

Part 61 – Witnessing and Execution of Instruments or Documents

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Part 61 – Witnessing and Execution of Instruments or Documents

Legislation

[61-0000]

Application of the *Land Title Act 1994* to the *Water Act 2000*

Under the provisions of the Water Act, the Land Title Act applies to the registration of an interest or dealings for a water allocation on the water allocations register subject to some exceptions.

A relevant interest or dealing may be registered in a way mentioned in the Land Title Act and the Registrar of Water Allocations may exercise a power or perform an obligation of the Registrar of Titles under the Land Title Act:

- (a) as if a reference to the Registrar of Titles were a reference to the Registrar of Water Allocations; and
- (b) as if a reference to the freehold land register were a reference to the water allocations register; and
- (c) as if a reference to freehold land or land were a reference to a water allocation; and
- (d) as if a reference to a lot were a reference to a water allocation; and
- (e) with any other necessary changes.

^{1, 3}Reference to the Chief Executive in the *Land Act 1994*

The functions of the Chief Executive under the Land Act relating to the keeping of registers are carried out by the Registrar of Titles under delegation given under s. 393 of the Land Act.

Witnesses to Executions

General Law

[61-1000]

²An instrument required by a provision of the *Land Title Act 1994* to be validly executed, is validly executed by an individual if it is executed in a way permitted by law and the execution is witnessed by a person mentioned in Schedule 1 of the Land Title Act (s. 161(2) of the Land Title Act).

^{1, 3}A document required by a provision of *Land Act 1994* to be validly executed, is validly executed by an individual if it is executed in a way permitted by law and the execution is witnessed by a person prescribed under the regulations (s. 310(2) of the Land Act and section 73 of the Land Regulation 2020).

Witnesses mentioned in Schedule 1 of the *Land Title Act 1994* and section 73 of the Land Regulation 2020

[61-1100]

The persons who can witness the execution of an instrument or document are listed in Schedule 1 of the Land Title Act or s. 73 of the Land Regulation, being:

- a notary public;

- a justice of the peace;
- a commissioner for declarations;
- a lawyer;
- a licensed conveyancer from another State;
- another person approved by the Registrar; and
- a person prescribed by regulation (where the place of execution of the instrument is outside Australia only).

Definitions in the Land Title Act, the *Justices of the Peace and Commissioners for Declarations Act 1991*, the *Acts Interpretation Act 1954* and other Acts apply to some of the terms in this list. Additional information about each type of witness is outlined below.

Notwithstanding that a person may be authorised to take a declaration, they are not authorised to witness the signing of an instrument or a document unless included in a category listed in Schedule 1 of the Land Title Act or s. 73 of the Land Regulation. For example, the following are not authorised unless they also hold an office or qualification mentioned in Schedule 1 of the Land Title Act, s. 73 of the Land Regulation or have been approved by the Registrar as ‘another person’:

- an *ex officio* commissioner for declarations under the *Oaths Act 2001* (Tas);
- a person who is an authorised witness under the *Oaths, Affidavits and Statutory Declarations Act 2005* (WA);
- a person authorised under the *Statutory Declarations Act 1959* (Cth);
- a legal executive or a paralegal;
- a commissioner for taking affidavits in the Supreme Court of South Australia under the *Oaths Act 1936* (SA).

A notary public

[61-1110]

A notary public is a person appointed to that office in accordance with the legal requirements of the appointing jurisdiction. In Queensland, notaries public are appointed by the Court of Faculties in England under the guidance of the Archbishop of Canterbury. In other Australian states and territories the appointment of notaries public is governed by legislation, e.g. *Public Notaries Act 2001* (Vic). In addition to the general requirements in [61-2040], for witnessing practice requirements specific to this category inside Australia see [61-2120] and outside Australia see [61-2220].

A justice of the peace or commissioner for declarations

[61-1120]

A ‘justice of the peace’ or ‘commissioner for declarations’ means a person holding the relevant office under the *Justices of the Peace and Commissioners for Declarations Act 1991* i.e. a Queensland justice of the peace or Queensland commissioner for declarations.

A justice of the peace appointed prior to 1 November 1991 who has not applied to be appointed as a commissioner for declarations by 30 June 2000 ceases to hold that office and instead holds the office of a justice of the peace (commissioner for declarations) (s. 42(1) of the Justices of the Peace and Commissioners for Declarations Act). Section 42(1) does not apply to a lawyer who remains a justice of the peace for life.

See [61-2120] for witnessing practice requirements specific to this category in addition to the general requirements in [61-2040]. See [61-1150] for justices of the peace and commissioners for declarations appointed by other Australian states and territories.

A lawyer

[61-1130]

A ‘lawyer’ is defined as an Australian lawyer under section 5(1) the *Legal Profession Act 2007* (see Schedule 2 of the *Land Title Act 1994* and Schedule 1 of the *Acts Interpretation Act 1954*).

Under the *Legal Profession Act* an Australian lawyer is any person who has been admitted to a Supreme Court of an Australian state or territory as an Australian lawyer, lawyer, solicitor, barrister or barrister and solicitor (depending on the terminology used in the jurisdiction at the time of admission). The term Australian lawyer includes all Australian legal practitioners i.e. an Australian solicitor, barrister or barrister and solicitor.

The term “lawyer” in Schedule 1 of the *Land Title Act* and s. 73 of the *Land Regulation 2020* does not include lawyers from foreign jurisdictions. See [61-1150] for New Zealand lawyers.

See [61-2220] for witnessing practice requirements specific to this category for witnessing instruments or documents outside Australia (for the general requirements see [61-2040]).

A licensed conveyancer from another State

[61-1140]

To be classified as a licensed conveyancer, the person must hold a current licence to practice as a conveyancer in a state outside Queensland which has a licensing regime for conveyancers. Queensland does not have a licensing regime for conveyancers.

Another person approved by the Registrar

[61-1150]

The Registrar may also approve ‘another person’ in a state or territory of Australia, or in any place outside Australia to witness the execution of an instrument or document.

Inside Australia

Categories of persons who have been generally approved by the Registrar to witness executions inside Australia are:

- a justice of the peace or commissioner for declarations under the law of an Australian state or territory other than Queensland. Note that an *ex officio* commissioner for declarations under the *Oaths Act 2001* (Tas) is not approved;
- a licensed settlement agent authorised under the *Settlement Agents Act 1981* (WA);
- a registrar or deputy registrar of the Supreme, District or Magistrates Courts of Western Australia;
- a commissioner for oaths appointed in the Northern Territory.

Outside Australia (including external Australian territories)

Categories of persons who have been generally approved by the Registrar to witness executions outside Australia are:

- a Norfolk Island justice of the peace being a person who has been appointed as a justice of the peace for Norfolk Island or is otherwise a justice of the peace under the *Justices of the Peace Act 1972* (NI).

See [61-2220] for additional witnessing practice requirements specific to this category;

- a Norfolk Island practitioner being a person who is registered as a practitioner on the register of practitioners of the Supreme Court of Norfolk Island in accordance with the *Legal Profession Act 1993* (NI). Norfolk Island practitioners will likely also fall within the definition of an Australian lawyer. See [61-1130] for information about Australian lawyers.

See [61-2220] for additional witnessing practice requirements specific to this category;

- a New Zealand lawyer who holds a current practising certificate under the *Lawyers and Conveyancers Act 2006* (NZ) (i.e. a solicitor, barrister or barrister and solicitor) where the place of execution of the instrument or document is New Zealand.

Please note that a person enrolled as a barrister and solicitor of the High Court of New Zealand is not an approved witness unless they also hold a current practising certificate. Therefore a witness with a qualification stated as an ‘enrolled barrister and solicitor of the High Court of New Zealand’ or similar will not be accepted unless further evidence can be provided that the witness holds a practising certificate under the *Lawyers and Conveyancers Act 2006* (NZ).

See [61-2220] for additional witnessing practice requirements specific to this category;

- a commissioner for oaths appointed under the *Oaths, Affirmations and Statutory Declarations Act 1962* (Papua New Guinea) where the place of execution of the instrument or document is Papua New Guinea.

