

Presentation for the surveying industry



Role of the Office of the Registrar General

Regulator

Overseeing NSW LRS operations and connections with other public and private parties

Torrens
Assurance Fund

Maintenance of the TAF, including administering and defending claims

Policy and Reform

Advising on land title policy matters and driving reforms in land titling, eConveyancing and digital survey plans

Review Body

Review of NSW LRS decisions under s 121 RPA (administrative reviews)

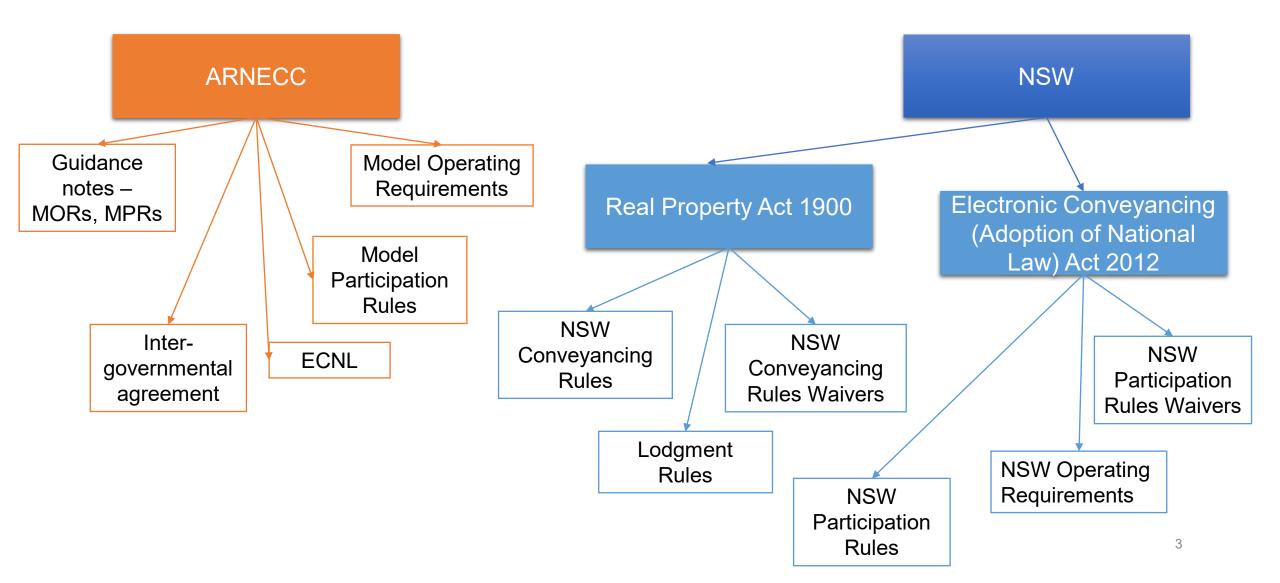
Independent Arbitrator

Arbitration of disputed title boundaries

What is eConveyancing?

- A digital solution allowing parties to complete stages of a conveyancing transaction online.
- A digital solution delivering the following benefits:
 - Reduced Risk of Fraud
 - Reduced Risk of Errors
 - Increased Transparency
- A reflection of the NSW Government's commitment to leading digital innovation.

eConveyancing legislative framework (NSW)



Who are Subscribers?

- The ECNL defines a Subscriber to mean "a person authorised under a participation agreement to use an ELN to complete conveyancing transactions on behalf of another person or on their own behalf"
- In order to lodge a document electronically you must be a registered Subscriber to an Electronic Lodgment Network Operator.
- In order to become a registered Subscriber you must satisfy the eligibility requirements set out in the NSW Participation Rules.



