



# Rules of Conveyancing Post 1 July 2019

Christina Garas & Sandrah Mikha  
Office of the Registrar General

9 November 2019



Office of the  
Registrar General

# Role of the Office of the Registrar General

Regulator

Overseeing NSW Land Registry Services' operations and connections with other public and private parties

Torrens  
Assurance Fund

Maintenance of the Torrens Assurance Fund, 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

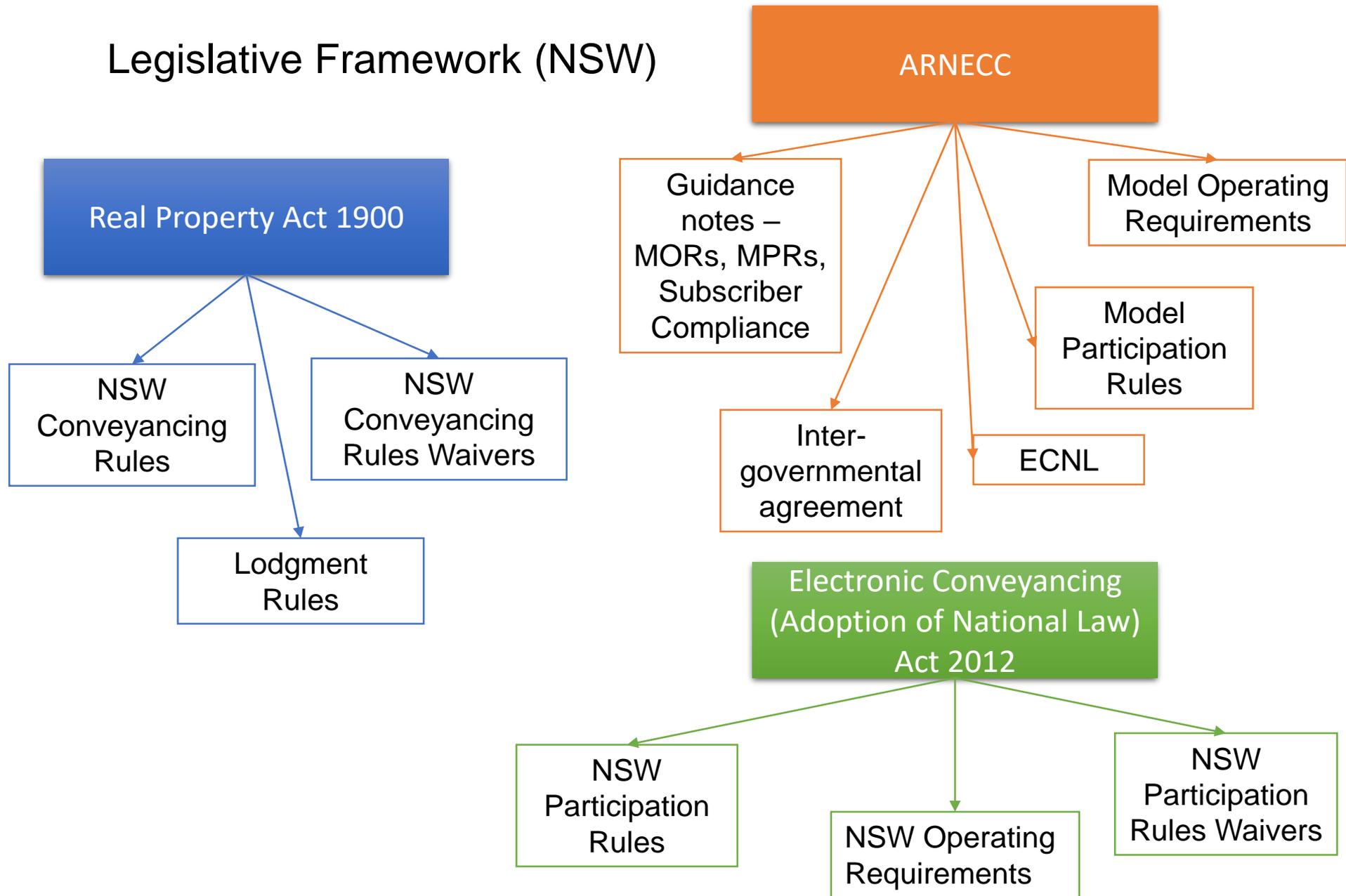
Review Body

Review of NSW Land Registry Services' decisions under section 121 of the Real Property Act (administrative reviews)