See [61-2220] for additional witnessing practice requirements specific to this category.

These categories of witnesses are only approved to witness instruments or documents in the country of their appointment i.e. a commissioner for oaths appointed under the Oaths, Affirmations and Statutory Declarations Act may only witness instruments or documents where the place of execution is Papua New Guinea.

The Registrar may also approve ‘another person’ to witness the execution of an instrument or document on an individual case by case basis. Such approval will usually only be given in exceptional circumstances. The requirements for making a submission to the Registrar to approve ‘another person’ to witness the execution of an instrument or document are outlined in [61-2400].

A person prescribed by regulation

[61-1160]

Where an instrument or document is executed outside Australia a person prescribed by regulation is also authorised to witness an execution.

Persons prescribed by regulation include:

- an Australian consular officer or an authorised employee of the Commonwealth under the *Australian Consular Officers’ Notarial Powers and Evidence Act 1946* and *Consular Fees Act 1955* (Cth).

Honorary consuls are not authorised to undertake notarial functions including witnessing the execution of an instrument or the signing of a document.

See [61-2220] for additional witnessing practice requirements specific to this category.

- a competent officer as defined under the Defence Regulation 2016 (Cth) where they are witnessing the execution of an instrument or document by:

- a member of the Australian Defence Force currently on service outside Australia; or
- a person who is accompanying a part of the Australian Defence Force outside Australia.

A competent officer is defined in s. 52 of the Defence Regulation as:

- any officer in the Australian Defence Force; or
- an officer (or an equivalent rank) in the Canadian, New Zealand, United Kingdom or United States of America armed forces (naval, military or air force); or
- the official representative of Australian Defence Force members who are prisoners of war or other persons detained or interned.

Officer is comprehensively defined in s. 4 of the *Defence Act 1903* (Cth).

To be accompanying a part of the Australian Defence Force the person must be formally accompanying the deployment, not just co-located with it. For example, civilian air crew or medical staff will likely be persons accompanying the Australian Defence Force. Spouses of members of the Australian Defence Force who have chosen to relocate to the country in which their spouse is serving but are not accompanying the deployment will not be persons accompanying the Australian Defence Force.

See [61-2220] for additional witnessing practice requirements specific to this category.

Instrument or document not witnessed

[61-1200]

Section 161(3) of the *Land Title Act 1994* and s. 310(3) of the *Land Act 1994* also give the Registrar discretion in exceptional circumstances to register an instrument or document even though the execution is not witnessed or was witnessed by a person other than mentioned in Schedule 1 of the Land Title Act or in s. 73 of the Land Regulation 2020.

Obligations of witnesses for individuals

[61-1300]

Section 162 of the *Land Title Act 1994* and s. 311 of the *Land Act 1994* require a person who witnesses an instrument or document executed by an individual to:

- first take reasonable steps to verify the identity of the individual and ensure that the individual is the person entitled to sign the instrument or document;
- have the individual execute the instrument or sign the document in their presence; and
- not be a party to the instrument or document.

Under s. 162(2) of Land Title Act and s. 311(2) of the Land Act, a witness will take reasonable steps to verify the identity of the individual if they comply with practices included in this Land Title Practice Manual for verifying the individual's identity. Relevant practices are outlined in [61-2300].

A witness is also required to retain either of the following for a period of 7 years after they witness the execution or signing of the instrument or document:

- a written record of the steps taken by the witness to verify the identity of the individual and ensure that the individual is the person entitled to sign the instrument or document; or
- originals or copies of the documents and other evidence obtained by the witness to verify the identity of the individual and ensure that the individual is the person entitled to sign the instrument or document.

The Registrar may, whether before or after the registration of the instrument, ask the witness to produce the written record or evidence (s. 162(4) of the Land Title Act and s. 311(4) of the Land Act).

Electronic conveyancing documents

[61-1400]

Refer to [62-3000].

Practice

[61-2000]

When witnessing is required

[61-2010]

Executions signed personally by an individual are required to be witnessed.

For witnessing requirements in relation to executions by corporations refer to [61-3030].

For witnessing requirements in relation to execution by an attorney see [61-3050].

²Section 161(3A) of the *Land Title Act 1994* provides that for an instrument that transfers or creates an interest in a lot (or where the instrument or document indicates), the execution by the legal practitioner acting for the transferee or the person in whose favour the interest is created need not be witnessed. Where a legal practitioner executes an instrument in this capacity, their full name and qualification must be shown adjacent to or below their signature. See [61-3060].

Additional witnessing requirement for Form 1, Mortgage (National Mortgage Form) and Form 3

[61-2020]

Form 1 – Transfer, Mortgage (National Mortgage Form) and Form 3 – Release of Mortgage require the completion of a separate witnessing provision for each signature which is required to be witnessed, even if the signatures are made in front of the same witness.

See examples in [1-4000] and [2-4010].

[61-2021] deleted

Multiple executions

[61-2030]

For instruments or documents which require separate witnessing provisions for each signature and where multiple executions are needed due to signatories signing before different witnesses, separate witnessing provisions must be completed by each witness.

In cases where there is insufficient room on the instrument or document, a Form 20 – Enlarged Panel may be used subject to the following:

- It is permissible for the execution Item (e.g. Item 6 on a Form 1 – Transfer) to appear partially on the face of the instrument or document and partially on a Form 20 – Enlarged Panel. However, the full execution for each party (signature, date and completed witnessing provision) must appear on the same page of the instrument or document.

- It is not permissible for all of the executions to appear on a Form 20 – Enlarged Panel where there is space on the face of the instrument or document for one of the executions.
- The Item number and heading (e.g. ‘**Item 6 Execution**’) must be included on the Form 20 – Enlarged Panel and otherwise comply with requirements for completing a Form 20. See [20-2020].

General witnessing requirements

[61-2040]

The Registrar requires the name and qualification of a witness to be shown legibly adjacent to or below their signature.

A witness may either write their full name or their name as it is registered or recorded with the relevant registering authority, e.g. a notary public who is recorded with the relevant notarial body as John J Jones does not have to write his middle name in full.

If the witness has been issued with an official seal, stamp or registration number they should write or type the registration number and / or apply the seal or stamp adjacent to or below their signature.

Where a witness applies an official seal or stamp the witness should ensure the stamp does not obscure the witness’s name.

Practices for witnessing within Australia

[61-2100]

There are three practice requirements related to the witnessing of instruments or documents within Australia:

1. instruments or documents must be witnessed by a person mentioned in Schedule 1 of the *Land Title Act 1994* or s. 73 of the *Land Regulation 2020* as a person who can witness execution at any place inside Australia (see [61-1100] and [61-2110]);
2. witnessing practice requirements – including requirements for specific categories of witness must be met (see [61-2040] and [61-2120]);
3. the witness must comply with their obligations under s. 162 of the *Land Title Act* or s. 311 of the *Land Act 1994* (see [61-2300]).

Witnesses who can witness instruments or documents within Australia

[61-2110]

Witnesses who can witness executions where the instrument or document is executed inside Australia include:

- a notary public;
- a justice of the peace (Qld);
- a commissioner for declarations (Qld);
- a lawyer, being an Australian lawyer or Australian legal practitioner (solicitor or barrister);
- a licensed conveyancer from another State;
- any of the following (being persons approved by the Registrar to witness instruments and documents within Australia):

- a justice of the peace or commissioner for declarations under the law of an Australian state or territory other than Queensland;
- a licensed settlement agent authorised under the *Settlement Agents Act 1981* (WA);
- a Registrar or Deputy Registrar of the Supreme, District or Magistrates Courts of Western Australia;
- a commissioner for oaths appointed in the Northern Territory;
- a specific person approved by the Registrar in response to a submission requesting that the Registrar approve that person – see [61-2400].

Definitions and additional information about these types of witnesses is outlined in [61-1100].

