat means a Document under the Land Titles Legislation giving notice of a purported claim to an interest in land that may have the effect of an injunction to stop the registration of a Registry Instrument in the Titles Register.

Client means the Person or Persons named in this Client Authorisation.

Client Agent means a Person authorised by a Client to act as the Client's agent but does not include the Subscriber acting solely as the Client's Representative.

Conveyancing Transaction has the meaning given to it in the ECNL.

Discharge /Release of Mortgage means a Registry Instrument that discharges or releases a Mortgage.

Document has the meaning given to it in the ECNL.

Duty Authority means the State Revenue Office of the Jurisdiction in which the Property is situated.

ECNL means the Electronic Conveyancing National Law as adopted or implemented in a Jurisdiction by the application law, as amended from time to time.

ELNO means Electronic Lodgment Network Operator and has the meaning given to it in the ECNL.

Jurisdiction has the meaning given to it in the ECNL.

Land Registry means the agency of a State or Territory responsible for maintaining the Jurisdiction's Titles Register(s).

Land Titles Legislation has the meaning given to it in the ECNL.

Land Title Reference means the relevant Land Registry's unique identifier(s) for the Property.

Licensed Conveyancer means a Person licensed or registered under the relevant legislation of the Jurisdiction and includes a real estate settlement agent for the purposes of the Settlement Agents Act 1981 (WA).

Mortgage means a Registry Instrument by which a Person charges an estate or interest in land as security.

Participation Rules has the meaning given to it in the ECNL.

Person has the meaning given to it in the ECNL.

Personal Information has the meaning given to it in the *Privacy Act 1988* (Cth).

Prescribed Requirement means any Published requirement of the Registrar that Subscribers are required to comply with.

Publish means, for any information, to publish the information on the Registrar's website.

Registrar has the meaning given to it in the ECNL.

Registry Instrument has the meaning given to it in the ECNL.

Representative means a Subscriber who acts on behalf of a Client.

Transfer includes the preparation of all documents required to effect a purchase or sale of land and the liaison with, where relevant, any proposed mortgagee.

Special Instructions means any instructions by the Client to the Subscriber not specifically provided for in this Client Authorisation.

Specific Authority means an authority for the Subscriber to act for the Client in completing the Conveyancing Transactions described in this Client Authorisation.

Standing Authority means an authority for the Subscriber to act for the Client for a period of time set out in the Special Instructions of this Agreement.

Subscriber is the Person named in this Agreement and has the meaning given to it in the ECNL or for a paper Conveyancing Transaction is an Australian Legal Practitioner or a Licensed Conveyancer.

Subscriber Agent means a Person authorised by a Subscriber to act as the Subscriber's agent.

Titles Register has the meaning given to it in the ECNL.

Withdrawal of Caveat means a Document under the Land Titles Legislation which removes a Caveat.

Annexure B – Verification of Identity Standard

1. Definitions

In this Verification of Identity Standard capitalised terms have the meanings set out below:

ADI or authorised deposit-taking institution has the meaning given to it in the *Banking Act 1959* (Cth).

Adult has the meaning given to it in the ECNL.

Australian Consular Officer has the meaning given to it in the *Consular Fees Act 1955* (Cth).

Australian Diplomatic Officer has the meaning given to it in the *Consular Fees Act 1955* (Cth).

Australian Legal Practitioner has the meaning given to it in the [insert Jurisdiction's legislation].

Australian Passport means a passport issued by the Australian Federal Government.

Bank Manager means a Person appointed to be in charge of the head office or any branch office of an ADI carrying on business in Australia under the *Banking Act 1959* (Cth).

Category means the categories of identification Documents set out in Verification of Identity Standard paragraph 3, as amended from time to time.

Client means a Person who has or Persons who have appointed a Subscriber as their Representative pursuant to a Client Authorisation.

Client Authorisation has the meaning given to it in the ECNL.

Commonwealth has the meaning given to it in the ECNL.

