

Upcoming reforms to paper conveyancing processes

Information Package

Land Tasmania

The Land Titles Office (LTO) is planning reforms to start this year which will incrementally introduce some new requirements in conveyancing transactions, abolish the requirement for certificates of title to be lodged for transactions, and end the practice of issuing new certificates of title

The purpose of this Information Package is to provide initial information to industry on these proposed reforms.

The Land Titles Amendment Bill 2022 (“the Bill”) is currently before Parliament. If passed, the Bill would amend the *Land Titles Act 1980* (“LTA”) to give the Recorder of Titles (“the Recorder”) the power to issue directions relating to the preparation and lodgment for registration of applications, dealings, and instruments (“Directions”). It is anticipated that the reforms outlined in this Information Package will be made pursuant to that power.

The aim of the proposed Directions is to make the paper based lodgment process with the Land Titles Office safer and more secure by giving the Recorder the power to mandate some of the requirements currently used in the National Electronic Conveyancing system. The terms for these requirements in this Information Package are the same as used in the National Electronic Conveyancing system.

Summary of anticipated reforms

Subject to the enactment of the relevant statutory amendments to the LTA, it is anticipated that Directions will be issued in a number of phases which will reform the current paper based conveyancing process

Initial Directions from the Recorder will be issued with the effect of requiring licensed conveyancers, legal practitioners and/or financial institutions to

- **conduct Verification of Identity (VOI) of relevant parties to conveyancing transactions;**
- **conduct verification of a relevant party’s authority and right to deal (RTD) in conveyancing transactions;**
- **retain evidence of compliance with the above obligations (RoE); and**
- **allow the Recorder to conduct audits of compliance with the Directions.**

Further, the Directions will require licensed conveyancers and legal practitioners to obtain client authorisation (CA) in a specified form.

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Subsequent Directions will be issued which will:

- **require certification of the above requirements being complied with;**
- **dispense with the requirement for certificates of title to accompany lodgment of applications, dealings and instruments; and**
- **end the practice of the LTO issuing certificates of title**

Changes to Paper Certificates of Title

The Directions will address ending the practice of lodgment and issuing of certificates of title. This change will be accompanied by the introduction of a new process for providing confirmation of registration. Phased Approach

It is planned that the reforms and Directions will be introduced in phases.

First Phase

Recorder's Directions will be issued requiring licensed conveyancers, legal practitioners and financial institutions to conduct Verification of Identity (VOI) of relevant parties, verification of a relevant party's right to deal in a conveyancing transaction, and to obtain authorization – in a specific form – to act on the client's behalf in the conveyancing transaction.

Legal practitioners, conveyancers and financial institutions will be required to retain documentary evidence showing that these steps were undertaken.

Lodgments will be accepted on the presumption of compliance with these requirements. The Recorder will be entitled to conduct audits to ensure that the Directions have been complied with.

Second Phase

The second phase is intended to introduce the requirement for licensed conveyancers, legal practitioners and financial institutions to certify on LTO forms that they have complied with the Directions.

The second phase will also likely introduce amendment of witness requirements for specific forms.

Further Phases

It is anticipated that further Directions will be issued relating to ending the issuing of certificates of title and dispensing with the requirement for a paper certificate of title to accompany lodgment of applications, dealings and instruments.

Planned First Phase of Directions

Verification of Identity

In National Electronic Conveyancing, legal practitioners and licensed conveyancers are required to verify the identity of their clients. Financial institutions will be required to verify the identity of mortgagors.

Legal practitioners and licensed conveyancers would be required to take 'reasonable steps' to verify the identity of their clients. Financial institutions would similarly be required to take 'reasonable steps' to verify the identity of mortgagors.

The verification of identity (VOI) standard and what it means to have taken 'reasonable steps' will apply in the same way as that in the 'Model Participation Rules' (currently version 6) used in the National Electronic Conveyancing system. This exhaustively lists the types of identity documents that can be used to verify the identity of a client or mortgagor under the VOI standard.

The Directions would provide a 'safe harbour' whereby legal practitioners, licensed conveyancers and financial institutions will be deemed to have taken 'reasonable steps' if they comply with the verification of identity standard (VOI Standard).

The proposed Directions would not mandate use of the VOI Standard. Legal practitioners, licensed conveyancers and financial institutions who do not use the VOI Standard will, however, still need to ensure they take 'reasonable steps' to verify identity. What constitutes 'reasonable steps' would depend on the circumstances, and ultimately could be determined by a Court.