Independent  
Arbitrator

Arbitration of disputed title boundaries

# Legislative Framework (NSW)



# Lodgment Rules

- The Lodgment Rules are made by the Registrar General and govern the lodgment of various instrument types including dealings, deeds and plans
- They include requirements for the preparation, form and content of documents and the procedures to be followed when lodging documents
- <https://www.registrargeneral.nsw.gov.au/publications-and-rules/lodgment-rules>

## Lodgment Rules

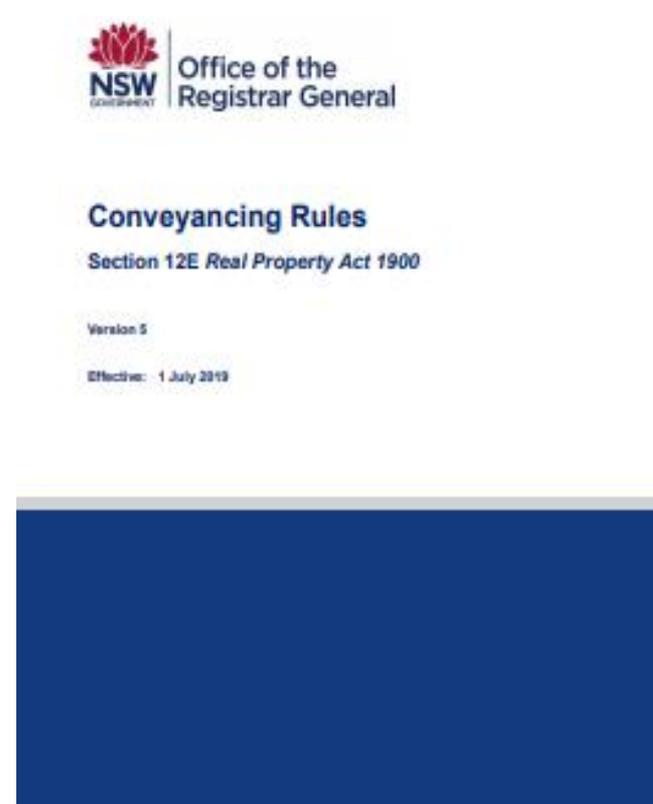
**Section 12F Real Property Act 1900**

Version 1.0

Effective: 19 May 2017

# Conveyancing Rules

- Under section 12E of the Real Property Act, the Registrar General may make Conveyancing Rules covering, for example:
  - verification of identity and authority
  - client authorisations
  - retention of documents and evidence
  - classes of documents that 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>



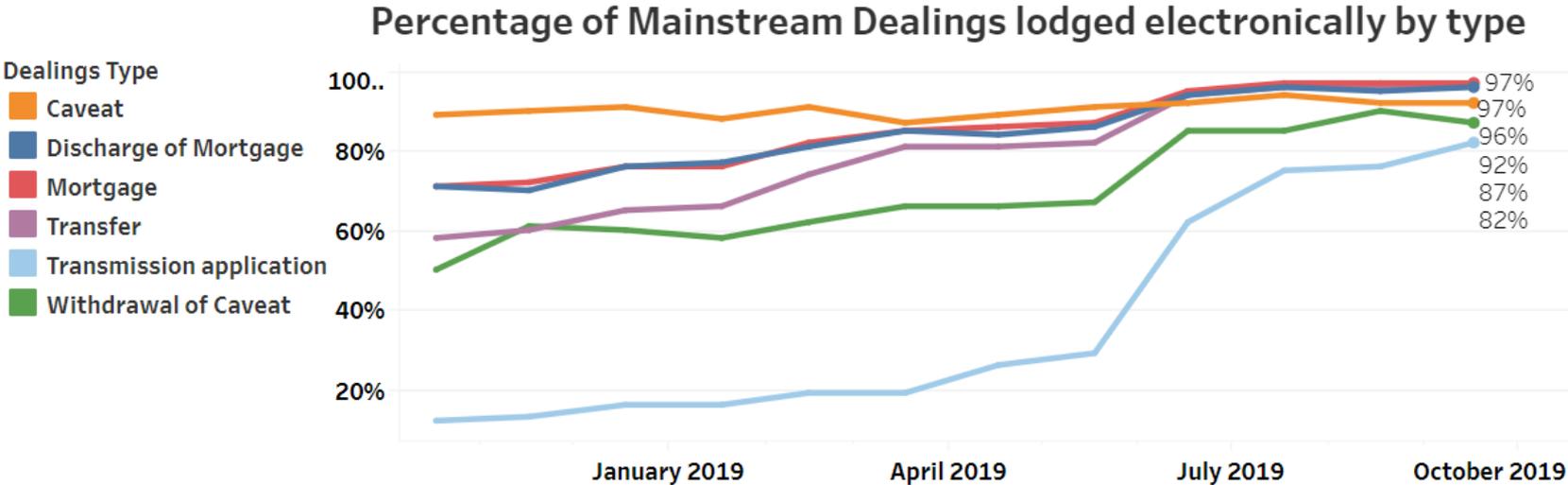
## Electronic Lodgment of Mainstream Dealings Mandated from 1 July 2019

