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## Office of the Registrar General - eConveyancing monthly update

**November 2018**

Topics covered in this edition:

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- *Competition in the Operator market*
- *Electronic leases ('eLeases') available soon*
- *Important questions from practitioners*
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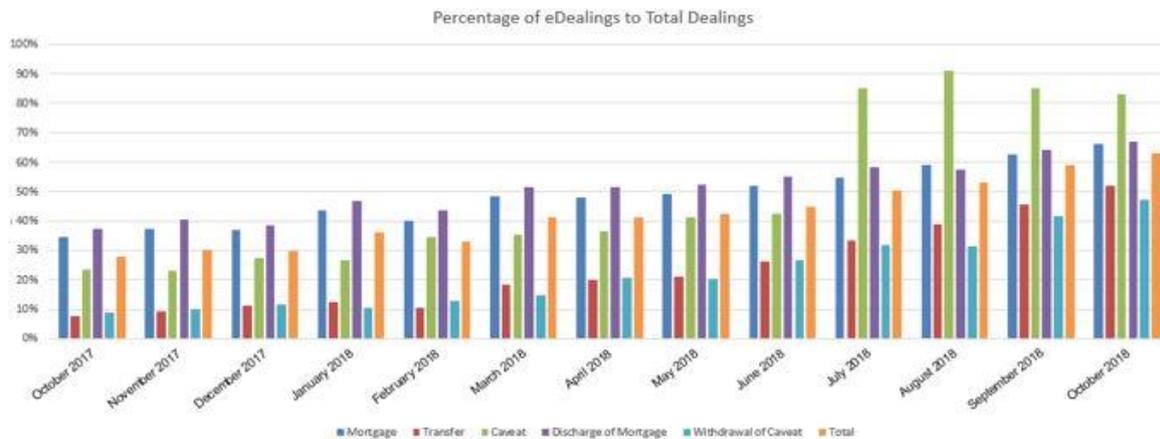
**Dear colleagues**

### **Almost two-thirds of possible conveyancing lodgments now electronic**

NSW is fast moving towards digital conveyancing. Take-up has been rising steadily since around February 2017—when fewer than 5 per cent of eligible transfers were done electronically.

In October 2018, 63 per cent of all possible dealings were lodged electronically. This included 52% of transfers. In addition:

- 66% of mortgages;
- 83% of caveats;
- 67% of discharges of mortgage; and
- 47% of withdrawals of caveat.



At the current rate, by year's end we expect around 70 per cent of all possible lodgments to be electronic. This means the longer you continue to transact in paper the more difficult it will become as your colleagues on the other side will be choosing to complete the transaction electronically.

Thank you again for the steps you are taking to reorganise your business and your teams around eConveyancing. We don't underestimate the effort this involves—but the gains for all of us are substantial. eConveyancing saves time, results in fewer errors, is more transparent, more accessible to users—and ultimately delivers a more efficient and secure outcome for buyers and sellers of land.

#### *Competition in the Operator market*

As paper conveyancing is phased out altogether in NSW in around 8 months, many of you are asking the Office of the Registrar General (ORG) about the steps we are taking to facilitate a competitive Electronic Lodgment Network Operator (ELNO) market.

For competition to work properly in the eConveyancing operator market, it's important that more than one company can provide the relevant services at the same time – known as competitive 'interoperability'. Interoperability is the ability of different organisations, products or systems to work together seamlessly to provide a service without additional effort on the part of the consumer or end-user.

We are working with the Australian Registrars National eConveyancing Council (ARNECC), current and potential ELNOs, the Law Society, Australian Institute of Conveyancers (NSW) and NSW Land Registry Services to develop a true model of competition, as soon as possible.

This must be a solution that is seamless for practitioners and financial institutions, that is secure, and always retain the consumers' interests as priority. We will continue to update you on progress. In the meantime, I would be grateful to hear your [views on interoperability](#) directly.

#### **Electronic leases ('eLeases') available soon**

Every new release brings new opportunities for practitioners to go electronic. Since eConveyancing started back in 2013, many of you have been calling for the ability to transact leases electronically. In NSW, we register close to 35,000 leases a year.