Specific practice requirements for witnessing instruments or documents within Australia

[61-2120]

Justice of the peace

When witnessing the execution of instruments or documents, justices of the peace must clearly write, type, print or stamp their name and the words ‘justice of the peace’ or the abbreviation ‘JP’ adjacent to or below their signature.

Where a justice of the peace has been given a registration number, this number should also be included adjacent to or below their signature.

Commissioner for declarations

Commissioners for declarations must clearly write, type, print or stamp their name and the following adjacent to or below their signature:

- the words ‘commissioner for declaration’, ‘Com Dec’ or the abbreviation ‘CDec’; and
- their registration number.

When witnessing the execution of instruments or documents a justice of the peace (commissioner for declarations) should repeat their full title or use the abbreviation ‘JP (C.Dec)’.

Notary public

A notary public who witnesses the execution of instruments or documents within Australia must clearly write, type, print or stamp their name, qualification and jurisdiction (e.g. Australian state or territory) adjacent to or below their signature.

Witnessing outside Australia (including external Australian territories)

[61-2200]

There are five practice requirements related to the witnessing of instruments or documents outside Australia:

1. instruments or documents must be witnessed by a person mentioned in Schedule 1 of the *Land Title Act 1994* or s. 73 of the *Land Regulation 2020* (see [61-1100] and [61-2210]);
2. witnessing practice requirements – including requirements for specific categories of witness must be met (see [61-2040] and [61-2220]);

3. the witness must comply with their obligations under s. 162 of the Land Title Act or s. 311 of the *Land Act 1994* (see [61-2300]);
4. a properly completed witnessing certification must be deposited (see [61-2500]);
5. a letter from an Australian legal practitioner or authorised employee of an Australian law firm or financial institution stating that they have taken reasonable steps to ensure that the individual is the person entitled to sign the instrument or document must be deposited where specified below (see [61-2530] and [61-2540]).

Witnesses who can witness instruments or documents outside Australia**[61-2210]**

Witnesses who can witness executions where the instrument or document is executed outside Australia include:

- a notary public;
- a lawyer, being an Australian lawyer or Australian legal practitioner (solicitor or barrister);
- a person prescribed by regulation including:
 - an Australian consular officer or authorised employee of the Commonwealth;
 - a competent officer as defined under the Defence Regulation 2016 where witnessing an execution by a member of the Australian Defence Force currently on service outside Australia or a person who is accompanying a part of the Australian Defence Force outside Australia;
- another person approved by the Registrar including:
 - a Norfolk Island justice of the peace;
 - a Norfolk Island practitioner;
 - a New Zealand lawyer (solicitor, barrister or barrister and solicitor) where the place of execution of the instrument or document is New Zealand;
 - a commissioner for oaths appointed under the *Oaths, Affirmations and Statutory Declarations Act 1962* (Papua New Guinea) where the place of execution of the instrument or document is Papua New Guinea;
- a specific person approved by the Registrar in response to a submission requesting that the Registrar approve that person – see [61-2400].

Definitions and additional information about these types of witnesses is outlined in [61-1100]).

Specific practice requirements for witnessing instruments or documents outside Australia**[61-2220]****Australian consular officer or authorised employee of the Commonwealth**

An Australian consular officer or authorised employee of the Commonwealth must clearly write, type or stamp their full name and legibly affix the official seal of their mission or post adjacent to or below their signature.

Refer to [61-1160] for further information about these types of witnesses.

Competent officer as defined under the Defence Regulation 2016 (Cth)

Where a competent officer as defined under the Defence Regulation 2016 has witnessed the signature of a member of the Defence Force serving outside Australia the following is required:

- the competent officer (witness) must print their full name and rank adjacent to or below their signature; and
- supporting documentation must be deposited to verify the execution was made while the member of the Australian Defence Force executing the instrument or document was serving overseas or accompanying a part of the Australian Defence Force outside Australia, for example a letter from an Australian legal practitioner. There is no need to state the country in which the member of the Defence Force was serving.

Refer to [61-1160] for further information about the requirements under the Defence Regulation and definitions.

Australian lawyer

An Australian lawyer who witnesses the execution of instruments or documents outside Australia must clearly write, type, print or stamp their full name and qualification (i.e. Australian lawyer, Australian legal practitioner, solicitor or barrister or solicitor and barrister) adjacent to or below their signature.

An overseas lawyer who is not an Australian lawyer is not able to witness the execution of an instrument or document outside Australia unless:

- they have an additional qualification mentioned in Schedule 1 of the *Land Title Act 1994* or s. 73 of the *Land Regulation 2020* which permits them to witness the execution of an instrument or document outside Australia e.g. they are also a notary public. If this is the case they must show that qualification adjacent to or below their signature and on the Form 20 - Identity / Witnessing Certification; or
- the Registrar of Titles has approved the overseas lawyer as ‘another person’ before lodgement of the instrument or document in accordance with the process outlined in [61-2400]; or
- they are a New Zealand lawyer and the place of execution of the instrument or document is New Zealand (see [61-1150] and New Zealand lawyer below).

New Zealand lawyer (solicitor, barrister or barrister and solicitor with a practising certificate)

A New Zealand lawyer who witnesses the execution of instruments or documents within New Zealand must clearly write, type, print or stamp their full name and qualification (e.g. New Zealand solicitor or New Zealand barrister or New Zealand barrister and solicitor) adjacent to or below their signature.

Note: a witness with a qualification stated as an ‘enrolled barrister and solicitor of the High Court of New Zealand’ or similar is not acceptable unless further evidence can be provided that the witness holds a current practising certificate under the *Lawyers and Conveyancers Act 2006* (NZ).

A New Zealand lawyer is not approved to witness the execution of an instrument or document outside New Zealand unless:

- they have an additional qualification mentioned in Schedule 1 of the *Land Title Act 1994* or s. 73 of the *Land Regulation 2020* which permits them to witness the execution of an instrument or document outside Australia e.g. they are also a notary public. If this

is the case they must show that qualification adjacent to or below their signature and on the Form 20 - Identity / Witnessing Certification; or

- the Registrar of Titles has approved the specific New Zealand lawyer to witness the instrument or document outside New Zealand before lodgement of the instrument or document in accordance with the process outlined in [61-2400].

Notary public

Where an instrument or document is signed outside of Australia, in the presence of a notary public, the following requirements apply:

- the name (either full name or name as registered or recorded with the relevant registering authority), qualification or description of public office or commission, date of expiry of the commission (if applicable) and official stamp/seal (if one is required to be used) of the notary public must be shown clearly:

- on the face of the instrument or document adjacent to or below their signature; or
- in the manner required of a notary public when undertaking a witnessing function.

Note: if the notary public signs a separate document, rather than the face of the instrument or document, the details of the instrument or document must be clearly referenced on the separate document - for example, type of instrument or document, property and party details and a submission must be made to the Registrar in accordance with the requirements outlined in [61-2610];

- a translation of any non-English part of the execution or Form 20 - Identity/ Witnessing Certification including stamps / seals must be provided. Note that an informal translation is acceptable e.g. via a letter.

Norfolk Island justice of the peace

Norfolk Island justices of the peace must clearly write, type, print or stamp their name and the words 'justice of the peace' or the abbreviation 'JP' adjacent to or below their signature.

Refer to [61-1150] for more information.

Norfolk Island practitioner

A Norfolk Island Practitioner who witnesses the execution of instruments or documents outside Australia must clearly write, type, print or stamp their name, qualification and jurisdiction (e.g. Norfolk Island) adjacent to or below their signature. If the Norfolk Island practitioner is also an Australian lawyer they may write either Australian lawyer or Norfolk Island lawyer.

Refer to [61-1150] for more information.

Commissioners for oaths under the *Oaths, Affirmations and Statutory Declarations Act 1962* (Papua New Guinea)

A commissioner for oaths appointed under the *Oaths, Affirmations and Statutory Declarations Act 1962* (Papua New Guinea) must clearly write, type or stamp their full name and legibly affix their official seal or stamp adjacent to or below their signature.

Refer to [61-1150] for more information.