All mainstream dealings must now be lodged electronically whether standalone, or in combination, being:

- Transfers
- Mortgages
- Discharges of mortgage
- Caveats
- Withdrawals of caveat
- Transmission applications



# 95 per cent of Mainstream Dealings were lodged electronically



# Conveyancing Rules Waivers

The Registrar General has issued a Mainstream Dealings waiver.

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

Some of the more common exceptions are:

- Transfers on forms other than the 01T Transfer, such as the Transfer including Easement
- Transfers requiring an attachment to be registered (e.g. order of court)
- Caveats against a registered interest (e.g. a registered lease)
- Transactions where land tax is required to be paid from settlement proceeds



Office of the  
Registrar General

Waiver No. CR 2/2019

## CONVEYANCING RULES WAIVER

New South Wales  
Section 12E Real Property Act 1990 (NSW)

### Title

This instrument is Conveyancing Rules Waiver CR 2/2019 – Mainstream Dealings Exceptions.

### Enabling Provisions

1. Under section 12E of the Real Property Act 1990 (RPA), the Registrar General ("Registrar") has determined and published Version 5 of the Conveyancing Rules which came into effect on and from 1 July 2019.
2. Section 12E(10) of the RPA, permits the Registrar to waive compliance with all or any provisions of the Conveyancing Rules if the Registrar is satisfied that granting the waiver is reasonable in all the circumstances.

### Affected Requirement

Conveyancing Rule (Version 5) 8.7 (CR 8.7)

### Explanatory Statement

CR 8.7 provides that a Mainstream Dealing or combination of Mainstream Dealings (defined to mean a transfer, mortgage, discharge of mortgage, caveat, withdrawal of caveat or transmission application) signed on or after 1 July 2019 must be lodged using an Electronic Lodgment Network, except where the Mainstream Dealing is to be lodged with any other dealing affecting the same folio(s) of the Register.

There are, however, certain types of Mainstream Dealings affected by CR 8.7 that in the Registrar's opinion are not able to be lodged electronically, or in the circumstances, may unfairly affect the parties if required to be lodged electronically.

### Waiver

The Registrar grants a waiver of the obligation to comply with CR 8.7 in the following circumstances:

#### 1. Caveat

- 1.1 where the caveat is not represented by a legal practitioner or licensed conveyancer;
- 1.2 accompanied by an attachment, such as a sketch plan;
- 1.3 that only affects part of the land in a folio of the Register;
- 1.4 lodged against premises contained in a lease;
- 1.5 affecting a registered interest (e.g. a mortgage, lease or charge);
- 1.6 involving multiple caveators who are not represented by a single Subscriber;
- 1.7 where the written consent of the registered proprietor, for the purpose of section 140 of the RPA, is required.

## Lodgment of dealings from 1 July 2020

- All dealings that can be lodged electronically must be lodged electronically, whether standalone or in combination.
- A list of proposed Eligible Dealings must be made publicly available on our website at least 90 days before the dealings have to be lodged electronically.
- This will include dealings such as leases (which are currently available) plus other dealings that will become available over time, such as Notice of Death and Change of Name.
- Our website has a schedule of dealings that can be lodged electronically, or that are planned to be made available electronically, with an estimated time for release.
- These mandates do not apply to titles that are not eligible for electronic lodgment.