NOTE: The Recorder will **not** be verifying the identity of parties – staff of the Land Titles Office will have no role in this process. The Directions would require legal practitioners, licensed conveyancers, and financial institutions to conduct the identity verification of their client or mortgagor and comply with retention of evidence obligations.

Verification of Authority or Right to Deal

It is further intended that the Directions would introduce the requirement for legal practitioners, licensed conveyancers, and financial institutions to take reasonable steps to verify the right of clients or mortgagors to deal with the land in question, or to participate in the conveyancing transaction.

Unlike verification of identity, there is no standard for verification of right to deal prescribed by the Model Participation Rules. There will not be a 'safe harbour' standard for verification of right to deal. Legal practitioners, licensed conveyancers and financial institutions will need to satisfy themselves that they have taken reasonable steps.

The Land Titles Office and the Recorder cannot provide legal or policy advice as to what reasonable steps might be in any matter. It is observed that merely noting that a client or mortgagor produces

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an original paper certificate of title will **not** be considered as taking reasonable steps. While that might arguably be one piece of evidence, further steps would need to be taken to both identify the person **and** ensure the person has a 'right to deal' with land or participate in the transaction. For example, these further steps might include things such as undertaking a title search, considering the existence of any registered interests, sighting a current extract of the title taken from the Register, viewing a rates notice, viewing a contract of sale, or other such evidence considered necessary in the professional judgment of the legal practitioner, licensed conveyancer or financial institution.

Client Authorisation

As part of the National Electronic Conveyancing system, legal practitioners and licensed conveyancers are required to obtain a client authorisation in a specific form (the Client Authorisation Form). The Recorder plans to make a Direction introducing this requirement to the paper conveyancing process in Tasmania.

The Direction will require legal practitioners and licensed conveyancers to obtain a signed Client Authorisation Form. The form required by the Recorder will likely be aligned with the form annexed to the Model Participation Rules (version 6) used in the National Electronic Conveyancing system.

The Client Authorisation Form is a standalone form that will be required as a result of the Recorder's Directions, *in addition to* any usual retainers or client agreements legal practitioners and licensed conveyancers have with their clients. The Client Authorisation Form is a document that may need to be produced in an audit and it cannot be an extension of any retainer document.

The Client Authorisation Form will be intended to authorise the legal practitioner or conveyancer to:

- lodge documents with the LTO;
- authorise any financial settlement involved in the conveyancing transaction; and
- do anything else necessary to complete the conveyancing transaction.

The form will also authorise the legal practitioner or conveyancer to sign LTO documents on behalf of the client 'as required for the Conveyancing Transaction.'. Notwithstanding this, it is likely that LTO forms will only be changed to allow legal practitioner/conveyancer signing on behalf of their clients in the planned Second Phase of Directions.

There is no current change to LTO forms and clients will still need to sign forms as currently made available. Notice will be given by the Recorder ahead of any changes to forms.

Retention of Evidence

To keep records of compliance with the Directions, it is planned that the Directions will require the retention of supporting documentary evidence by a legal practitioner, conveyancer, or financial institution.

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Evidence will need to be retained for seven (7) years from the date of lodgment. Evidence that must be retained will include:

- any evidence required by the State Revenue Office;
- any Client Authorisation Form and any evidence supporting the client authorisation;
- any evidence verifying the client's right to deal with land or enter the conveyancing transaction (e.g., title searches, copies of contracts of sale or rates notices or other material sourced and relied upon to support this);
- evidence supporting the Verification of Identity of the client (e.g., certified copies of identity documents); and
- any other evidence demonstrating compliance with prescribed requirements (i.e., any supporting documents required for the dealing type).

Legal practitioners, licensed conveyancers, and financial institutions can determine the appropriate medium (i.e., paper or electronic) for retaining the evidence, however they will have to ensure the evidence is accessible, legible, and safely stored.

Compliance Examinations

National Electronic Conveyancing includes a framework for land registries to conduct audits to ensure compliance with requirements. It is anticipated that the Directions will create a similar framework to conduct compliance examinations.

Using the compliance examination procedure developed for National Electronic Conveyancing, would empower the Recorder e to require production of the evidence retained by the legal practitioner, licensed conveyancer or financial institution. If, on reviewing the evidence provided for a particular dealing, the Recorder finds that the Directions were not complied with, the Recorder may refuse to register the dealing.