This category of witness is only approved to witness instruments and documents where the place of execution of the instrument or document is Papua New Guinea.

Obligations of witnesses

[61-2300]

Under s. 162 of the *Land Title Act 1994* and s. 311 of the *Land Act 1994* a person who witnesses an instrument or document executed by an individual is required to:

1. take reasonable steps to verify the identity of the individual;
2. take reasonable steps to ensure that the individual is the person entitled to sign the instrument or document;
3. retain either of the following for a period of 7 years after they witness the signing of the instrument or document:
 - a written record of the steps taken by the witness to verify the identity of the individual and ensure that the individual is the person entitled to sign the instrument or document; or
 - originals or copies of the documents and other evidence obtained by the witness to verify the identity of the individual and ensure that the individual is the person entitled to sign the instrument or document;
4. have the individual execute the instrument or sign the document in their presence; and
5. not be a party to the instrument or document.

Each of these requirements is explained further below.

Take reasonable steps to verify the identity of the individual

[61-2310]

A witness has statutory obligation to take reasonable steps to verify the identity of the individual whose execution they have been asked to witness. This means the witness must take the steps that an ordinarily prudent witness would take in the circumstances to ensure that the individual is the person who they claim to be.

A witness will take reasonable steps if they verify the identity of the individual using the Verification of Identity Standard outlined in [61-2700]. Verifying an individual in accordance with the Verification of Identity Standard involves a face-to-face, in-person interview between the witness, the 'Identity Verifier', and the individual, the 'Person Being Identified', where the individual supplies original identity documents from the list of documents outlined in the Verification of Identity Standard. The witness must carefully inspect the documents used to verify the identity of the individual and ensure the documents are original (not copies), current (except for an expired Australian passport which may have expired within the last two years) and appear to be genuine.

Mere mechanical compliance with the Verification of Identity Standard, without attention to detail, is not sufficient. Accordingly, paragraph 8 of the Verification of Identity Standard requires a witness to undertake further steps to verify the identity of the individual where:

- an identity document does not appear to be genuine;
- a photograph on an identity document is not a reasonable likeness;
- the individual executing the instrument or document does not appear to be the person to which the identity documents relate, for example because the individual appears not to be of the same gender as the current registered owner or holder of the relevant interest,

as indicated by the name of the registered owner or holder of the interest or by any other information reasonably available to the witness;

- it is otherwise reasonable to take further steps, for example because:
 - there appears to be an inconsistency between the identity documents and the instrument or document being executed such as differing signatures;
 - there is a discrepancy between identity documents, e.g. middle name missing, name apparently abbreviated or anglicised on a document;
 - the witness is aware or has reason to believe that there is a relative of the individual with a similar or the same name;
 - the individual appears to be younger than the current registered owner or holder of the interest, as indicated by the date that the person became registered on title or by any other information reasonably available to the witness;
 - where the individual executing the instrument or document has very limited identity documents and there is no plausible explanation as to why.

Examples of further steps that could be taken include (but are not limited to):

- obtaining more identity documents or other supporting evidence;
- where the identity documents are Australian using electronic verification services;
- where it is a foreign identity document checking the identification document looks the same as those on the respective country's government website.

Take reasonable steps to ensure the individual is entitled to sign

[61-2320]

A witness also has a statutory obligation to take reasonable steps to ensure that the individual is the person entitled to sign the instrument or document. This means the witness must take the steps that an ordinarily prudent witness would take in the circumstances to confirm both the true legal identity of the individual and also ensure that the individual is the registered proprietor of an interest or about to become the registered proprietor of the relevant interest in land.

Verifying entitlement to sign requires the witness to sight sufficient supporting evidence that includes the name of the individual whose entitlement to sign is being verified and the property or transaction details and clearly links the registered proprietor or interest holder to the land.

For an outgoing party or mortgagor, evidence that may assist in establishing entitlement to sign may include originals, copies or records of the following:

- a registration confirmation statement or current title search showing the individual as a registered proprietor;
- a current local government rates notices;
- a current land valuation notice;
- a current land tax assessment notice for the property;
- the mortgage granted by the mortgagor (if one exists).

For a party coming on the title, such as a transferee or a mortgagee, evidence that may assist in establishing entitlement to sign may include originals, copies or records of the following:

- a contract of sale for the property;
- loan documentation;
- a letter from a solicitor confirming that the individual is entitled to sign the instrument or document.

Recordkeeping obligations

[61-2330]

A witness is also required to retain either of the following for a period of 7 years after they witness the signing of the instrument or document:

- a written record of the steps taken by the witness to verify the identity of the individual and ensure that the individual is the person entitled to sign the instrument or document; or
- originals or copies of the documents and other evidence obtained by the witness to verify the identity of the individual and ensure that the individual is the person entitled to sign the instrument or document.

Where the witness opts to retain a written record the record should include as a minimum:

- the full name of the individual;
- the date the witnessing occurred;
- a description of the steps taken by the witness to verify the identity of the individual and their entitlement to sign e.g. a description of the identity documents and other evidence sighted by the witness. It is not necessary for the record to include the serial numbers of identity documents.

The Registrar may, whether before or after the registration of the instrument or document, ask the witness to produce the written record or evidence. It is anticipated that production of records would be required where the Registrar is investigating a particular allegation or other matter.

Where the instrument or document has been witnessed outside Australia then the witness's recordkeeping obligations will be satisfied by the deposit of a properly completed certification (see [61-2500]).

Justices of the peace and commissioners for declarations

Where a justice of the peace or commissioner for declarations witnesses an individual's signature on a paper instrument or document inside Australia, it is acceptable for the purposes of s. 162(3) of the *Land Title Act 1994* and s. 311(3) of the *Land Act 1994* for the justice of the peace or commissioner for declarations to only retain a written record. There is no expectation that a justice of the peace or commissioner for declarations will retain originals or copies of the documents or other evidence.

Australian legal practitioners

Where an Australian legal practitioner employed by an Australian law firm witnesses a paper instrument or document inside Australia it is acceptable for the record or evidence of the steps taken under s. 162(1) of the *Land Title Act 1994* or s. 311(1) of the *Land Act 1994* to be retained by the firm. There is no expectation that an Australian legal practitioner who has changed firms or retired from the profession would retain the records or evidence provided the practitioner's former firm has retained such records or evidence.

Have the individual execute the form in the witness's presence**[61-2340]**

To comply with this requirement the witness must be physically present when the individual executes the instrument or document with a 'wet' signature.

Titles Registry forms provide spaces for each individual and witness to sign separately. The date of execution must also be included in the space provided.

There is currently no provision in Queensland for instruments or documents to be witnessed 'electronically' or remotely via Skype or other electronic means.

Not be a party to the instrument**[61-2350]**

Any person with a vested interest in the transaction cannot also be a witness to the execution of the instrument or document. For example, if A and B own the land together and A is a justice of the peace, A cannot witness B's signature if they are both signing a Titles Registry instrument or document.

Care should also be taken when someone is signing under a power of attorney. For example, where A and B own the land together and C is both an attorney for B and an Australian lawyer. If A signs in their own right and C signs on behalf of B, C cannot then witness either signature as he or she is involved in the transaction.

The requirement that a witness must not be a party to the instrument or document is not infringed by an employee of a bank or other entity, who is a qualified witness by virtue of Schedule 1 of the *Land Title Act 1994* or s. 73 of the *Land Regulation 2020* witnessing the execution of an instrument or document that their employer is a party to. For example, a bank officer who is a justice of the peace is not a party to a mortgage to the bank.

Another person approved by the Registrar**[61-2400]**

In exceptional circumstances (for example, due to the remote location of the party signing the instrument or document), the Australian legal practitioner or financier for the individual executing the instrument or document may seek approval from the Registrar for 'another person' (other than a person mentioned in Schedule 1 of the *Land Title Act 1994* or s.73 of the *Land Regulation 2020*) to witness the execution of the instrument or document (for example, an overseas lawyer) before it is lodged.