## Schedule of eDealings

A Schedule of eDealings is maintained on the Office of the Registrar General's website at:

<https://www.registrargeneral.nsw.gov.au/eConveyancing/schedule-of-edealings>

Form name	Description	Available to be lodged electronically*	Mandated and from when**
Caveat - form 08X	Prohibits the registration of certain dealings and plans affecting a folio of the Register pending determination by a court Section 74F <i>Real Property Act 1900</i> .	Y	Y - 1 July 2019
Discharge of mortgage - form 05DM	Used by a registered mortgagee to remove the recording of the mortgage from a folio of the Register.	Y	Y - 1 July 2019
Lease - form 07L	Not to be used in lieu of a residential tenancy agreement.	Y	N
National Mortgage form version 1.5	Registers a mortgage over Torrens Title land, lease, mortgage or charge	Y	Y - 1 July 2019
Transfer - form 01T	Registers the new owner when land is sold or otherwise disposed of.	Y	Y - 1 July 2019

# NSW Operating Requirements

- The NSW Operating Requirements are made by the Registrar General under section 22 of the Electronic Conveyancing National Law (**ECNL**)
- The requirements govern the operating and compliance requirements of Electronic Lodgment Network Operators (**ELNOs**), including the framework for Subscriber registration and suspension
- <https://www.registrargeneral.nsw.gov.au/publications-and-rules/nsw-operating-requirements>
- <https://www.registrargeneral.nsw.gov.au/eConveyancing/legal-framework/approval-conditions>



Electronic Conveyancing National Law (NSW)

Section 22

## NSW Operating Requirements for

### Electronic Conveyancing

Determined by the

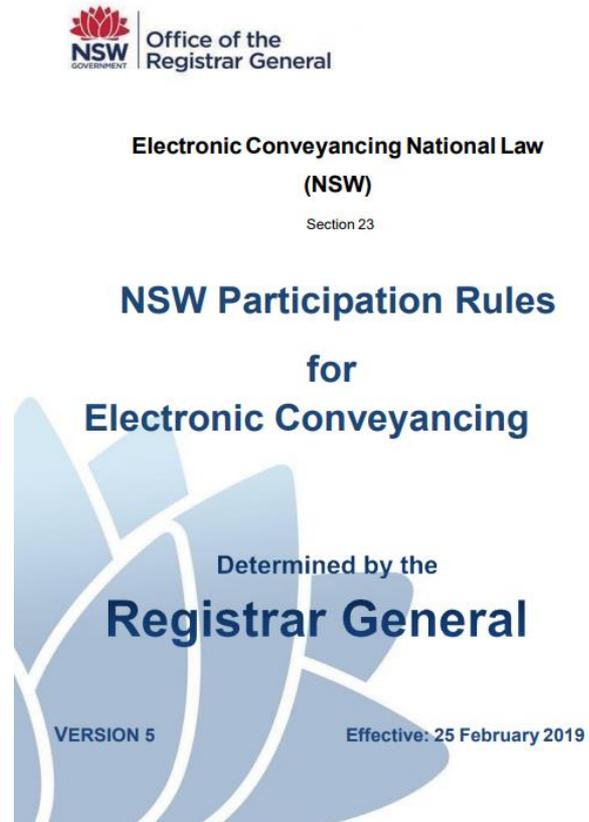
## Registrar General

VERSION 5

Effective: 25 February 2019

# NSW Participation Rules

- The NSW Participation Rules are made by the Registrar General under section 23 of the ECNL
- The rules govern the role and obligations of Subscribers when transacting and participating on an electronic lodgment network
- <https://www.registrargeneral.nsw.gov.au/publications-and-rules/nsw-participation-rules>



## 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-to-face in-person interview
  - in some other way that constitutes reasonable steps
- Further checks should be completed in some cases, such as where a document does not appear genuine, or a photograph is not a reasonable likeness of the Person Being Identified
- See ARNECC Guidance Note 2
- [https://www.arnecc.gov.au/publications/mpr\\_guidance\\_notes](https://www.arnecc.gov.au/publications/mpr_guidance_notes)



## Right to deal

- You must ensure that the person who is your client has the Right to Deal with the subject property
- Examples of evidence include possession of rates notices, contract for sale, certificate of title
- Ensure the client is a legal person (not, for example, a superannuation fund)
- See Guidance Note 4
- [https://www.arnecc.gov.au/publications/mpr\\_guidance\\_notes](https://www.arnecc.gov.au/publications/mpr_guidance_notes)



## Client authorisations

- 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 (may need to be produced for Subscriber compliance examination purposes)
- It is not a power of attorney (so no registration is required)
- Must be substantially in the form set out in the NSW PRs (schedule 4)