Community Leader means, in relation to an Aboriginal or Torres Strait Islander community:

- (a) a Person who is recognised by the members of the community to be a community elder; or
- (b) if there is an Aboriginal council that represents the community, an elected member of the council; or
- (c) a member, or a member of staff, of a Torres Strait Regional Authority established under the *Aboriginal and Torres Strait Islander Commission Act 2005* (Cth); or
- (d) a member of the board, or a member of staff, of Indigenous Business Australia established under the *Aboriginal and Torres Strait Islander Commission Act 2005* (Cth); or
- (e) a member of the board, or a member of staff, of an Indigenous Land Corporation established under the *Aboriginal and Torres Strait Islander Commission Act 2005* (Cth); or
- (f) a member, or a member of the staff, of an Aboriginal Land Council established under the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth).

Competent Officer has the meaning given to it in the *Defence Force Regulations 1952* (Cth).

Court Officer means a judge, master, magistrate, registrar or clerk, or the chief executive officer, of any court in Australia.

Defence Force has the meaning given to it in the *Defence Act 1903* (Cth).

Doctor means a Person who is registered under any Commonwealth, State or Territory law as a practitioner in the medical profession.

ECNL means the Electronic Conveyancing National Law as adopted or implemented in a Jurisdiction by the Application Law, as amended from time to time.

Foreign Country has the meaning given to it in the ECNL.

Identifier Declaration means the declaration set out in Verification of Identity Standard paragraph 4.

Identity Declarant means a Person providing an Identifier Declaration.

Insurance Rules means the rules set out in Schedule 6, as amended from time to time.

Land Council Officeholder means a chairperson or deputy chairperson of an Australian land council or land and sea council established under any Commonwealth, State or Territory law.

Licensed Conveyancer means a Person licensed or registered under the [*insert Jurisdiction's legislation*].

Local Government Officeholder means a chief executive officer or deputy chief executive officer of a local government.

Member of the Defence Force has the meaning given to it in the *Defence Force Regulations 1952* (Cth).

Nurse means a Person registered under any Commonwealth, State or Territory law as a practitioner in the nursing and midwifery profession.

Person has the meaning given to it in the ECNL.

Person Being Identified means any of the Persons required to be identified under Participation Rule 6.5.1 (a) to (f).

Photo Card is a card issued by any State or Territory showing a photograph of the holder and enabling the holder to evidence their age and/or their identity.

Police Officer means an officer of any Commonwealth, State or Territory police service.

Public Servant means an employee or officer of the Commonwealth, a State or a Territory.

Representative means a Subscriber who acts on behalf of a Client.

Relative means a Person's spouse or domestic partner or a child, grandchild, sibling, parent or grandparent of the Person or of the Person's spouse or domestic partner.

Signer means a User authorised by the Subscriber to Digitally Sign, and where it is required, certify, electronic Documents on behalf of the Subscriber.

State means New South Wales, Queensland, South Australia, Tasmania, Victoria and Western Australia.

Statutory Declaration has the meaning given to it in the ECNL.

Subscriber has the meaning given to it in the ECNL.

Subscriber Agent means a Person authorised by a Subscriber to act as the Subscriber's agent.

Territory has the meaning given to it in the ECNL.

Verification of Identity Standard means this verification of identity standard, as amended from time to time.

2. Face-to-face regime

- 2.1. The verification of identity must be conducted during a face-to-face in-person interview between the Subscriber or the Subscriber Agent and the Person Being Identified.
- 2.2. Where Documents containing photographs are produced by the Person Being Identified, the Subscriber or the Subscriber Agent must be satisfied that the Person Being Identified is a reasonable likeness (for example the shape of his or her mouth, nose, eyes and the position of his or her cheek bones) to the Person depicted in those photographs.
- 2.3. Where a Client Authorisation is required, the Subscriber or the Subscriber Agent must ensure that the completed Client Authorisation is signed:
 - (i) by the Person Being Identified in the presence of the Subscriber or the Subscriber Agent; and
 - (ii) by the Subscriber or the Subscriber Agent.

3. Categories of identification Documents

- 3.1. The Subscriber or the Subscriber Agent must ensure that the Person Being Identified produces original Documents in one of the following Categories, starting with Category 1.
- 3.2. The Subscriber or the Subscriber Agent must be reasonably satisfied that a prior Category cannot be met before using a subsequent Category.
- 3.3. The Subscriber or the Subscriber Agent must sight the originals of all Documents from Categories 1, 2, 3, 4, or 5 produced by the Person Being Identified.