ABN

Status

Character

Insurance

Business Name

Eligibility Criteria

Eligibility Criteria

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Character Requirements – Subscriber Eligibility Criteria

The Subscriber must not be subject to or have been subject to:

- i. an Insolvency Event within the last five years; or
- ii. a conviction for fraud or an indictable offence which may impact on the conduct of a Conveyancing Transaction or a conviction for any offence for dishonesty against any law in connection with business, professional or commercial activities; or
- iii. disqualification from managing a body corporate under the Corporations Act; or
- iv. any determination of a disciplinary action of any government or governmental authority or agency, or any regulatory authority of a financial market or a profession, which may impact on the conduct of a Conveyancing Transaction; or
- v. any refusal of an application to subscribe to an electronic Lodgment service; or
- vi. any current suspension under Participation Rule 9.2 for Suspension Events (a)(i) to (v) in any Jurisdiction; or
- vii. any termination under Participation Rule 9.3 for Termination Events (a)(i) to (v) and (b) in any Jurisdiction

The Subscriber must take reasonable steps to ensure that the Subscriber's principals and officers who have access to the ELN or control over Persons who have access to the ELN and Subscriber administrators are not and have not be subject to:

- an Insolvency Event within the last five years; or
- ii. a conviction for fraud or an indictable offence which may impact on the conduct of a Conveyancing Transaction or a conviction for any offence for dishonesty against any law in connection with business, professional or commercial activities; or
- iii. disqualification from managing a body corporate under the Corporations Act; or
- iv. any determination of a disciplinary action of any government or governmental authority or agency, or any regulatory authority of a financial market or a profession, which may impact on the conduct of a Conveyancing Transaction; and

The Subscriber must take reasonable steps to ensure that the Subscriber's principals and officers who have access to the ELN or control over Persons who have access to the ELN and Subscriber administrators are not and have not been principal, or officer or Subscriber Administrator of a Subscriber that is or has been subject to:

- any refusal of an application to subscribe to an electronic Lodgment service, unless that principal, Officer or Subscriber Administrator did not materially contribute to the refusal of the application; or
- ii. any current suspension under Participation Rule 9.2 for Suspension Events (a)(i) to (v) in any Jurisdiction, unless that principal, Officer or Subscriber Administrator did not materially contribute to the Suspension Event; or
- iii. termination under Participation Rule 9.3 for Termination Events (a)(i) to (v) and (b) in any Jurisdiction, unless that principal, Officer or Subscriber Administrator did not materially contribute to the Termination Event

Character Requirements – Subscriber Eligibility Criteria

A Subscriber is deemed to comply with participation Rule 4.3.1(a) where the Subscriber is:

- a) an ADI; or
- b) an Australian Legal Practitioner or a Law Practice; or
- c) a Licensed Conveyancer; or
- d) the Crown in right of the Commonwealth, a State or a Territory; or
- e) a Public Servant acting on behalf of the Crown in right of the Commonwealth, a State or a Territory; or
- f) a holder of an Australian Credit Licence; or
- g) a Local Government Organisation; or
- h) a Statutory Body,

A Subscriber's principal, director, partner, officer or Subscriber Administrator is deemed to comply with participation Rule 4.3.1(b) where the Subscriber is:

- a) an officer or employee of an ADI; or
- b) an Australian Legal Practitioner; or
- c) a Licensed Conveyancer; or
- d) a Public Servant acting on behalf of the Crown in right of the Commonwealth, a State or a Territory; or
- e) A fit and proper Person for the purpose of performing duties in relation to the credit activities authorised by an Australian Credit Licence; or
- f) A Local Government Officer acting on behalf of a Local Government Organisation; or
- g) a Statutory Body acting on behalf of a statutory body.

ABN

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Insurance

Business Name

Eligibility Criteria

Insurance Requirements – Subscriber Eligibility Criteria

(Insurance Rule 1.1) – Subscriber must maintain Professional indemnity insurance:

- a) which specifically names the Subscriber as being insured; and
- b) with an Approved Insurer; and
- c) for an insured amount of at least \$1,500,000 per claim (including legal Costs); and
- d) having an excess per claim of no greater than \$20,000; and
- e) having an annual aggregate amount of not less than \$20,000,000; and
- f) which includes coverage for Conveyancing Transactions; and
- g) the terms of which do not limit compliance with Insurance Rules 1.1(a) to (f).