# Guidance Notes to the Model Participation Rules (ARNECC)



CLIENT  
AUTHORISATIONS



VERIFICATION OF  
IDENTITY



CERTIFICATIONS



RIGHT TO DEAL



RETENTION OF  
EVIDENCE



COMPLIANCE  
EXAMINATIONS

# Certifications

## Schedule 3 to the Participation Rules

1. The Certifier has taken reasonable steps to verify the identity of the transferor/transferee/mortgagor/caveator etc
2. The Certifier holds a properly completed Client Authorisation for the transaction
3. The Certifier has retained the supporting evidence
4. The Certifier has taken reasonable steps to ensure the Registry Instrument or Document is correct and compliant with relevant legislation/requirements
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 and holds a mortgage granted by the mortgagor on the same terms as the Registry Instrument or Document
- ~~6. The Certifier has retrieved and either securely destroyed or made invalid the duplicate CT~~
7. The Certifier as Attorney has taken reasonable steps to ensure that the signing of the Registry Instrument is authorised by the Power of Attorney

# Subscriber Compliance

- Section 33 of the ECNL allows for Registrar General to audit users of the eConveyancing system
- Random audit conducted by NSW Land Registry Services on behalf of the Registrar General
- Failure to comply with a compliance request can result in suspension or termination of a Subscriber

## SUBSCRIBER CHECKLIST

### Client Authorisation

Has the client authorisation form been fully completed **before** transacting?

- Have you ensured that the client(s) and yourself have signed and dated the form?
- Have you selected the appropriate Authority Type?
- Do the transaction details match the documents to be lodged?
- Does the land description match the dealing form? (Specific Authority only)
- Have you or your agent conducted verification of identity of client(s)? (See below)

### Verification of Identity

How have you verified the identity of your client(s)?

- Have you used the Verification of Identity Standard to verify the identity of your client(s)?
- or
- Did you otherwise take reasonable steps?
  - Reasonable steps are defined Participation Rule 6.5.1;
- Do you have any doubts regarding the identity of you clients?
  - If so further investigation is required.
- Did you use a 3<sup>rd</sup> party identity agent?
  - Did you retain any evidence?
- Do the names of your clients match the lodged registry instruments?

### Right to Deal

Have you checked that your client(s) have the legal entitlement to be a particular party to the conveyancing transaction?

Acting for a Transferor

- What documents have you obtained to establish right to deal?
  - Refer to Guidance Note #4 point 5.2 for suggested documents

Acting for a transferee

- Have you retained a copy of the contract of sale?

Acting for a mortgagee

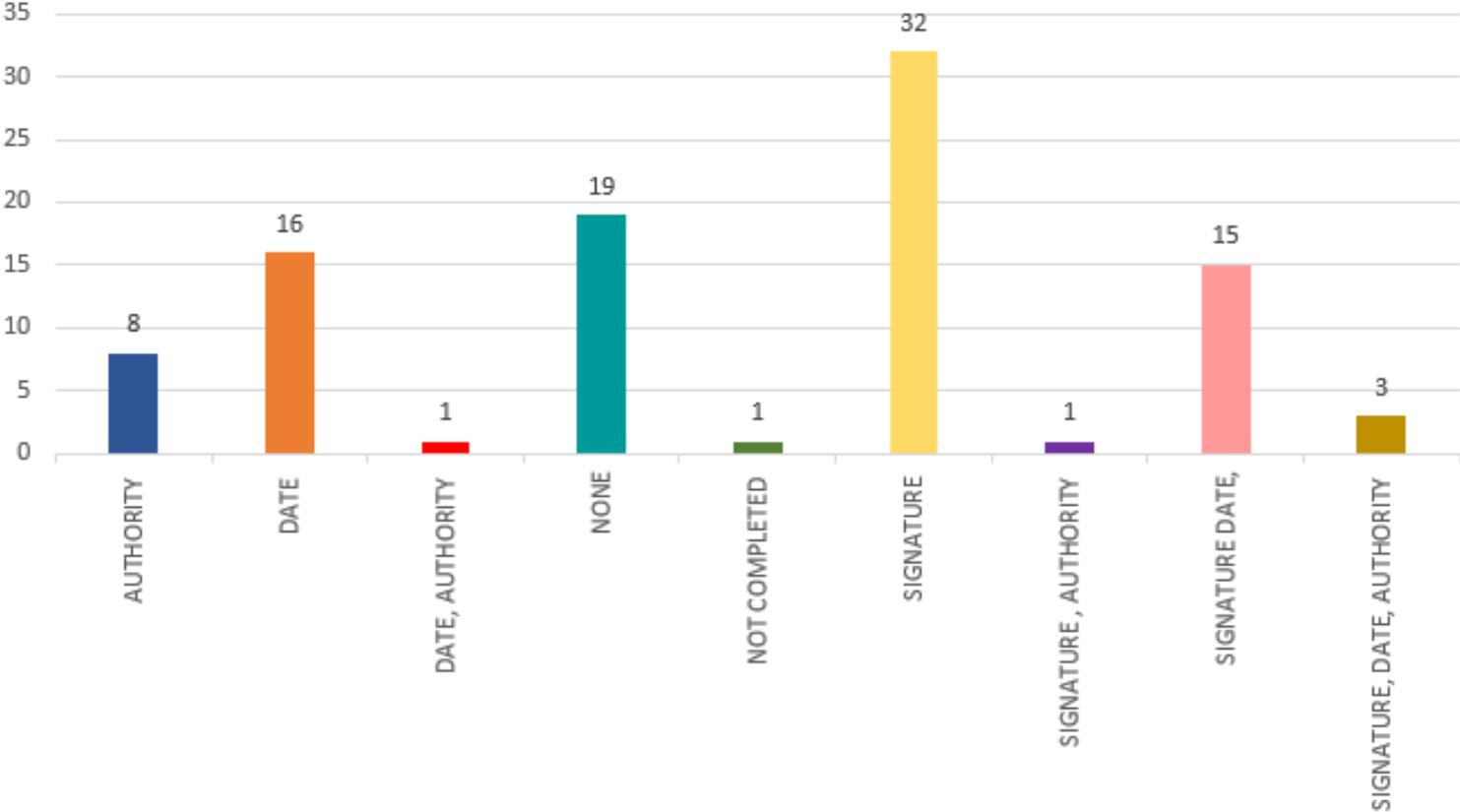
- Have you retained copies of the loan documentation?
- Do you, or the mortgagee, hold a counterpart mortgage?

