

Proposed regulation to mandate eConveyancing in Queensland: Consultation Paper

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Overview

Queensland introduced voluntary eConveyancing in 2013, under the National Federation Reform Council's Intergovernmental Agreement for a national electronic conveyancing (eConveyancing) system. The initial phase of the roll-out has been through a voluntary model that has allowed the conveyancing sector to adopt electronic conveyancing practices or maintain traditional lodgement practices.

The sector has adapted well to the eConveyancing framework with over 70 per cent of relevant titling transactions now lodged via eConveyancing. The evidence that there are significant administrative efficiencies, enhanced security and accuracy, immediate confirmation of lodgement with time savings for all parties has prompted the Queensland government to transition to a mandatory eConveyancing system for conveyancing professionals.

The Department of Resources is developing a new Land Title Regulation to mandate certain 'classes' of conveyancing instruments or documents to be lodged or deposited using the Electronic Lodgement Network (ELN)¹, unless exempted. See the **table below** for the classes of instruments and other documents subject to the mandate.

Queensland's transition to mandatory eConveyancing will deliver a consistent service delivery experience for all the parties involved in the execution of contracts. It is anticipated the mandate will take effect in early 2023, ten years after commencement of optional eConveyancing in Queensland.

eConveyancing has delivered administrative efficiencies over traditional paper and manual processes for the sector, as well as reducing the time taken for practitioners to administer dual lodgement processes (paper and electronic); providing greater security and accuracy of transactions; immediate confirmation of lodgement; and time savings from reduced travel and in-person execution of documents.

Market trends towards digital and online interfaces have increased pressure on governments to replace paper and manual processes. Governments, financial institutions, industry, and the community have quickly responded to the new digital environment and shifted towards electronic systems for communication, development, and storage of information.

Transitioning to a mandatory eConveyancing system is the next step and Queensland's conveyancing sector is well positioned to make this transition. These changes will bring Queensland into line with other States that have mandated eConveyancing and would contribute to a nationally consistent service delivery approach. Reaching 100 per cent lodgement of eligible land title documents by eConveyancing will deliver the cost and administrative efficiencies for the conveyancing sector, government, and those in the community buying and selling property.

This consultation paper is seeking your feedback to inform the development of the new Land Title Regulation. A summary of the proposed detail of the regulation is outlined below. Submissions on the proposed regulatory amendments should be forwarded to the Department of Resources by **COB 6 May 2022**. How to provide feedback is outlined at end of the paper.

¹ There are currently two nationally approved ELNOs - Property Exchange Australia Limited (PEXA) and Sympli Australia Pty Ltd (Sympli).

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Background

The Council of Australian Governments agreed to a national electronic system for settling real property transactions, which was ratified through the [Intergovernmental Agreement](#) for national eConveyancing.

Queensland enacted the *Electronic Conveyancing National Law (Queensland) Act 2013*, establishing the framework for the Registrar of Titles to determine and implement the Operating Requirements for an approved Electronic Lodgement Network Operator (ELNO)² and the Participation Rules for the lodgement or deposit of land title transactions through an [Electronic Lodgement Network](#) (ELN).

Since 2016, New South Wales, Victoria, South Australia, and Western Australia have all implemented compulsory eConveyancing for certain land title transaction types. The Australian Capital Territory, Northern Territory and Tasmania are at different stages of activity to implement eConveyancing in their jurisdictions.

Proposed regulatory amendments to mandate eConveyancing

Summary

The *Land Title Act 1994* enables a regulation to stipulate classes of land title instruments or other documents that must be lodged using an ELN by a prescribed class of person.

It is proposed to make a new Land Title Regulation 2022 to specify:

- types or classes of instruments or other documents that must be lodged electronically through the ELN;
- exemptions that will apply.

The mandate would apply to eligible conveyancing subscribers under the Participation Rules, unless exempted. Self-represented parties (i.e. those without a solicitor to handle their conveyancing) are unable to become eConveyancing subscribers and will be exempt from the mandate and may continue to lodge paper documents.

The regulations are anticipated to take effect in early 2023.

Proposed detail of mandate

Range of 'classes' of instruments and other documents (electronic conveyancing documents) and detail of transaction types

Table - The electronic conveyancing document and transaction types proposed to be listed by the regulation are those that are capable of lodgement using eConveyancing

Electronic conveyancing document type	Detail of the transactions under the 'class' of electronic conveyancing document
Transfer (Form 1) Including the form 24 Including the form 25 (as applicable)	<ul style="list-style-type: none">• Fee simple• Whole of the land• Where both the transferee and the transferor (as applicable) are any of the following:<ul style="list-style-type: none">○ individuals○ corporations○ trustees○ personal representatives

² There are currently two nationally approved ELNOs - Property Exchange Australia Limited (PEXA) and Sympli Australia Pty Ltd (Sympli).