(Insurance Rule 1.2) – Subscriber must maintain Fidelity insurance:

- a) which specifically names the Subscriber as being insured; and
- b) with an Approved Insurer; and
- c) for an insured amount of at least \$1,500,000 per claim (including legal Costs); and
- d) having an excess per claim of no greater than \$20,000; and
- e) having an annual aggregate amount of not less than \$20,000,000; and
- f) which provides coverage for third party claims arising from dishonest and fraudulent acts; and
- g) which includes coverage for Conveyancing Transactions; and
- h) the terms of which do not limit compliance with Insurance Rules 1.2(a) to (g)

Insurance Requirements – Subscriber Eligibility Criteria

(Insurance Rule 1.3) – If a Subscriber does not comply with Insurance Rules 1.1 and 1.2, the Subscriber must maintain Professional Indemnity Insurance:

- a) which specifically names the Subscriber as being insured; and
- b) with an Approved Insurer; and
- c) for an insured amount of at least \$1,500,000 per claim (including legal Costs); and
- d) having an excess per claim of no greater than \$20,000; and
- e) having an annual aggregate amount of not less than \$20,000,000; and
- f) which provides coverage for third party claims arising from dishonest and fraudulent acts; and
- g) which includes coverage for Conveyancing Transactions; and
- h) The terms of which do not limit compliance with Insurance Rules 1.3(a) to (g)

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Eligibility Criteria

Four pillars of eConveyancing

VOI

VOI Standard was carried out or evidence of reasonable steps

Right to deal

Entitlement of a person to be a party to a conveyancing transaction

Client authorisations

Authorisation given to the Subscriber to transact on behalf of the client

Supporting evidence

Supporting evidence to support the steps are kept for at least seven years

Verification of identity

- You must take reasonable steps to verify the identity of your client either by:
 - applying the VOI Standard (deemed to be reasonable steps)
 - The VOI standard requires a face-toface in-person interview
 - in some other way that constitutes reasonable steps
- You may use an Identity Agent or agent to undertake the VOI



Right to deal

- Entitlement of a person to be a party to a conveyancing transaction
- Verification of right to deal is closely linked to VOI
- Must ensure that the person who is your client or the intended mortgagor has the right to deal with the subject property
- Evidence of possession of rates notice, contract for sale
- Ensure client is a legal person (not, for example, a superannuation fund)
- See ARNECC Guidance Note #4 https://www.arnecc.gov.au/publications/mpr guidance notes



Client Authorisation

- Authorisation for solicitor to digitally sign documents, lodge electronically and authorise the associated financial transaction
- Must be signed by the client/client agent before a Subscriber can digitally sign any documents
- It is separate to a retainer
- It is not a power of attorney (so no registration is required)
- Must be substantially in the form set out in the schedule 4
- See ARNECC Guidance Note #1 https://www.arnecc.gov.au/publications/m
 pr guidance notes

rivacy Collection	CLIENT AUTHORIS It is signed, the Representative is authorised to act for Statement: The information in this form is collected by searchable registers and indexes.	or the Client in a Conveyancing Transaction(s).
epresentative Refe	rence: BLOGGS-16-4-15	
3	CLIENT 1	CLIENT 2
NAME	FREDERICK BLOGGS	FREDA BLOGGS
ACN/ARBN		
NAME ACN/ARBN ADDRESS	11/53 ALBERT ST, BRISBANE	11/53 ALBERT ST, BRISBANE
AUTHORITY TYPE	✓ SPECIFIC AUTHORITY (set out conveyancing transaction details below) STANDING AUTHOR ends on revocation or exit of the conveyancing transaction (tick relevant conveyancing)	xpiration date:// (attach details pf
	CONVEYANCING TRANSACTION(S) 1	CONVEYANCING TRANSACTION(S) 2
PROPERTY ADDRESS	11/53 ALBERT ST, BRISBANE	10/100 QUEEN ST, BRISBANE
LAND TITLE	71011681	
REFERENCE(S) (and/or property description)	LOT 1 ON RP 1569	
CONVEYANCING	✓ TRANSFER	✓ TRANSFER
PROPERTY ADDRESS LAND TITLE REFERENCE(S) (and/or property description) CONVEYANCING TRANSACTION(S)	PRIORITY/ SETTLEMENT RELEASE OF OF CAVEAT NOTICE MORTGAGE	PRIORITY/ SETTLEMENT DISCHARGE/ WITHDRAWAL OF RELEASE OF CAVEAT NOTICE MORTGAGE
	OTHER	☐ OTHER
ADDITIONAL INSTRUCTIONS	SALE OF THIS PROPERTY	PURCHASE OF THIS PROPERTY
	CLIENT 1 / CLIENT AGENT 1	CLIENT 2 / CLIENT AGENT 2
	I CERTIFY that:	
	(a) I am the Client or Client Agent; and	
	(b) I have the legal authority to instruct the Representative in relation to the Conveyancing Transaction(s); and	
	(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.	
	I AUTHORISE the Representative 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:	
	(a) sign Documents on my behalf as required for the Conveyancing Transaction(s); and	
	(b) submit or authorise submission of Documents for lodgment 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).	
	E RE	w w

