



28 February 2019

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Dear Sir

## Certificates of Title: the next evolution

Thank you for the opportunity to provide feedback on this paper.

ABA members have reviewed the various models presented in the paper and consider that Model 3 is the option that is simpler and more likely to be easily understood by lay persons, which will reduce the current administrative costs and delays associated with CoRDs. Furthermore, Adoption of Model 3 in New South Wales (NSW) would promote consistency across national jurisdictions as Model 3 is currently being used in South Australia (SA) and is the model proposed for Western Australia (WA).

We set out our comments in response to each of the paper's questions below.

### Model 1- The current mixed eCT and paper CT environment

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

In the case where a customer wants a memento title, a physical piece of paper could be offered to meet the need for tangible proof of ownership.

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

N/A

### Model 2- eCTs and CoRD Holder Consents

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

Removal of paper CTs would be welcomed and would enable a seamless transition to electronic processing. The CoRD mechanism allows the title-owner to authorise changes to the title, CoRD is therefore useful for third-party transactions. There is, however, no need for CoRD if the CoRD Holder (or a solicitor representing the CoRD Holder) is part of the transaction and has at least one document in a workspace to sign. Similarly, all mortgages, leases, or plans to which a registered proprietor is a party, should be registrable without a registered proprietor's CoRD.

Training should be reactivated to lay down the correct procedures to follow when obtaining CoRD Holder consent, as the experience in other states demonstrates a lack of understanding of the correct approach.

**4. Are there any issues arising in a 100% eCT and CoRD Holder Consent environment that have not been considered in this discussion paper?**



Costs would escalate if the registered proprietor needed to engage lawyers to provide CoRD to many transactions, whereas this is not a requirement at present.

## Model 3- No eCTs and no CoRD Holder Consents

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

If a transaction is on paper, CoRD requirements should be reduced and generalised in the case where individual CoRD for each document is not required. This would be along the same lines as the nomination in Victoria where a title to be modified is only nominated. No CoRD would be required if a person is participating in the transaction.

### 6. Are there any issues arising from a no eCT/no CoRD Holder Consent environment which have not been considered in this discussion paper?

It is our members' experience that where this model is used in other states there have rarely been any issues relating to no eCT/no CoRD Holder Consent. However, in SA, QLD, and WA where consents are not electronically mandated, paper lodgement and notification processes continue to be used. If no CoRD is required, and another party can transact on a title, enhanced notification should be introduced to the mortgagee to advise them of changes taking place on a title.

Mortgagee consent to leases should be a possible option, although not a mandatory one.

### 7. What are the risks of removing transacting party Consents only?

As long as transacting parties have at least one document in a workspace to sign, the risks of fraud are considered minimal and are outweighed by the benefits.

## General

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

Currently, consent for third-party transactions on unencumbered property or private mortgagee is effected by presentation of a paper title. The paper suggests if the title for unencumbered property is eCT, "unrepresented parties would be required to engage a subscriber to transact, even if only to lodge a standalone consent". Where this is the case, a fee refund should be in place so that people are not forced to pay ELN fees and legal (subscriber) fees. Without a fee waiver, people in this situation would end up paying more than under the current approach.

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

Model 3 – No eCT's and no CoRD Holder Consents.

Model 3 is simpler, more easily understood by lay persons, and will reduce current administrative costs and delays associated with CoRDs.

However, consideration should be given to other transactions that will require the "mortgagee on title" to provide approval to the transaction – see below.

A few examples that we expect will continue to require "mortgagee on title" Consent (CoRD) are:

- Plan of Sub Divisions
- Standalone Transfer of Land
- Registration of subsequent mortgage



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- Discharge of subsequent mortgage
- Registration of Lease
- Transmission Applications

Additional consideration should be given to any transaction, electronic or paper, where the “mortgagee on title” is not a participant to the transaction and may not be aware of what is taking place. This could either be a well-intentioned or a fraudulent transaction.

Yours sincerely

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