### Retention of Evidence

Have you retained all the evidence from the transaction?

- Is the evidence accessible, legible, and safely and securely stored?

# Subscriber Compliance



## Subscribers – System Security

- Under the Participation Rules, a Subscriber must:
  - take reasonable steps to comply with an ELNO's security policy
  - not do anything that it knows or ought reasonable to know is likely to have an adverse effect on the security of the ELN
  - not fail to do anything within its reasonable control, the omission of which, it knows or ought reasonably to know, is likely to have an adverse effect on the security of the ELN.



## Signers and Digital Certificates

- Electronic Registry Instruments and other electronic Documents to be lodged through an ELN must be Digitally Signed using a Private Key to create the Subscriber's Digital Signature
- The Subscriber must obtain at least one Digital Certificate



# Requisitions

- Requisitions may be raised electronically in the NSW Land Registry Services' system used for lodgment and processing of documents or raised manually using a form letter
- A request to waive a requisition must be made by the lodging party (or their representative)
- The lodging party must fill out a request for review of requisition form and submit it to NSW Land Registry Services. The form can be found on the Land Registry Services' website at [https://rg-guidelines.nswlrs.com.au/land\\_dealings/procedures/requisitions](https://rg-guidelines.nswlrs.com.au/land_dealings/procedures/requisitions)
- The application fee will be refunded if the review is successful



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1 Prince Albert Road, Queens Square, Sydney NSW 2000  
Tel 1300 052 637 | 02 9228 6666 | [www.nswlrs.com.au](http://www.nswlrs.com.au)  
ABN 23 519 493 925

## Request for Review of Requisition

*Please leave this section clear*

Dealing Number		Plan Number	
Invoice Number	NSW LRS Box Number	NSW LRS Account Number	
Contact Name		Surveyor	
Lodging Party			
Phone Number		Email Address	

**Details of Request** (provide a brief outline of the request - if more space is required please attach an additional sheet).