Retention of evidence

- You must retain evidence supporting:
 - Client Authorisation
 - Verification of identity
 - Right to deal
 - any evidence required by the Duty Authority, and
 - Any other Prescribed Requirements.
- See ARNECC Guidance Note #5 https://www.arnecc.gov.au/publications/mpr guidance
 e notes



Certifications

 The Subscriber certifies that they have fulfilled their obligations (VOI, Client Authorisation, right to deal, retention of evidence, compliance with laws and prescribed requirements) in the workspace when digitally signing and lodging the dealing or document.

SCHEDULE 3 - CERTIFICATION RULES

- The Certifier has taken reasonable steps to verify the identity of the [transferor/transferee/mortgagor/mortgagee/caveator/applicant/covenantor/covenantee/enc umbrancer/encumbrancee/grantor/grantee/lienor/lessor/lessee/receiving party/relinquishing party] or his, her or its administrator or attorney.
- The Certifier holds a properly completed Client Authorisation for the Conveyancing Transaction including this Registry Instrument or Document.
- 3 The Certifier has retained the evidence supporting this Registry Instrument or Document.
- The Certifier has taken reasonable steps to ensure that this Registry Instrument or Document is correct and compliant with relevant law and any Prescribed Requirement.
- 5 The Certifier, or the Certifier is reasonably satisfied that the mortgagee it represents,:
 - has taken reasonable steps to verify the identity of the mortgagor or his, her or its administrator or attorney; and
 - (b) holds a mortgage granted by the mortgagor on the same terms as this Registry Instrument or Document.

Subscriber Compliance Examinations



- Section 33 of the Electronic Conveyancing National Law allows for Registrar General to audit users of the eConveyancing system
- Purpose is to assist Subscribers in meeting their obligations and responsibilities under the Participation Rules and to build trust and confidence in the ELN
- Random audit conducted by NSW Land Registry Services on behalf of the Registrar General
- Checking that VOI, right to deal and client authorisation form are done correctly
- Checking that subscriber has retained the evidence of support
- Failure to comply with a compliance request can result in suspension or termination of a Subscriber.

Other obligations



- Comply with an ELNO's Subscriber Review Process
- Comply with an ELNO's security policy
- Train and monitor users
- Safekeeping of digital certificates



Suspension and termination events

1 Suspension Events

The following are Suspension Events:

- (a) the Registrar knows or has reasonable grounds to suspect that the Subscriber:
 - is in material breach of any of the Subscriber's obligations under the Participation Rules; or
 - has or may have acted fraudulently in a way which may impact on a Conveyancing Transaction; or
 - (iii) has or may have acted negligently in a way which may impact on a Conveyancing Transaction; or
 - (iv) poses a threat to the operation, security, integrity or stability of the ELN; or
 - (v) has otherwise engaged in conduct contrary to the interests of other Subscribers or the Registrar, which may impact on a Conveyancing Transaction; or
- the Subscriber's purported payment of any Land Registry Fees is unpaid or dishonoured and the Subscriber fails to remedy the non-payment Promptly; or
- the Subscriber fails, without reasonable excuse, to comply with a notice served under the Compliance Examination Procedure; or
- (d) the Subscriber fails, without reasonable excuse, to produce Documents within a time specified in a written request from the Registrar; or
- the Subscriber fails, without reasonable excuse, to comply with a written direction of the Registrar given to the Subscriber or to a class of Subscribers to which the Subscriber belongs; or
- (f) the Subscriber fails, without reasonable excuse, to comply with the ELNO's Subscriber Review Process.