The Registrar will only consider a submission seeking approval where it is supported by the following:

- a letter from the Australian legal practitioner or financier for the person which details the special circumstances which mean it is unreasonable to expect the individual to execute the instrument or document in the presence of a witness listed in Schedule 1 of the *Land Title Act* or s. 73 of the *Land Regulation*;
- either a statement by an Australian legal practitioner or financier on their letterhead, or a statutory declaration by the person responsible within the law firm or financial institution, explaining how he or she knows that they are dealing with the individual entitled to execute the instrument or document, a combination of the following:
 - the individual is a long standing client or customer;
 - the Australian legal practitioner or financier had met with the individual prior to their departure to the remote location in relation to the sale/mortgage etc.;
 - the Australian legal practitioner or financier has taken independent steps to verify the identity of the individual;

- the Australian legal practitioner or financier has contacted the proposed witness and verified their qualifications;
- where the instrument or document is to be executed outside Australia – the Australian legal practitioner or financier has contacted the person on an email address or telephone number that the individual provided prior to leaving the country; and
- where the instrument or document is executed outside Australia a Form 20 - Identity/Witnessing Certification in the form in [61-2540].

Note: It is expected that such submissions are made before lodgement of the instrument or document to allow the Registrar reasonable time to consider each submission.

Please note that where the Registrar approves ‘another person’ to witness the execution of the instrument or document:

- the other general requirements will still apply i.e. the full name and qualification of the witness must be shown legibly adjacent to or below their signature; and
- where the instrument or document is executed outside Australia a Form 20 - Identity/Witnessing Certification in the form in [61-2540] must be prepared by the witness and deposited with the instrument or document; and
- the letter or email of approval must be deposited with the instrument or document at lodgement. The letter or email of approval will be imaged with the instrument or document and will form part of the publicly searchable registers under s. 35 of the Land Title Act.

Certifications

[61-2500]

Every person witnessing the execution of an instrument or document outside Australia is required to complete a certification in relation to the instrument or document being executed and the original certification must be lodged/deposited with the relevant instrument or document that was witnessed when it is lodged in the Titles Registry.

If a witness refuses to comply with their obligations or complete the certification then, in the first instance, steps should be taken to locate an alternative witness. An Australian legal practitioner or financier may wish to contact an intended witness in advance to confirm that they are willing to comply with their obligations and complete the certification.

Links to copies of these certifications are available on the [Titles Registry’s forms page](#).

Types of certification

[61-2510]

There are two types of certifications:

- The Australian Embassy/High Commission/Consulate Identity and Witnessing Certification for witnessing carried out by an Australian consular officer or authorised consular employee of the Commonwealth (see [61-2530] below for a completed example and specific form requirements); and
- The Form 20 - Identity/Witnessing Certification for all other categories of witness (see [61-2540] below for a completed example and specific form requirements).

Please ensure that the correct certification is used based on the category of witness carrying out the witnessing. Further information and requirements in relation to each type of certification is outlined below.

Separate certification required for each and every individual execution**[61-2520]**

A separate certification is required for each individual execution outside Australia and for each instrument or document. A certification should not relate to the execution of more than one person or be for the execution of more than one instrument or document.

It is acceptable for a single certification to be provided where an instrument or document requires the same individual to sign in two places e.g. where the relevant Titles Registry form requires it to be signed on the face of the form and also requires a signed declaration to accompany the form.

For example, where X & Y are executing a Form 1 – Transfer and Mortgage (National Mortgage Form) overseas four separate certifications will be required:

- a certification in relation to the execution of the Form 1 – Transfer by X;
- a certification in relation to the execution of the Form 1 – Transfer by Y;
- a certification in relation to the execution of the Mortgage (National Mortgage Form) by X; and
- a certification in relation to the execution of the Mortgage (National Mortgage Form) by Y.

Australian Embassy/High Commission/Consulate Identity and Witnessing Certification**[61-2530]**

This type of certification must be completed where the witness is an Australian consular officer or authorised consular employee of the Commonwealth.

Specific requirements

Please note the following specific requirements:

- This certification must NOT be on a Form 20. This form has been developed by the Department of Foreign Affairs and Trade (DFAT) to reflect DFAT policy requirements. If a Form 20 - Identity/Witnessing Certification is provided to a consular officer or authorised consular employee in error, they may refuse to complete the certification as it is not in the form required by DFAT.
- Copies of this certification are available from the Titles Registry Forms page or from the relevant DFAT website.
- A separate certification by the witness is required for every execution outside Australia. A certification must not relate to the execution of more than one person or be for the execution of more than one instrument or document. It is acceptable for a single certification to be provided where an instrument or document requires the same individual to sign in two places.
- The original certification must be lodged/deposited with the instrument or document.
- Copies of identification documents sighted by the witness must not be deposited in the Titles Registry when the relevant instrument or document is lodged.
- Any identification document numbers referred to in the certification must be obliterated by black marking pen prior to lodgement of the instrument or document.
- The certification must be completed by the witness in full. In particular, the witness must complete the description of documents produced and endorsed in the table.

Letter relating to entitlement to sign

A letter must be deposited by an Australian legal practitioner or authorised employee of an Australian law firm or financial institution stating that they have taken reasonable steps to ensure that the individual is the person entitled to sign the instrument or document.

Completed example

A completed example of the Australian Embassy / High Commission / Consulate Identity and Witnessing Certification is shown on the following page.

Australian Embassy/High Commission/Consulate Identity and Witnessing Certification

"I, John James Jones [full name of consular/diplomatic officer or authorised consular employee]
of Australian Consulate – General
1 Smith Street, Chelsea, London, United Kingdom, SW3 2EZ [Australian Embassy/High Commission/Consulate]

being a consular officer, diplomatic officer or an authorised consular employee within the meaning of the Section 3 of the *Consular Fees Act 1955* (Cth) hereby certify that:

(a) the identification/witnessing relates to

Samuel Stephen Smith

[full name of the person being identified] ('the person being identified'); and

(b) the verification of identity/witnessing was carried out on 2 January 2019 [date]; and

(c) the current identification documents as listed below were produced to me and copies of these documents signed, dated and endorsed by me as true copies were provided to the person being identified; and

(d) the verification of identity/witnessing was conducted in accordance with the Department of Foreign Affairs and Trade policy for verification of identity, witnessing signatures on documents and making of endorsed copies; and

(e) the person being identified was physically present for the verification of identity and the witnessing of the document(s) listed at paragraph (g); and

(f) I am not a party to the transaction; and

(g) I witnessed the person being identified execute the following document(s)

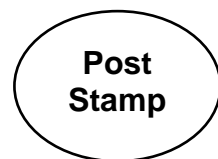
Transfer of Land

(e.g., Client Authorisation, transfer of land, mortgage of land); and

(h) this signed, dated and endorsed certification; the signed, dated and endorsed copy identity documents (listed below); and the witnessed document(s) listed in paragraph (g); were returned to the person being identified."

J Jones

.....
Signature of consular officer, diplomatic officer or authorised consular employee



Post Stamp

List of identification documents produced (see (c) above):

Description of identity documents produced and endorsed
<i>Australian passport</i>
<i>Australian drivers licence</i>

Form 20 - Identity/Witnessing Certification**[61-2540]**

This type of certification must be completed by all categories of witness (outside Australia) other than an Australian consular officer or authorised consular employee of the Commonwealth.

Specific requirements

Please note the following specific requirements:

- This certification must be on a Form 20. The certification is available for download as a word document or PDF on the Titles Registry Forms page.
- A separate certification is required for every execution carried out by a person outside Australia. A certification must not relate to the execution of more than one person or be for the execution of more than one instrument or document. It is acceptable for a single certification to be provided where an instrument or document requires the same individual to sign in two places.
- The original certification must be lodged/deposited with the instrument or document.
- Copies of identification documents sighted by the witness must not be deposited in the Titles Registry when the relevant instrument or document is lodged.
- Any identification document numbers referred to in the certification must be obliterated by black marking pen prior to lodgement of the instrument or document.
- The certification must be completed by the witness in full. In particular, the table entitled ‘description of documents produced and endorsed’ must be completed and must include a brief description of the documents produced to the witness e.g. Australian passport, drivers licence, title search, rates notice, loan documentation etc.