**Outcome of Review:** Requisition Stands / Requisition Waived (NSW LRS Office use only)

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NSW LRS Officer		Table no.	Initials
Position			

# Certificates of Title

- All paper certificates of title held by authorised deposit-taking institutions as first mortgagees have been replaced with electronic titles in the next phase of the NSW Government's transition to fully digital standard conveyancing by 1 July 2019
- NSW Land Registry Services performed the conversions on behalf of the NSW Government over the first four weekends in September 2018
- Majority of titles are held by the 4 major banks and were converted by 9 September



## E-Settlement Agents

- A conveyancer or lawyer (Instructing Practitioner) may instruct a conveyancer or lawyer Subscriber to act on the Instructing Practitioner's client's behalf to undertake work in an ELN, including creating and digitally signing electronic instruments or documents
- There is some confusion about VOI requirements and the correct completion of the Client Authorisation form in these situations, so ARNECC will be releasing a guidance note to provide clarity for practitioners



## *Conveyancing Legislation (Amendment) Act 2018* – Electronic contracts reforms

- Commenced on **22 November 2018**.
- Amended the Conveyancing Act 1919 and the Real Property Act 1900 to clarify the role of electronic technology in land transaction documents
- Removes barriers that have prevented a wholly electronic conveyancing transaction, from contract formation through to settlement
- Electronic service of notices: section 170 of the Conveyancing Act now permits service by email to an address specified by the person to be served notices of that kind

Sale of land  
contracts

Deeds

Supporting  
documents

# Recent e-caveat case

## **Guirgis v JEA Developments Pty Limited [2019] NSWSC 164**

- Licensed conveyancer lodged caveat claiming an estate or interest pursuant to a Charge by virtue of an Agreement.
- Caveat held to be deficient in at least five respects:
  - ...For the Conveyancer to be able to state that “to the best of the knowledge of the” Conveyancer the caveator had a good and valid claim to the estate or interest claimed requires more than a casual or incomplete inquiry.
  - The ..certification that the Conveyancer had take reasonable steps to ensure that the Caveat was “correct and compliant with relevant legislation and any Prescribed Requirement” could not, on the evidence before the Court, have been correct.
  - The second certification was also, in this case, completely misleading because the Conveyancer had not retained anything...The assertion of an agreement in this context when read together with the second certification would lead any reasonable reader to think that there was a written agreement.
- Kunc J: “Lodging a caveat is not a trivial act to be undertaken lightly. It has immediate legal effect and can have significant commercial and financial consequences. Legal practitioners and licensed conveyancers who advise on, prepare and certify caveats that are lodged electronically have an important role to ensure that obviously unmeritorious caveats are not lodged”.

# Recent e-mortgage case

## **Perebo Pty Ltd v Wayville Residential Investments Pty Ltd & Ors [2019] SACS 35**

- The plaintiff loaned money to the defendants pursuant to a number of loan agreements and obtained the registration of mortgages over various properties to secure the loans. The defendants defaulted on the loans, and as a result, the plaintiff sought possession of the mortgaged properties.
- The mortgage contained a certification signed by the plaintiff's solicitor which included the following:
  - The Mortgagee, or the Prescribed Person, is reasonably satisfied that the Mortgagee it represents:
    - ... (b) Holds a mortgage granted by the mortgagor on the same terms as this Registry Instrument or Document.
- Part (b) of the certification is complemented by sections 128 and 273 of the Real Property Act 1886 which prevents the RG from registering the mortgage unless the certification is provided.
- Although there were loan agreements between the plaintiff and the defendants, the mortgagee did not hold a mortgage granted by the defendant mortgagor. The certification provided by the plaintiff mortgagee's solicitor was therefore inaccurate.
- The Court held that the plaintiff's non-compliance with the South Australian RPA and the inaccuracy of the certification did not invalidate the registered mortgage or render it unenforceable.
- However, by giving an incorrect certification, the mortgagee (or the mortgagee's representative such as a solicitor) risks facing disciplinary action from its regulator, or risks facing suspension or termination as a subscriber to an ELNO.

# Resources

## Registrar General:

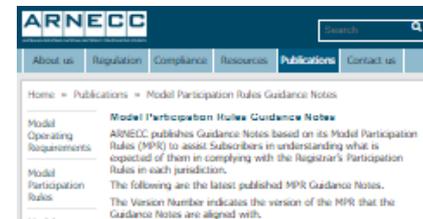
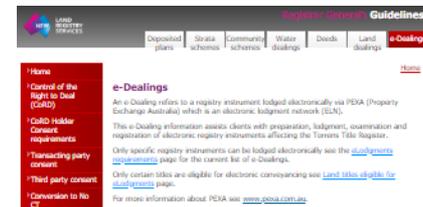
- Subscribe to our monthly updates
- Contact for eConveyancing enquiries: [ORG-eConveyancing@customerservice.nsw.gov.au](mailto:ORG-eConveyancing@customerservice.nsw.gov.au)

## NSW Land Registry Services:

- eLodgment page: <https://rg-guidelines.nswlrs.com.au/e-dealings/elodgment>
- Contact for operational enquiries: [econveyancingnsw@nswlrs.com.au](mailto:econveyancingnsw@nswlrs.com.au)

## ARNECC:

- Model Participation Rules Guidance Notes: [https://www.arnecc.gov.au/publications/mpr\\_guidance\\_notes](https://www.arnecc.gov.au/publications/mpr_guidance_notes)



# The eConveyancing Market – what has happened?

## Pre-November 2019

### September 2018

- ARNECC commissioned a review of the IGA by Dench McClean Carlson (DMC).