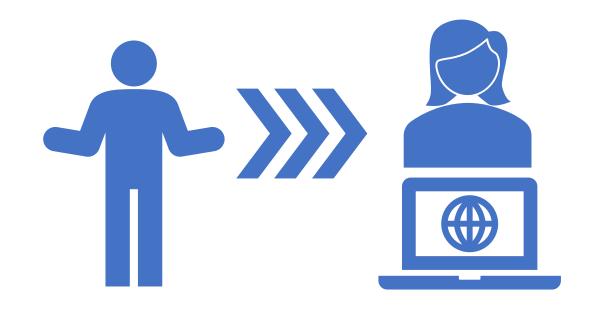
2 Termination Events

The following are Termination Events:

- (a) the Registrar knows or has reasonable grounds to believe that the Subscriber:
 - is in material breach of any of the Subscriber's obligations under the Participation Rules; or
 - has or may have acted fraudulently in a way which may impact on a Conveyancing Transaction; or
 - has or may have acted negligently in a way which may impact on a Conveyancing Transaction; or
 - (iv) poses a threat to the operation, security, integrity or stability of the ELN; or
 - (v) has otherwise engaged in conduct contrary to the interests of other Subscribers or the Registrar, which may impact on a Conveyancing Transaction; or
- (b) the Subscriber is subject to an order or directions of a court, tribunal, professional regulator or disciplinary body, which may impact on a Conveyancing Transaction; or
- (c) the Subscriber is not reinstated within a reasonable time following a suspension of the Subscriber.

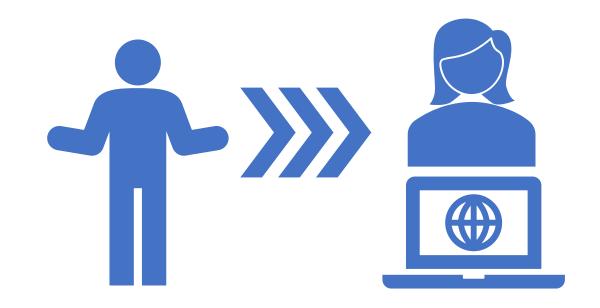
Alternative options for surveyors Liaise with lawyer/conveyancer

- Only Subscribers and their Users can access ELNs to lodge dealings and documents electronically.
- Surveyor can liaise with the lawyer/conveyancer to lodge the dealing



Alternative options for surveyors E-Lodgment Subscribers

- A conveyancer or lawyer (Instructing Practitioner) may instruct a conveyancer or lawyer who is a Subscriber to act on their behalf in the electronic workspace
- This includes creating and digitally signing electronic Registry Instruments and other electronic instruments
- The Subscriber that is instructed is referred to as the 'e-Lodgment Subscriber'.
- Remember that the eSettlement Subscriber is subject to the requirements of the ECNL, the Participation Rules and the professional regulatory framework



Alternative options for surveyors Section 88b instruments

- Upon registration of a plan, a section 88b instrument creates interests, such as easements, profit à prendre, restrictions on use of land, and positive covenants
- A section 88b instrument can also release an easement or profit à prendre



Electronic signing

As a temporary measure during COVID-19 restrictions:

- The Electronic Transactions Act 2000 applies to the signing of land instruments lodged for registration
 Sch 1 of the Conveyancing Rules
- A person can witness the signing of a document by audio visual link

Electronic Transactions Act 2000

 A copy of a document signed electronically may be lodged as an original of the document

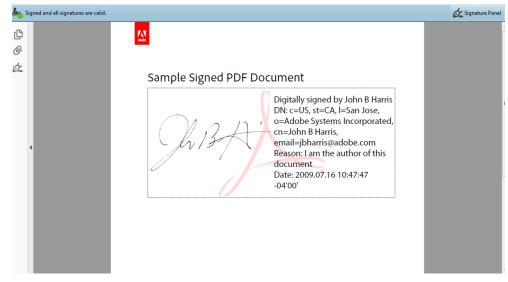
Version 3 of Conveyancing Rules (COVID-19 Pandemic) Amendment extends the changes until 31 December 2021



Requirements for a valid electronic signature

- Identity a method is used to identify the person and to indicate the person's intention in respect of the information communicated, and
- 2. Reliability the method used must be as reliable as appropriate for the purpose, and
- **3. Consent** the parties must agree to the use of electronic signatures and to the method used (for further detail.

s 9 Electronic Transactions Act 2000.