On 3 December 2018, eLeases will go live in NSW. We will publish a circular on eLeases shortly explaining what an eLease is, and any exclusions that apply. It will not be mandatory to lodge a lease electronically. However, an eLease will be particularly handy for those who are buying or selling commercial and retail premises, securing a tenant at the same time and wish to do the whole transaction electronically.

Next year other lease types will also be available electronically, such as variation of lease and surrender of lease.

### **Important questions from practitioners**

We want to share with you some of the most frequently asked questions in the last month, and our answers—all of which are important for you to know.

1. *We are a panel firm acting for a number of smaller ADIs, and hold a number of paper titles that were converted to eCTs. What do we do with the paper titles?*

**Answer:** The paper certificate of title no longer has any legal effect. You can retain it, send it back to the mortgagee, or destroy it. However, please make sure if the paper title was part of a transaction, you retain it for at least seven years as part of the evidence you are required to keep. The bulk conversion that occurred in September is not considered to be a 'transaction'.

2. *Does a transfer which alters the tenancy pursuant to a Local Court Order or severance of joint tenancy need to be lodged electronically?*

**Answer:** No, any transfer altering tenancy, or a transfer severing joint tenancy (Form 01TJ) can be lodged in paper for the time being. We are still assessing whether these dealings will be required to be lodged electronically after 1 July 2019.

3. *I'm acting on the sale of a property from the attorney for a person who has lost capacity. Does the attorney need to execute the transfer?*

**Answer:** You as the Representative Subscriber would execute the transfer as usual. You must retain the Power of Attorney with the Client Authorisation. The Power of Attorney must be registered before you can complete the transaction.

4. Can a CoRD Holder Consent be lodged in paper?

**Answer:** No, a CoRD Holder Consent can only be lodged electronically.

Please visit the ORG website for more [FAQs](#)

## **Oversight regime update**

### *Intergovernmental Review ('IGA')*

Since this reform commenced, the market structure of Australia's conveyancing sector has continued to rapidly change along with the regulatory environment of the financial services and legal sectors, and the technological environment.

The Australian Registrars National eConveyancing Council (ARNECC) has appointed Dench McLean Carlson (DMC) to undertake an independent review of the Intergovernmental Agreement (IGA). The IGA sets out the regulatory oversight framework for participating jurisdictions, including NSW.

We expect DMC to complete its review in the first half of 2019. DMC will be consulting widely across industry. You can find more information on [ARNECC's website](#). Please contact Review lead, [Ms Anne Larkins](#), for more information or to get involved in the review.

### *Independent analysis of Operator pricing regime*

The NSW Premier has approved NSW's independent pricing body IPART to undertake a review of ELNO pricing in NSW. The Tribunal will recommend an appropriate pricing of ELNOs from 1 July 2019 after all mainstream documents must be lodged electronically in NSW. The focus is on the protection of consumers in a single-operator market environment.

The first step is for IPART to consult on the draft terms of reference. This will take place in November. Please contact IPART directly if you would like to comment on the draft terms of reference. IPART has published information [here](#).

## **New resources**

### *New subscriber checklist to help with your compliance requirements*

NSW has now completed 780 subscriber audits across the state. We have found 15percent are non-compliant, mostly in the area of client authorisation.

In consultation with practitioners, we are taking steps to reduce error rates.

We have just released a checklist for when practitioners are taking instructions from their clients. The checklist is designed for practitioners to check they have all the necessary documents and have completed all steps when transacting electronically. The checklist also shows what we are looking for when auditing subscribers under the subscriber compliance audit process.

The subscriber checklist is available [here](#). We recommend having a softcopy with you when opening a new matter or even stapled to your new file folder. We hope this makes the process simpler.

Please don't hesitate to [contact ORG](#) if you would like further information on the subscriber compliance audit process.

*Other resources for a smoother transition*

In the meantime, please enrol in a workshop if you need further training and make use of many additional resources to help you with a smooth transition to eConveyancing:

- ['How-to complete a Client Authorisation Form' video](#)
- [Training workshops](#)
- [FAQs](#)
- [Timeline for transition](#)
- [Subscriber compliance](#)
- [Legal framework](#)
- [Other news](#)

If you have other topics that you'd like us to cover or eConveyancing issues that you're wanting further help with, please contact the [ORG eConveyancing team](#).

Kind regards

*Jeremy Cox*  
NSW Registrar General