Letter relating to entitlement to sign

If the ‘description of identity documents produced and endorsed’ does not include documents used to verify entitlement to sign (e.g. title search and rates notice) then a letter must be deposited by an Australian legal practitioner or authorised employee of an Australian law firm or financial institution stating that they have taken reasonable steps to ensure that the individual is the person entitled to sign the instrument or document.

Completed example

A completed example of the Form 20 – Identity/Witnessing Certification is shown on the following page.

Title Reference [50087766]

I, John James Jones
[Full name of witness e.g. notary public, competent officer of the defence force, Australian lawyer]

of 1 Smith Street, Chelsea, London, United Kingdom, SW3 2EZ
[Provide full postal address (other than competent officer of the defence force)]

Telephone number: +44 02 1234 5678 Email address: jjones@londonnotaries.co.uk

being a Notary Public
[Qualification or description of public office or commission, date of expiry of the commission (if applicable) or rank for competent officer]

hereby certify that:

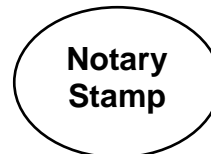
- (a) the identification/witnessing relates to
Samuel Stephen Smith
[Full name of the person being identified] ('the person being identified'); and
- (b) I took reasonable steps to both verify the identity of the person being identified and ensure they are the person entitled to sign the witnessed document in paragraph (g); and
- (c) the verification of identity/witnessing was carried out on 2 January 2019 [date]; and
- (d) the original current identification documents and documents demonstrating the person being identified's entitlement to sign the witnessed document as listed below were produced to me and copies of these documents signed, dated and endorsed by me as true copies were provided to the person being identified; and
- (e) the person being identified was physically present for the verification of identity, verification of entitlement to sign and the witnessing of the document listed at paragraph (g); and
- (f) I am not a party to the transaction; and
- (g) I witnessed the person being identified execute the following document
Transfer of land
(e.g. transfer of land or mortgage of land etc.); and
- (h) this signed, dated and endorsed certification; the signed, dated and endorsed copies of documents (listed below); and the witnessed document listed in paragraph (g); were returned to the person being identified.

List of documents produced (see (d) above):

Description of documents produced and endorsed (both identification documents and documents demonstrating entitlement to sign). Please do not include identification document numbers (e.g. "Australian Passport" not "Australian Passport N123456789").
<i>Australian Passport</i>
<i>Australian Drivers Licence</i>
<i>Title search</i>
<i>Rates Notice</i>

J Jones

.....
Signature of witness



Stamp (if applicable)

Witnessing not in accordance with the Registrar's requirements

[61-2600]

A submission can be made to the Registrar in relation to an instrument or document that has been witnessed by a person who is a qualified witness by virtue of Schedule 1 of the *Land Title Act 1994* or s. 73 of the *Land Regulation 2020* but, where the witnessing does not meet the Registrar's requirements, for example where a witness does not sign on the face of the instrument or document. This submission should be made before the instrument or document is lodged.

Legal or other Restrictions applying to a particular witness

[61-2610]

If the reason that the Registrar's requirements have not been met is a legal or other restriction applying to a particular witness, a submission should be made to the Registrar in writing outlining the reasons it was not possible for the witness to comply with the Registrar's requirements.

The submission should include reference to any relevant legislative provisions and attach supporting documentation where appropriate. For example, legislation in a jurisdiction may require that the witness provide information or endorse documents in a prescribed format.

Any other reason

[61-2620]

If the Registrar's requirements have not been met for any other reason, a submission should be made to the Registrar detailing:

- what specific requirements have not been met and the reasons why they have not been met; and
- if the failure to meet the requirements impacts on the evidence available to the Registrar to be satisfied that the instrument or document has been properly executed and witnessed including reasonable steps taken to verify the identity of the person signing the instrument or document and the person's entitlement to sign the instrument or document, further evidence should be provided to show how the Registrar can be satisfied of the above requirements.

Verification of Identity Standard

[61-2700]

This part relates only to Verification of Identity. For Witnessing see [61-1000] and Executions see [61-3000].

This Verification of Identity Standard is substantially the same as the verification of identity standard in schedule 8 of the current Queensland Participation Rules for electronic conveyancing determined under section 23 of the Electronic Conveyancing National Law (Queensland). The current Queensland Participation Rules are available on the Electronic lodgement and conveyancing page at:

<http://goo.gl/BXrxcB>

This Verification of Identity Standard provides practices which may be used for:

- (a) the verification of identity of mortgagors under the following provisions of the Land Titles Legislation:
 - (i) Section 11A of the *Land Title Act 1994*;
 - (ii) Section 11B of the *Land Title Act 1994*;
 - (iii) Section 288A of the *Land Act 1994*;
 - (iv) Section 288B of the *Land Act 1994*.

See part 1 – Transfer [1-2495] and part 2 –Mortgage (National Mortgage Form) [2-2005].

- (b) Verification of identity by witnesses to the execution of instruments or documents under the following provisions of the Land Titles Legislation:
- (i) Section 162 of the *Land Title Act 1994*;
 - (ii) Section 311 of the *Land Act 1994*.
- See [61-2310].

1 Definitions

In this Verification of Identity Standard capitalised terms have the meanings set out below:

ADI or authorised deposit-taking institution has the meaning given to it in the *Banking Act 1959* (Cth).

Adult means an individual who is 18 or more.

Attorney means in relation to a Power of Attorney the Person to whom the power is given.

Australian Legal Practitioner has the meaning given to it in the relevant legislation of the Jurisdiction in which the land the subject of the Conveyancing Transaction is situated.

Australian Passport means a passport issued by the Australian Commonwealth government.

Bank Manager means a Person appointed to be in charge of the head office or any branch office of an ADI carrying on business in Australia under the *Banking Act 1959* (Cth).

Category means the categories of identification Documents set out in the table in Verification of Identity Standard paragraph 4, as amended from time to time.

Commonwealth means the Commonwealth of Australia but, when used in a geographical sense, does not include an external Territory.

Community Leader means, in relation to an Aboriginal or Torres Strait Islander community:

- (a) a Person who is recognised by the members of the community to be a community elder; or
- (b) if there is an Aboriginal council that represents the community, an elected member of the council; or
- (c) a member, or a member of staff, of a Torres Strait Regional Authority established under the *Aboriginal and Torres Strait Islander Act 2005* (Cth); or
- (d) a member of the board, or a member of staff, of Indigenous Business Australia established under the *Aboriginal and Torres Strait Islander Act 2005* (Cth); or
- (e) a member of the board, or a member of staff, of an Indigenous Land Corporation established under the *Aboriginal and Torres Strait Islander Act 2005* (Cth); or
- (f) a member, or a member of staff, of an Aboriginal Land Council established under the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth).

Conveyancing Transaction means a transaction that involves one or more parties and the purpose of which is:

- (a) to create, transfer, dispose of, mortgage, charge, lease or deal with in any other way an estate or interest in land, or
- (b) to get something registered, noted or recorded in a register kept under the Land Titles Legislation, or
- (c) to get the registration, note or record of something in the titles register changed, withdrawn or removed.

Court Officer means a judge, master, magistrate, registrar, clerk or the chief executive officer of any court in Australia.

Doctor means a Person who is registered under any Commonwealth, State or Territory law as a practitioner in the medical profession.

Donor means in relation to a Power of Attorney the Person giving the power.

Identifier Declaration means the declaration set out in Verification of Identity Standard paragraph 5.

Identity Declarant means a Person providing an Identifier Declaration.

Identity Verifier means the Person conducting the verification of identity in accordance with this Verification of Identity Standard.

Individual means a natural person.

Land Council Officeholder means a chairperson or deputy chairperson (however described) of an Australian land council or land and sea council established under any Commonwealth, State or Territory law.