Compliance examinations conducted post-registration may not affect the registered status of a dealing, subject to the provisions of legislation, but findings of non-compliance may have other consequences for legal practitioners, licensed conveyancers or financial institutions.

Planned Second Phase of Directions

It is anticipated that the Second Phase of Directions would introduce further changes, including:

- requiring certifications on LTO forms;
- allowing provision for legal practitioners and licensed conveyancers, where a Client Authorisation Form has been obtained, to sign LTO forms on behalf of their clients; and
- removing witnessing requirements in some circumstances.

LTO forms would need to be amended to accommodate these changes.

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Certifications

In National Electronic Conveyancing, legal practitioners, licensed conveyancers and financial institutions must provide a certification of the fact that they have complied with the requirements to enter into a client authorisation and undertake verification of identity, verification of right to deal, retention of evidence, and otherwise comply with the Act and other requirements.

The Recorder intends to issue a Direction that would create an equivalent requirement in the current paper based conveyancing system. Where relevant, legal practitioners, licensed conveyancers, and financial institutions will be required to certify on the face of the form, that they have complied with the relevant Directions. The certification required will depend on their role and that of their client in the particular conveyancing transaction. A list of the certifications appears in **Appendix A**. The purpose of the certifications is to give the Recorder greater certainty that the rules have been complied with.

Certifications will only be required on the most commonly used forms that make up a majority of LTO lodgments (listed in **Appendix B**). This will require the LTO to amend the relevant forms to include the certifications.

Questions raised by certification

The requirement to provide certifications may raise pertinent questions for consideration by industry:

- Will representatives seek to rely on certifications undertaken by the other party's representatives, and if so, by what means?
- If not, will representatives ask to see supporting evidence retained by the other party's representatives, and if so, on what basis?
- What, if any, role may be played by the standard form contract?

These questions cannot be answered by the Recorder, as they are matters for consideration by industry.

Authorised Representative Signatures

In National Electronic Conveyancing, legal practitioners and licensed conveyancers electronically sign applications, dealings, and instruments on behalf of their clients.

The Recorder plans to introduce a Direction that would allow legal practitioners and licensed conveyancers to sign paper applications, dealings, and instruments on behalf of their clients.

As noted above, the Client Authorisation Form that would be required under the first set of Directions will authorise the solicitor or conveyancer to sign LTO applications, dealings, and

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instruments on behalf of their clients. The further Direction would require legal practitioners and licensed conveyancers to do so.

'Authorised Representative' signatures will only be required on the most commonly used forms that make up a majority of LTO lodgments – the same ones on which certifications will be introduced. This will require the LTO to amend the relevant forms to indicate that the representative will sign. Notice will be given by the Recorder ahead of any changes to forms.

Removing Witness Requirements

Once legal practitioners and licensed conveyancers are permitted and required to sign certain forms on behalf of their clients, there will no longer be a need for the execution of those documents to be witnessed. The legal practitioner or licensed conveyancer will be able to sign the dealing and provide the necessary certifications.

To that end it is anticipated that the Recorder will issue a Direction dispensing with the need for witnessing of signatures in some circumstances – this will apply to the same forms that require certifications and Authorised Representative signatures.

There is no change yet to current practice and notice will be given of any pending change.

Planned Third Phase of Directions

Dispensing with Certificates of Title

It is anticipated that a Direction will be issued dispensing with the need to lodge certificates of title with applications, dealings, and instruments. This would mean that, for example, a Transfer form would no longer need to be accompanied by the certificate of title.

At the same time, the Recorder would use existing legislative discretion to stop issuing certificates of title.

As a result, paper certificates of title would cease to play any role in the conveyancing process and would not be required to be lodged with the Land Titles Office.

It is **not** anticipated that the Recorder would 'call in' all certificates of title as part of this process.

Why remove certificates of title?

Certificates of title are a major source of risk in the functioning of the Register. The Register of land maintained by the Recorder pursuant to section 33 of the LTA provides a conclusive record of estates and interests in land. Despite this, certificates of title are widely – but mistakenly – understood to be conclusive evidence of ownership of land and the right to deal with that land.

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By dispensing with the requirement to lodge certificates of title with dealings and ending the practice of issuing certificates of title, the Recorder intends to reinforce the current position that only the Register provides conclusive evidence of estates and interests in land.

The introduction of a requirement for legal practitioners and licensed conveyancers to verify clients' Right to Deal will mean that the certificate of title need not be used as a 'proxy' for the Right to Deal.