	<ul style="list-style-type: none"> ○ State of Queensland ○ Commonwealth of Australia ○ Local Governments ○ charitable bodies ○ other organisations • All lots on title • Where the consideration is any of the following: <ul style="list-style-type: none"> ○ monetary ○ gift ○ natural love and affection ○ retirement or appointment of a trustee ○ death and appointment of a trustee ○ discharge and appointment of a trustee ○ desire to change tenancy ○ severance of joint tenancy pursuant to s59 of Land Title Act ○ agreement under the part VIIIAB Family Law Act ○ financial agreement under the part VIIIA of the Family Law Act 1975 ○ assumption of liability under mortgage ○ pursuant to a clause in the trust deed ○ pursuant to a family law act order ○ pursuant to the rules of intestacy (transferor must be a personal representative) ○ pursuant to the terms of a will (transferor must be a personal representative)
Mortgage (National Mortgage Form)	<ul style="list-style-type: none"> • Fee simple • Where both the mortgagor and the mortgagee (as applicable) are any of the following: <ul style="list-style-type: none"> ○ individuals ○ corporations ○ trustees ○ personal representatives ○ State of Queensland ○ Commonwealth of Australia ○ Local Governments (excluding as mortgagor) ○ charitable bodies ○ other organisations • Whole of land • All lots on title • All of the registered owners
Release of mortgage (Form 3)	<ul style="list-style-type: none"> • Fee simple • Whole of land • All lots on title • All of the registered mortgagors
Caveat (Form 11)	<ul style="list-style-type: none"> • Fee simple • Caveats where the claim category is any of the following and the claim is available electronically: <ul style="list-style-type: none"> ○ Charge ○ Constructive trust ○ Mortgage ○ Purchase
Withdrawal of caveat (Form 14)	<ul style="list-style-type: none"> • Fee simple • Withdrawal from all lots included in the caveat
Priority notice (PNN)	<ul style="list-style-type: none"> • Fee simple • Water Allocation • Fee simple pursuant to the Southbank Corporation Act 1989 • All lots on title
Extension of priority notice (PNE)	<ul style="list-style-type: none"> • Fee simple • Water Allocation • Fee simple pursuant to the Southbank Corporation Act 1989 • All lots on title

	<ul style="list-style-type: none"> All current titles where the priority notice is current
Withdrawal of priority notice (PNW)	<ul style="list-style-type: none"> Fee simple Water Allocation Fee simple pursuant to the Southbank Corporation Act 1989 All lots on title All current titles where the priority notice is current
Transmission by death application (Grant in Queensland or Queensland Recognised Grant) (Form 5)	<ul style="list-style-type: none"> Fee simple Whole of the land All lots on title Deceased sole registered owner Where a grant of representation in Queensland or a Queensland Recognised Grant has been obtained.

Exemptions

The following exemptions are proposed to apply to the mandate:

- a) Where the title is not electronically tradeable, for example:
 - i) The registered owner has the recorded capacity of 'minor'; or
 - ii) The registered owner has a name suffix; or
 - iii) The title is for part of the lot (including timeshares and other undivided moieties); or
 - iv) Where a Party is a deregistered company or bankrupt.
- b) Where one or more of the Parties are self-represented. The term *self-represented* means the Party is a person and is not:
 - i) eligible to enter into a Participation Agreement to become a Subscriber; or
 - ii) a Subscriber; or
 - iii) an Authorised Deposit-taking Institution; or
 - iv) a registered financial corporation; or
 - v) represented by a person who is a Subscriber or eligible to enter into a Participation Agreement to become a Subscriber.
- c) Where the Instrument or Document is required to be presented for lodgement together with an Instrument or Document which is not an Electronic Conveyancing Document. .
- d) Where technical difficulties prevent the Instrument or Document from being completed and lodged using an ELN, for example:
 - i) internet outages;
 - ii) unavailability of the ELN;
 - iii) natural disasters.
- e) Where Titles Queensland (on behalf of the Registrar) has granted a Subscriber a waiver, for that single Instrument or Document or for a specific type of Instrument or Document.
- f) Where an Instrument or Document has been executed by at least one party prior to the date mandatory eConveyancing takes effect.
- g) Where the Instrument or Documents or functionality required to complete the Instrument or Documents has not been made available in any ELN.
- h) Where a consent is required to be deposited with an Electronic Conveyancing Document in the Lodgement Case.

Certain terms used in this paper have the same meanings as defined in the *Electronic Conveyancing National Law (Queensland)* and *Land Title Act 1994* – i.e., electronic conveyancing document, Participation Rules and Operating Requirements.

Commencement of regulation

To provide certainty for the conveyancing sector it is proposed the regulation will be made by the middle of 2022 and commence in January 2023.

Commencing the new Land Title Regulation in January 2023 will allow conveyancing professionals that have not adopted eConveyancing practices sufficient time to implement the necessary systems prior to the new regulation being enforced.

Your feedback is welcomed

To maximise the efficiencies of mandating eConveyancing for Queensland we are interested to hear your feedback on the following matters:

- the classes of electronic conveyancing instruments and document types for transactions that are subject to the mandate proposal– see **Table** above
- the proposed exemptions that will apply
- the proposed commencement of the mandate in January 2023
- potential barriers to the uptake of eConveyancing and suggestions on how they can be addressed
- any other issues or concerns around a mandatory eConveyancing system.

How to provide your feedback

Email your feedback to lpconsult@resources.qld.gov.au by **COB 6 May 2022**.

We thank you for your time to participate and we will consider your feedback to inform the development of a draft regulation for government decision making.

Any updates about the development of the regulation and implementation of a mandatory eConveyancing system will be published at the Department of Resources' website.