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A land dealing signed electronically must include a statement to the effect of:

Electronic signature of me, [insert full name], affixed by me, or at my direction, on [insert date]

Moving to 100% digital

Topics to be covered in this part of the presentation

- eConveyancing: where we are now
 - Electronic dealings
 - Mandates
 - Waivers
- The end goal: 100% eConveyancing
 - Final deliverables
 - Effect of changes
- Real Property Amendment (Certificate of Title) Bill 2021
 - Cancellation of CTs and CoRD
 - Streamline electronic process

Current status

Electronic dealings

- Mainstream dealings, that is transfers, mortgages, discharge of mortgages, caveats and withdrawal
 of caveats and transmission applications make up around 85% of all lodgment types. On average
 about 90% of mainstream dealings are being lodged electronically (approximately 59,000).
- Those dealings in connection with a sale and purchase (transfer, discharge and mortgage) are close to 98% electronic lodgment.
- Mainstream dealings can be lodged in paper only be if a waiver applies. On average around 50 paper lodgements a month which rely on a waiver.
- The remaining 10% or so of dealings lodged in paper are due to the dealing being out of scope, such as part of land, or sub-interest. NSWLRS and ELNOs are working to remove scope limitations.
- Apart from leases, the remaining 100 or so dealings are grouped together and known as "residual documents" e.g. positive covenant, change of name, lapsing notices, variation of easement, etc.
- Leases have undergone a recent change due to industry feedback, whereby only the lessor needs to be represented. Electronic leases have experienced a low take up for a while, however new changes have already seen an increase in take up.

Mandate

- Under the Conveyancing Rules, the Registrar General can mandate when a dealing must be lodged electronically. The first tranche of mandates started in 2016 when all discharge of mortgages must be lodged electronically.
- In 1 July 2018, the Registrar General mandated that all transfers, mortgages and discharge of mortgages must be lodged electronically if lodged as standalone (i.e. not in combination with any other dealing).
- On 1 July 2019, all mainstream dealings (standalone or in combination) must be lodged electronically.
- On 22 March 2021 all mainstream dealings, twenty six residual documents and including notice of death, transfer without monetary consideration and transfer of lease, mortgage or charge (collectively known as Required Dealings) were mandated to be lodged electronically.
- There are 24 residual documents currently available electronically which are yet to be mandated.
- There remains thirty three other residual documents which are not yet available electronically.
- Conveyancing Rules here: https://www.registrargeneral.nsw.gov.au/publications/conveyancing-rules

Waivers

- As of 22 March 2021 all mainstream dealings and twenty six residual documents have been declared to be Required Dealings. This means that they must be lodged electronically. The list of Required Dealings is on the Schedule of Dealings page on the Office of the Registrar General website: https://www.registrargeneral.nsw.gov.au/property-and-conveyancing/eConveyancing/schedule-of-edealings
- The Required Dealings waiver grants exceptions to the mandatory electronic lodgement of dealings, if certain scenarios apply. Those persons who are not legally represented can continue to lodge most dealings in paper.
- Any dealing that affects only part of the land cannot be lodged electronically. Dealings affecting some sub-interests cannot be lodged electronically.
- Required Dealings waiver is here:
 https://www.registrargeneral.nsw.gov.au/ data/assets/pdf_file/0006/967200/Conveyancing-Rules-Waiver-CR1-2021.pdf

Goal: 100% digital lodgment by end of 2021

Dependencies

- All dealings available to be lodged electronically.
- All dealings mandated to be lodged electronically.
- Cancellation of certificates of title and CoRD.

Effect

- No longer able to lodge in paper
- All dealings must come in via an ELNO (PEXA or Sympli)
- Subscriber compliance strictly enforced

Dependencies

Dealings

The remaining residual documents to be made available electronically are due to be delivered on 8 May 2021. From this date, all dealings in NSW will be available electronically.

Mandate

On a date to be chosen by the Registrar General, the remaining residual documents (totalling 57) to be declared as a "Required Dealing". Under Rule 8.8 of the Conveyancing Rules, three months notice must be given before a dealing can be declared as a Required Dealing.