### 4 December 2018 + 14 February 2019

- The NSW Government held a forums on interoperability.

### April 2019 to July 2019

- The NSW Government established two industry working groups on interoperability between ELNOs under an independent chair, Dr Rob Nicholls.

### 13 February 2019 + 26 July 2019

- DMC published an Issues Paper with some commentary on interoperability.
- DMC published its Draft Final Report on the IGA. The Draft Report suggests one form of interoperability.

### 12 March 2019 + 20 August 2019

- IPART published an Issues Paper noting the benefits of competition and interoperability.
- IPART published a draft final report again highlighting the benefits of competition and interoperability.

## November 2019 and onwards

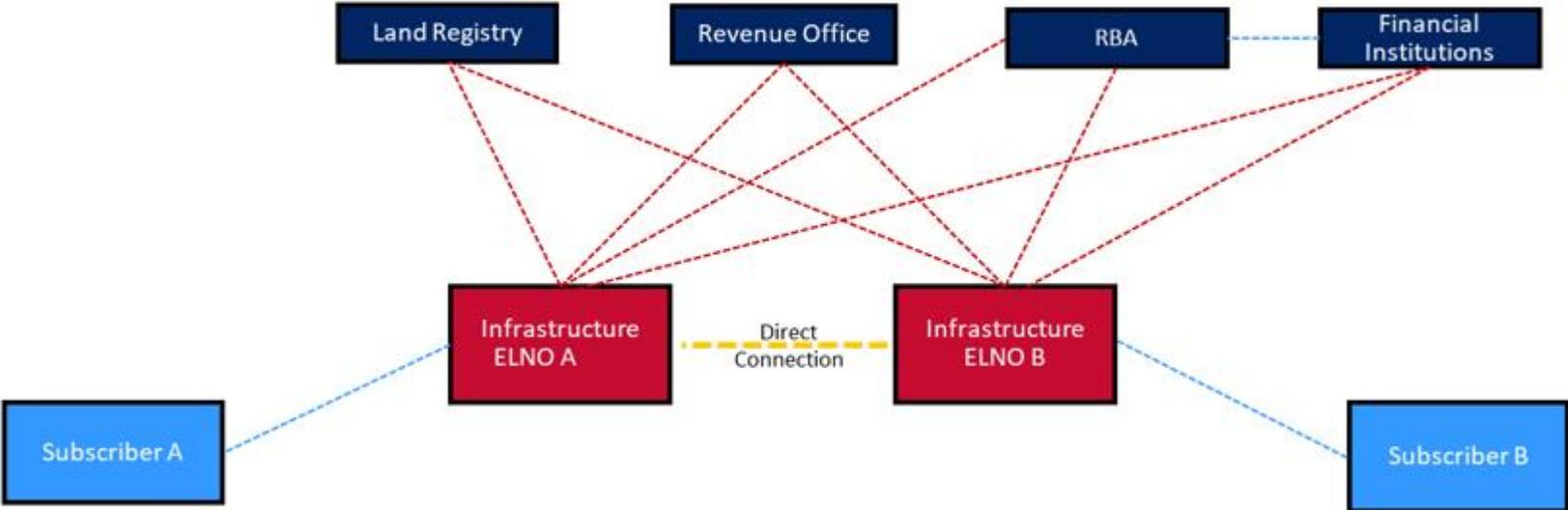
### Now

- The NSW Government is continuing to work closely with relevant stakeholders in targeted workshops to further explore interoperability.
- Stakeholders include:
  - The Law Council
  - The Australian Bankers Association
  - The Australian Institute of Conveyancers
  - ELNOs

### Coming Up

- The ACCC will be publishing a study on the eConveyancing market.
- IPART will be publishing its Final Report on pricing.
- DMC will be publishing its Final Report on the IGA.

# One Potential Model of Interoperability



Thank you &  
Questions