Licensed Conveyancer means a Person licensed or registered under the relevant legislation of the Jurisdiction in which the land the subject of the Conveyancing Transaction is situated and in Western Australia is a real estate settlement agent for the purposes of the *Settlement Agents Act 1981* (WA).

Local Government Officeholder means a chief executive officer or deputy chief executive officer (however described) of a Local Government Organisation.

Local Government means a local government council (however described) established under any Commonwealth, State or Territory law.

Land Titles Legislation means any of the following—

- (a) the *Body Corporate and Community Management Act 1997*;
- (b) the *Building Units and Group Titles Act 1980*;
- (c) the *Integrated Resort Development Act 1987*;
- (d) the *Land Act 1994*;
- (e) the *Land Title Act 1994*;
- (f) the *Mixed Use Development Act 1993*;
- (g) the *Registration of Plans (H.S.P. (Nominees) Pty. Limited) Enabling Act 1980*;
- (h) the *Registration of Plans (Stage 2) (H.S.P. (Nominees) Pty. Limited) Enabling Act 1984*;
- (i) the *Sanctuary Cove Resort Act 1985*;
- (j) the *South Bank Corporation Act 1989*;
- (k) the *Water Act 2000*;
- (l) any other Act prescribed under a regulation for this definition;
- (m) a regulation made under an Act mentioned in any of paragraphs (a) to (k) or prescribed under paragraph (l);
- (n) any other law of this jurisdiction that authorises or requires something to be deposited, registered, noted or recorded in a titles register.

Nurse means a Person registered under any Commonwealth, State or Territory law as a practitioner in the nursing and midwifery profession.

Person includes an individual or a body politic or corporate.

Person Being Identified means any of the Persons required to be identified under a provision of the Land Titles Legislation or the Land Title Practice Manual kept under section 9A of the *Land Title Act 1994*.

Photo Card is a card issued by the Commonwealth or any State or Territory showing a photograph of the holder and enabling the holder to evidence their age and/or their identity.

Police Officer means an officer of any Commonwealth, State or Territory police service.

Power of Attorney means a [registered] written document by which a Donor appoints an Attorney to act as agent on his, or her behalf.

Public Servant means an employee or officer of the Commonwealth, a State or a Territory.

Record includes information stored or recorded by means of a computer.

Relative means a Person's spouse or domestic partner or a child, grandchild, sibling, parent or grandparent of the Person or of the Person's spouse or domestic partner.

State means New South Wales, Queensland, South Australia, Tasmania, Victoria and Western Australia.

Statutory Declaration means a declaration made under an Act, or under a Commonwealth Act or an Act of another jurisdiction, that authorises a declaration to be made otherwise than in the course of a judicial proceeding.

Territory means the Australian Capital Territory or the Northern Territory of Australia.

Verification of Identity Standard means this verification of identity standard, as amended from time to time.

2 Face-to-face regime

- 2.1 The verification of identity must be conducted during a face-to-face in-person interview between the Identity Verifier and the Person Being Identified.
- 2.2 Where Documents containing photographs are produced by the Person Being Identified, the Identity Verifier must be satisfied that the Person Being Identified is a reasonable likeness (for example the shape of his or her mouth, nose, eyes and the position of his or her cheek bones) to the Person depicted in those photographs.

3 Categories of identification Documents and evidence retention

- 3.1 At the face-to-face in-person interview described in paragraph 2.1, the Identity Verifier must ensure that the Person Being Identified produces original Documents in one of the Categories in the following table, starting with Category 1.
- 3.2 The Identity Verifier must be reasonably satisfied that a prior Category cannot be met before using a subsequent Category.
- 3.3 The Identity Verifier must:
 - (a) sight the originals of all Documents from Categories 1, 2, 3, 4, 5 or 6 produced by the Person Being Identified; and
 - (b) retain copies of all Documents produced by the Person Being Identified and any Identity Declarant.
- 3.4 The Documents produced must be current, except for an expired Australian Passport which has not been cancelled and was current within the preceding 2 years.

Category	Minimum Document Requirements
	For Persons who are Australian citizens or residents:
1	Australian Passport or foreign passport or Australian Evidence of Immigration Status ImmiCard or Australian Migration Status ImmiCard <u>plus</u> Australian drivers licence or Photo Card <u>plus</u> change of name or marriage certificate if necessary
2	Australian Passport or foreign passport or Australian Evidence of Immigration Status ImmiCard or Australian Migration Status ImmiCard <u>plus</u> full birth certificate or citizenship certificate or descent certificate <u>plus</u> Medicare or Centrelink or Department of Veterans' Affairs card <u>plus</u> change of name or marriage certificate if necessary

Category	Minimum Document Requirements
3	Australian drivers licence or Photo Card <u>plus</u> full birth certificate or citizenship certificate or descent certificate <u>plus</u> Medicare or Centrelink or Department of Veterans' Affairs card <u>plus</u> change of name or marriage certificate if necessary
4	(a) Australian Passport or foreign passport or Australian Evidence of Immigration Status ImmiCard or Australian Migration Status ImmiCard plus another form of government issued photographic identity Document plus change of name or marriage certificate if necessary (b) Australian Passport or foreign passport or Australian Evidence of Immigration Status ImmiCard or Australian Migration Status ImmiCard plus full birth certificate plus another form of government issued identity Document plus change of name or marriage certificate if necessary
5	(a) Identifier Declaration plus full birth certificate or citizenship certificate or descent certificate plus Medicare or Centrelink or Department of Veterans' Affairs card plus change of name or marriage certificate if necessary. (b) Identifier Declaration by a Person specified in Verification of Identity Standard paragraph 4.4(e) plus Medicare or Centrelink or Department of Veterans' Affairs card plus change of name or marriage certificate if necessary. <i>Note: Refer to Verification of Identity Standard paragraph 4.</i>
	For Persons who are not Australian citizens or residents:
6	(a) Foreign passport <u>plus</u> another form of government issued photographic identity Document <u>plus</u> change of name or marriage certificate if necessary (b) Foreign passport <u>plus</u> full birth certificate <u>plus</u> another form of government issued identity Document <u>plus</u> change of name or marriage certificate if necessary.

4 The Identifier Declaration

4.1 Where the requirements of:

- (a) Categories 1 to 4 cannot be met, Category 5(a) may be used; and
- (b) Category 5(a) cannot be met, Category 5(b) may be used,

including the provision of an Identifier Declaration in accordance with this paragraph.

4.2 The Identity Verifier must ensure that both the Person Being Identified and the Identity Declarant attend the same face-to-face in-person interview described in paragraph 3.1.

4.3 The Identity Verifier must verify the identity of the Identity Declarant in accordance with this Verification of Identity Standard except that the Identity Verifier cannot utilise Category 5.

4.4 The Identity Verifier must undertake reasonable enquiries to satisfy themselves that the Identity Declarant is:

- (a) an Adult; and
- (b) an Individual who has known the Person Being Identified for more than 12 months; and
- (c) not a Relative of the Person Being Identified; and
- (d) not a party to the Conveyancing Transaction(s) the Person Being Identified has entered into or is entering into; and

- (e) where Category 5(b) is used, an Australian Legal Practitioner, a Bank Manager, Community Leader, Court Officer, Doctor, Land Council Officeholder, Licensed Conveyancer, Local Government Officeholder, Nurse, Police Officer or Public Servant.

4.5 The Identity Verifier must ensure that the Identity Declarant provides a Statutory Declaration detailing the following:

- (a) the Identity Declarant's name and address; and
- (b) the Identity Declarant's occupation; and
- (c) the Identity Declarant's date of birth; and
- (d) the nature of the Identity Declarant's relationship with the Person Being Identified; and
- (e) that the Identity Declarant is not a relative of the Person Being Identified; and
- (f) that the Identity Declarant is not a party to the Conveyancing Transaction(s) the Person Being Identified has or is entering into; and
- (g) the length of time that the Identity Declarant has known the Person Being Identified; and
- (h) that to the Identity Declarant's knowledge, information and belief the Person Being Identified is who they purport to be; and
- (i) where Category 5(b) is used, that the Identity Declarant is an Australian Legal Practitioner, a Bank Manager, Community Leader, Court Officer, Doctor, Land Council Officeholder, Local Government Officeholder, Nurse, Public Servant or Police Officer.