Abolish CTs

Amendment of legislation awaiting Parliament approval, which will remove all references to CTs and CoRD on a date to be proclaimed by the Registrar General. The Bill also makes other changes to remove barriers to electronic lodgment.

Effect

No paper

Once all dependencies enacted, NSW LRS will no longer accept paper dealings. The Conveyancing Rules pursuant to s.12E of the Real Property Act will determine all classes of dealings must be lodged electronically. The Registrar General may refuse to accept or register, or may reject, a conveyancing transaction that does not comply with the requirements of the Conveyancing Rules

https://www.registrargeneral.nsw.gov.au/publications-and-rules/conveyancing-rules

ELNO

All dealings must be lodged by a Subscriber through an ELNO. Personal lodgements will no longer be supported. The current Conveyancing Rules waivers allowing unrepresented parties to lodge in paper will be revoked.

Compliance

Due to the move to 100% digital lodgment, Subscribers will be subject to stricter compliance requirements. Audits will move from the current educational approach to a strict enforcement and targeted approach. Subscriber compliance is there to provide confidence, integrity and accountability in the 100% digital lodgment framework.

Real Property Amendment (Certificates of Title) Bill 2021

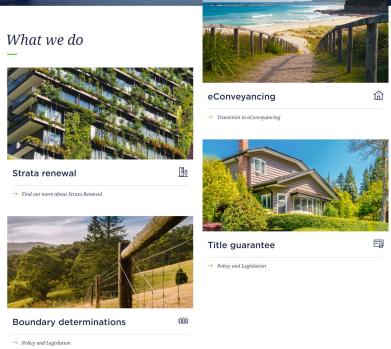
Proposals in the Bill

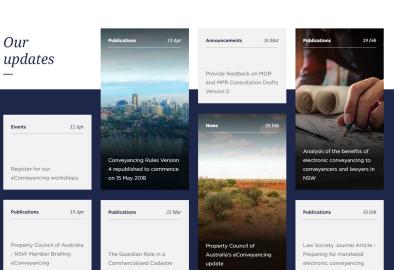
- The Bill will amend to the *Real Property Act* and about 30 other pieces of legislation (e.g. *Strata Development Act, Crown Lands Act, Conveyancing Act,* etc) to remove references to:
 - Certificates of Title
 - CoRD (control of the right to deal)
 - Attachments and evidential requirements for some dealings strengthened such as consents from mortgagees required for all transfers creating easements and profits a prendre
 - Removing language that points to a paper process, such as uplifting of documents, substituting dealings with another paper dealing and duplicate dealings.
 - The issue of an Information Notice which replicates the information on the certificate of title so customers don't lose that tool.
 - Legislation to allow the Registrar General to declare the date when CTs and CoRD are cancelled. At this stage aiming by Q4 this calendar year.

Real Property Amendment (Certificates of Title) Bill 2021

Effect of the Bill when passed and enacted

- A paper certificate of title ceases to be a legal document.
- The Registrar General is no longer required to issue a paper certificate of title, or require its production on lodgment of a plan or dealing.
- Parties are no longer required to produce the paper certificate of title for any sale or purchase of land or as par of a settlement.
- People holding a paper certificate of title don't have to do anything. They can keep it or destroy it.
- Authorised Deposit Taking Institutions (ADIs) will no longer be issued with CoRD. ADIs will no longer require to provide CoRD for lodgment of a plan or dealing.
- Consents where required by legislation or the Registrar General Guidelines must be provided where necessary.
- Future proofed the language in the Act to allow for innovations when they are ready, such as the
 ability to satisfy requisitions electronically and the ability to amend dealings in the workspace.
- The Torrens Register has, and always will be, the single source of truth of a persons ownership or interest in land.





Resources

Office of the Registrar General:

- Visit the ORG website
 - www.registrargeneral.nsw.gov.au
- Email ORG
 - ORG-Admin@customerservice.nsw.gov.au
- Subscribe to ORG emails
 - http://www.registrargeneral.nsw.gov.au/contact-us

ARNECC:

- Model Participation Rules: https://www.arnecc.gov.au/regulation/participation_ru les_by_jurisdiction/new_south_wales
- Model Participation Rules Guidance Notes: https://www.arnecc.gov.au/publications/mpr_guidance_notes