When certificates of title are no longer required to be lodged with dealings, they will not be able to be used in fraudulent transactions. If a certificate of title is lost or accidentally destroyed, there will be no need to go through the time and expense of an application for a new certificate of title. Finally, when the National Electronic Conveyancing system is introduced in Tasmania, there will be no need to continue to lodge paper certificates of title in an otherwise electronic system.

Removing certificates of title, having introduced requirements for Verification of Identity, Verification of Authority or Right to Deal, and Certifications, a safer and more secure process can be realised, with the risk of fraud greatly reduced.

Ensure all interests registered

It is understood that there may have been a practice of land owners providing their certificate of title as 'security' for private loans. By retaining possession of the certificate of title, the lender could ensure the borrower did not deal with their property where the original title was needed to effect a change in the Register.

When certificates of title no longer need to be lodged with dealings, these arrangements will no longer provide any security at all to lenders. As such, any lender or their representative in the possession of a certificate of title should consider the effect of the planned Directions and prepare accordingly.

Updated confirmation processes

The issuing of new certificates of title by the LTO is often used by parties as confirmation that a particular dealing has been successfully registered. The LTO intends to expand its existing automatic confirmation of registration email service so that lodging parties that provide an email address will receive an email confirmation when their dealing has been registered.

The confirmation email will include a PDF registration confirmation, with each dealing appearing on separate pages of the PDF.

Unrepresented Parties

While unrepresented parties are not able to participate in transactions in National Electronic Conveyancing, they will continue to be able to complete and lodge paper documents after the Directions are introduced.

Directions will be issued relevant to unrepresented parties.

For example, the Direction requiring completion of a Client Authorisation Form will not apply to unrepresented parties.

It is suggested that legal practitioners and licensed conveyancers familiarise themselves with the Directions that will be issued relevant to unrepresented parties. In the event a legal practitioner or licensed conveyancer is engaged to act as an authorised identity verifier for an unrepresented party, or in the event that they represent a client who is transacting with an unrepresented party in relation to land, it will be important to be aware of any such Directions.

Anticipated Timeframes

All the Directions referred to in this Information Sheet would be made under a head of power in the *Land Titles Amendment Bill* currently before Parliament. As such, the timeline for the anticipated Directions will depend on when, or whether, the Bill is passed. Notice will be given ahead of the introduction of any Directions with the possibility of some Directions being issued in 2023.

Appendix A – Certifications

The following certifications are extracted from page 33 of the Model Participation Rules, version 6, linked below:

1 The Certifier has taken reasonable steps to verify the identity of the [transferor/transferee/mortgagor/mortgagee/caveator/applicant/covenantor/covantee/encumbrancer/encumbrancee/grantor/grantee/lienor/lessor/lessee/receiving party/relinquishing party] or his, her or its administrator or attorney.

2 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.

4 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,:

(a) 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.

6 The Certifier has:

(a) retrieved; and

(b) either securely destroyed or made invalid, the (duplicate) certificate(s) of title for the folio(s) of the Register listed in this Registry Instrument or Document.

Appendix B – Included Forms

It is anticipated that the following forms will be amended to include certifications, allow for Authorised Representative signing, and remove witness requirements:

- *Transfer (initially solely transfer of fee simple,*
- *Mortgage*
- *Discharge of Mortgage*
- *Partial Discharge of Mortgage (Part of Monies)*
- *Partial Discharge of Mortgage (Personal Responsibility)*
- *Partial Discharge of Mortgage (Part of Land)*
- *Caveat*
- *Withdrawal of Caveat*
- *Priority Notice*
- *Withdrawal of Priority Notice*
- *Section 98*
- *Section 99*
- *Survivorship (section 100)*
- *Transfer by way of Assent*
- *Application to Correct Name*
- *Application to Note Marriage*
- *Application to Revert to Maiden Name*
- *Application to Change Name*

Note some of the above forms may be merged.

Appendix C – Further Information

- Model Participation Rules, version 6, developed by ARNECC:
[Model Participation Rules Version 6 - clean \(arnecc.gov.au\)](https://www.arnecc.gov.au/Model-Participation-Rules-Version-6-clean)
- Guidance Notes regarding the Model Participation Rules, developed by ARNECC:
[Model Participation Rules Guidance Notes - ARNECC](#)
Please note that, while the Guidance Notes specifically relate to National Electronic Conveyancing, the principles are intended to apply, to the extent possible, to the paper reforms.