3.4. The Documents produced must be current.

Category	Minimum Document Requirements
For Persons who are Australian citizens or residents:	
1	Australian Passport or foreign passport and an Australian visa grant notice evidencing an Australian resident visa <u>plus</u> Australian drivers licence or Photo Card <u>plus</u> change of name or marriage certificate if necessary
2	Australian Passport or foreign passport and an Australian visa grant notice evidencing an Australian resident visa <u>plus</u> full birth certificate or citizenship certificate or descent certificate <u>plus</u> Medicare or Centrelink or Department of Veterans' Affairs card <u>plus</u> change of name or marriage certificate if necessary
3	Australian drivers licence or Photo Card <u>plus</u> full birth certificate or citizenship certificate or descent certificate <u>plus</u> Medicare or Centrelink or Department of Veterans' Affairs card <u>plus</u> change of name or marriage certificate if necessary
4	(a). Identifier Declaration <u>plus</u> full birth certificate or citizenship certificate or descent certificate <u>plus</u> Medicare or Centrelink or Department of Veterans' Affairs card <u>plus</u> change of name or marriage certificate if necessary. (b). Identifier Declaration by a Person specified in Verification of Identity Standard paragraph 4.4(e) <u>plus</u> Medicare or Centrelink or Department of Veterans' Affairs card <u>plus</u> change of name or marriage certificate if necessary. <i>Note: refer to Verification of Identity Standard paragraph 4</i>
For Persons who are not Australian citizens or residents:	
5	(a). Foreign passport plus another form of government issued photographic identity Document plus change of name or marriage certificate if necessary (b). Foreign passport <u>plus</u> full birth certificate <u>plus</u> another form of government issued identity Document <u>plus</u> change of name or marriage certificate if necessary

4. The Identifier Declaration

4.1. Where the requirements of:

- (a) Categories 1 to 3 cannot be met, Category 4(a) may be used; and
 - (b) Category 4(a) cannot be met, Category 4(b) may be used,
- including the provision of an Identifier Declaration in accordance with this paragraph.

4.2. The Subscriber or the Subscriber Agent must ensure that both the Person Being Identified and the Identity Declarant attend the same face-to-face in-person interview with the Subscriber or the Subscriber Agent.

- 4.3. The Subscriber or the Subscriber Agent must verify the identity of the Identity Declarant in accordance with this Verification of Identity Standard except that the Subscriber or Subscriber Agent cannot utilise Category 4 as set out in Verification of Identity Standard paragraph 3.
- 4.4. The Subscriber or the Subscriber Agent must undertake reasonable enquiries to satisfy themselves that the Identity Declarant is:
- (a) an Adult; and
 - (b) an individual who has known the Person Being Identified for more than 12 months; and
 - (c) not a Relative of the Person Being Identified; and
 - (d) not a party to the Conveyancing Transaction the Person Being Identified has or is entering into; and
 - (e) where Category 4(b) is used, an Australian Legal Practitioner, a Bank Manager, Community Leader, Court Officer, Doctor, Land Council Officeholder, Licensed Conveyancer, Local Government Officeholder, Nurse, Public Servant or Police Officer.
- 4.5. The Subscriber or the Subscriber Agent must ensure that the Identity Declarant provides a Statutory Declaration detailing the following:
- (a) the Identity Declarant's name and address; and
 - (b) the Identity Declarant's occupation; and
 - (c) the Identity Declarant's date of birth; and
 - (d) the nature of the Identity Declarant's relationship with the Person Being Identified; and
 - (e) that the Identity Declarant is not a relative of the Person Being Identified; and
 - (f) that the Identity Declarant is not a party to the Conveyancing Transaction the Person Being Identified has or is entering into; and
 - (g) the length of time that the Identity Declarant has known the Person Being Identified; and
 - (h) that to the Identity Declarant's knowledge, information and belief the Person Being Identified is who they purport to be; and
 - (i) where Category 4(b) is used, that the Identity Declarant is an Australian Legal Practitioner, a Bank Manager, Community Leader, Court Officer, Doctor, Land Council Officeholder, Licensed Conveyancer, Local Government Officeholder, Nurse, Public Servant or Police Officer.

5. Execution by Body Corporate

Where a Client Authorisation or mortgage is to be executed by a body corporate, the Subscriber or the Subscriber Agent must:

- (a) confirm the existence and identity of the body corporate by conducting a search of the Records of the Australian Securities and Investments Commission or other regulatory body with whom the body corporate is required to be registered; and
- (b) take reasonable steps to establish who is authorised to sign or witness the affixing of the seal on behalf of the body corporate; and

- (c) verify the identity of the individual or individuals signing or affixing the seal on behalf of the body corporate in accordance with the Verification of Identity Standard.

[Note: *body corporate* includes an incorporated association.]

6. Execution by an Individual as attorney

Where a Client Authorisation or mortgage is to be executed by an Individual as attorney under a power of attorney, the Subscriber or the Subscriber Agent must:

- (a) confirm from the [registered] power of attorney the details of the attorney and the Client Party; and
- (b) take reasonable steps to establish that the Conveyancing Transaction(s) is authorised by the power of attorney; and
- (c) verify the identity of the attorney in accordance with the Verification of Identity Standard.

7. Execution by Body Corporate as attorney

Where a Client Authorisation or mortgage is to be executed by a body corporate as attorney under a power of attorney, the Subscriber or the Subscriber Agent must:

- (a) confirm from the [registered] power of attorney the details of the attorney and the Client Party; and
- (b) take reasonable steps to establish that the Conveyancing Transaction(s) is authorised by the power of attorney; and
- (c) comply with Verification of Identity Standard paragraph 5.

[Note: *body corporate* includes an incorporated association.]

8. Verification of identity conducted in a Foreign Country

8.1. A verification of identity conducted in a Foreign Country must be conducted by either:

- (a) Subscriber or Subscriber Agent; or
- (b) an Australian Consular Officer or an Australian Diplomatic Officer; or
- (c) where the Person Being Identified is a Member of the Australian Defence Force, a Competent Officer.

8.2. Category 4 cannot be used for verifications of identity conducted in a Foreign Country.

9. Use of Subscriber Agent

Where the Subscriber uses the Verification of Identity Standard and engages a Subscriber Agent to verify the identity of a Person Being Identified and any Identity Declarant and witness the signing of the properly completed Client Authorisation where applicable, the Subscriber must:

- (a) appoint a Subscriber Agent who the Subscriber reasonably believes is reputable, competent and insured in compliance with the Insurance Rules; and

- (b) ensure that the Subscriber Agent does not limit its liability for negligence to less than the amount specified in paragraph 1.2(b) of the Insurance Rules or for fraud to less than the amount specified in paragraph 2.2(b) of the Insurance Rules; and
- (a) direct the Subscriber Agent to conduct the verification of identity in accordance with this Verification of Identity Standard; and
- (d) where a Client Authorisation is required, receive from the Subscriber Agent the completed Client Authorisation signed:
 - (i) by the Person Being Identified in the presence of the Subscriber Agent; and
 - (ii) by the Subscriber Agent; and
- (e) receive from the Subscriber Agent copies of the Documents produced to verify the identity of the Person Being Identified and any Identity Declarant signed, dated and endorsed as a true copy of the original by the Subscriber Agent, and a certification in the following form:

"I, [full name of the Subscriber Agent], of [address of the Subscriber Agent] being a [occupation of the Subscriber Agent] hereby certify that:

- a) the identification relates to [full name of the Person Being Identified or the Identity Declarant]; and
- b) the identification was carried out on [date]; and
- c) the original current identification Documents as listed below were produced to me and copies of these Documents endorsed by me as true copies are attached to this certification; and
- d) the verification of identity was conducted in accordance with the Registrar's Verification of Identity Standard [; and]

[I witnessed [full name of the Person] execute the completed Client Authorisation].

Date:..... Subscriber Agent

List of identification Documents produced (see c) above):

Description of identity Documents produced and sighted	Page number in set of copies
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E.g. Australian Passport	1
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10. Further checks

The Subscriber or the Subscriber Agent must undertake further steps to verify the identity of the Person Being Identified or the Identity Declarant where the Subscriber or the Subscriber Agent knows or ought reasonably to know that:

- (a) any identity Document produced by the Person Being Identified or the Identity Declarant is not genuine; or
- (b) any photograph on an identity Document produced by the Person Being Identified or the Identity Declarant is not a reasonable likeness of the Person Being Identified or the Identity Declarant; or
- (c) if it would otherwise be reasonable to do so.

11. Previous verification of identity

The Subscriber or the Subscriber Agent need not verify the identity of the Person Being Identified in accordance with this Verification of Identity Standard if the Subscriber or the Subscriber Agent has a face-to-face in-person interview with the Person Being Identified and has within the previous 24 months verified the identity of the Person Being Identified in accordance with this Verification of Identity Standard.

Annexure C - Certifications

Discharge of Mortgage (Mortgagee signing on its own behalf)

1. The Mortgagee has obtained, considered and securely retained originals or copies of all supporting evidence for this Registry Instrument or Document.
2. The Mortgagee has taken reasonable steps to ensure that this Registry Instrument or Document is correct and compliant with relevant legislation and any Prescribed Requirement.

Discharge of Mortgage (representative signing on behalf of Mortgagee)

1. The representative has taken reasonable steps to verify the identity of the Mortgagee.
2. The representative holds a properly completed Client Authorisation for the Conveyancing Transaction including this Registry Instrument or Document.
3. The representative has obtained, considered and securely retained originals or copies of all supporting evidence for this Registry Instrument or Document.
4. The representative has taken reasonable steps to ensure that this Registry Instrument or Document is correct and compliant with relevant legislation and any Prescribed Requirement.

Mortgage (Mortgagee signing on its own behalf)

1. The Mortgagee has obtained, considered and securely retained originals or copies of all supporting evidence for this Registry Instrument or Document.
2. The Mortgagee has taken reasonable steps to ensure that this Registry Instrument or Document is correct and compliant with relevant legislation and any Prescribed Requirement.
3. The representative or the Mortgagee it represents:
 - a) has taken reasonable steps to verify the identity of the Mortgagor; and
 - b) holds a valid mortgage from the mortgagor, on the same terms as this Registry Instrument.

Mortgage (representative signing on behalf of Mortgagee)

1. The representative has taken reasonable steps to verify the identity of the Mortgagee.
2. The representative holds a properly completed Client Authorisation for the Conveyancing Transaction including this Registry Instrument or Document.
3. The representative has obtained, considered and securely retained originals or copies of all supporting evidence for this Registry Instrument or Document.
4. The representative has taken reasonable steps to ensure that this Registry Instrument or Document is correct and compliant with relevant legislation and any Prescribed Requirement.
5. The representative or the Mortgagee it represents:
 - a) has taken reasonable steps to verify the identity of the Mortgagor; and
 - b) holds a valid mortgage from the mortgagor, on the same terms as this Registry Instrument.

Transfer (representative signing on behalf of Transferee)

1. The representative has taken reasonable steps to verify the identity of the Transferee.
2. The representative holds a properly completed Client Authorisation for the Conveyancing Transaction including this Registry Instrument or Document.
3. The representative has obtained, considered and securely retained originals or copies of all supporting evidence for this Registry Instrument or Document.
4. The representative has taken reasonable steps to ensure that this Registry Instrument or Document is correct and compliant with relevant legislation and any Prescribed Requirement.

Transfer (representative signing on behalf of Transferor)

1. The representative has taken reasonable steps to verify the identity of the Transferor.
2. The representative holds a properly completed Client Authorisation for the Conveyancing Transaction including this Registry Instrument or Document.
3. The representative has obtained, considered and securely retained originals or copies of all supporting evidence for this Registry Instrument or Document.
4. The representative has taken reasonable steps to ensure that this Registry Instrument or Document is correct and compliant with relevant legislation and any Prescribed Requirement.

Caveat (representative signing on behalf of Caveator)

1. The representative has taken reasonable steps to verify the identity of the Caveator.
2. The representative has obtained, considered and securely retained originals or copies of all supporting evidence for this Registry Instrument or Document.
3. The representative has taken reasonable steps to ensure that this Registry Instrument or Document is correct and compliant with relevant legislation and any Prescribed Requirement.

Withdrawal of Caveat (representative signing on behalf of Caveator)

1. The representative has taken reasonable steps to verify the identity of the Caveator.
2. The representative holds a properly completed Client Authorisation for the Conveyancing Transaction including this Registry Instrument or Document.
3. The representative has obtained, considered and securely retained originals or copies of all supporting evidence for this Registry Instrument or Document.
4. The representative has taken reasonable steps to ensure that this Registry Instrument or Document is correct and compliant with relevant legislation and any Prescribed Requirement.