5 Body corporate

The Identity Verifier must:

- (a) confirm the existence and identity of the body corporate by conducting a search of the Records of the Australian Securities and Investments Commission or other regulatory body with whom the body corporate is required to be registered; and
- (b) take reasonable steps to establish who is authorised to sign or witness the affixing of the seal on behalf of the body corporate; and
- (c) verify the identity of the Individual or Individuals signing or witnessing the affixing of the seal on behalf of the body corporate in accordance with the Verification of Identity Standard.

[Note: *body corporate* includes an incorporated association.]

6 Individual as Attorney

The Identity Verifier must:

- (a) confirm from the [registered] Power of Attorney the details of the Attorney and the Donor; and
- (b) take reasonable steps to establish that the Conveyancing Transaction(s) is authorised by the Power of Attorney; and
- (c) verify the identity of the Attorney in accordance with the Verification of Identity Standard.

7 Body Corporate as Attorney

The Identity Verifier must:

- (a) confirm from the [registered] Power of Attorney the details of the Attorney and the Donor; and
- (b) take reasonable steps to establish that the Conveyancing Transaction(s) is authorised by the Power of Attorney; and
- (c) comply with Verification of Identity Standard paragraph 5.

[Note: *body corporate* includes an incorporated association.]

8 Further checks

The Identity Verifier must undertake further steps to verify the identity of the Person Being Identified and/or the Identity Declarant where:

- (a) the Identity Verifier knows or ought reasonably to know that:
 - (i) any identity Document produced by the Person Being Identified and/or the Identity Declarant is not genuine; or
 - (ii) any photograph on an identity Document produced by the Person Being Identified and/or the Identity Declarant is not a reasonable likeness of the Person Being Identified or the Identity Declarant; or
 - (iii) the Person Being Identified and/or the Identity Declarant does not appear to be the Person to which the identity Document(s) relate; or
- (b) it would otherwise be reasonable to do so.

Execution of Instruments or Documents

[61-3000]

General

[61-3010]

Section 11(1) of the *Land Title Act 1994* requires that an instrument to transfer or create an interest in a lot must be executed by:

- the transferor or the person creating the interest; and
- the transferee or the person in whose favour the interest is to be created or a solicitor authorised by the transferee or the person.

The execution date must be included when the transferor, transferee, person or solicitor executes the document.

Execution Where Different Capacities in Same Instrument or Document

[61-3020]

Where a party has entered into a transaction in two different capacities, as a trustee and in their own right, and it is acceptable to use one instrument or document (see further [51-2115] and [59-2020]), the form may be executed separately in each capacity. Alternatively, a single execution is acceptable provided a statement appears in the appropriate item of the form that the party was executing in both capacities.

Execution by Corporation

[61-3030]

See part 50, esp [50-2000] and [50-2030] to [50-2050]).

Execution with Marksman Clause

[61-3040]

A person who is illiterate, blind, infirm or too ill to sign may affix a mark, instead of a signature. The witness to the signature then writes the words '[name in full], his or her mark', around the mark, and places their signature at the witness signature position on the form.

A Form 20 – Declaration is required to include the following statements by the witness:

- (a) that the witness is the attesting witness to the mark of the person executing the instrument or document in respect of the property being transferred (the property must be fully described);
- (b) that the witness certifies that the mark was made in their presence; and

- (c) that prior to the mark being made, the witness read the instrument or document to that person, who appeared to understand the nature and effect of the instrument or document.

Execution by Attorney

[61-3050]

The signature of an attorney who signs an instrument or document for an individual must be witnessed. Acceptable witnesses to executions, whether inside or outside Australia, are listed in Schedule 1 to the *Land Title Act 1994* or s. 73 of the *Land Regulation 2020*.

The signature of an individual as attorney for a corporation who executes a transfer, mortgage, lease etc. as transferor, mortgagor, lessor etc. must be witnessed in the same manner as for individuals above. However, an execution by an attorney for a corporation as transferee, mortgagee etc. in a transfer, mortgage, lease etc. need not be witnessed as no conveyance is involved (s. 46 of the *Property Law Act 1974*). The signature of an individual as attorney for a corporation who executes a release of mortgage or a surrender of lease or easement as mortgagee, lessee or grantee must be witnessed.

A conveyance executed by a corporation as an attorney (with or without a common seal) is not required to be witnessed in accordance with Schedule 1 of the *Land Title Act* or s. 73 of the *Land Regulation 2020* (see also part 50 – Corporations and Companies, esp [50-2000]).

Where an instrument or document (other than the *National Mortgage Form, Priority Notice Form, Extension of Priority Notice Form and Withdrawal of Priority Notice Form*) is executed by an individual as attorney for another person, or for a corporation, the execution clause must read:

‘John Smith [or John Smith & Co Pty Ltd ACN 001 002 003] by his [its] duly constituted attorney William Smith [name in full] under power of attorney No X9999999Y’.

Where an instrument or document (other than the *National Mortgage Form, Priority Notice Form, Extension of Priority Notice Form and Withdrawal of Priority Notice Form*) is executed by a corporation as attorney for another person, or for a corporation, the execution clause must read:

‘John Smith [or John Smith & Co Pty Ltd ACN 001 002 003] by his [its] duly constituted attorney William Smith & Co Pty Ltd ACN 004 005 006 under power of attorney No X9999999Y’.

The execution by the corporation must comply with the requirements outlined in part [50-2000].

Refer to Part 2, Part 23 and the relevant guide to completion for information about completing the relevant execution panel of the *National Mortgage Form, Priority Notice Form, Extension of Priority Notice Form and Withdrawal of Priority Notice Form* for an execution by an attorney.

Where an instrument* or document is executed by a substitute attorney (refer to [16-0160]) for another person, or for a corporation, the execution clause must include a reference to both the substitutionary power of attorney and head power of attorney. For example:

‘John Smith [or John Smith & Co Pty Ltd ACN 001 002 003] by his [its] duly constituted sub-attorney William Smith [name in full] under substitutionary power of attorney No X9999999Y under head power of attorney No X8888888Z’.

* In the *National Mortgage Form* the dealing numbers of the substitutionary power of attorney and the head power of attorney may be shown as in the example below. However, please refer to the

requirements for completing an execution panel for an attorney executing under a registered power of attorney that are detailed in [2-4090].

Mortgagee Execution

Executed on behalf of	JOHN SMITH & CO PTY LTD
under power of attorney	X9999999Y&X8888888Z
Signer Name	<u>WILLIAM SMITH</u>
Signer Role	<u>ATTORNEY</u>
Signature	<u>W Smith</u>
Execution Date	<u>27 / 07 / 2017</u>

The Registrar does not require proof that the attorney has not received notice of the death of the principal or revocation of the power of attorney.

Where a lodged instrument or document is signed under a power of attorney that is restricted to deal with certain property, but the property is identified by other than lot on plan description, a statutory declaration is required to identify the property in the instrument or document as the property referred to in the power of attorney. Similarly, a declaration is required to be deposited with an instrument or document signed under a power of attorney limited to property identified by lot on plan description, but the property has been subdivided.

Where two or more persons have jointly appointed a common attorney under a power of attorney or have a common attorney under separate powers of attorney, one execution of the instrument by the attorney suffices. That is, 'A and B by their attorney C'. However, reference to the relevant power(s) of attorney must be shown.

Where there are two or more attorneys for a single principal under a power of attorney, only one witnessing provision need be completed for attorneys signing at the same time before a witness.

Where an attorney is executing on behalf of a custodian, appointed by a responsible entity incorporated under the *Corporations Act 2001* (Cth), a statutory declaration by the attorney is required stating the interest being dealt with is held in the capacity of custodian. The declaration must also identify the trust/scheme referred to in the registered power of attorney. Alternatively, a letter from the solicitor acting on behalf of the custodian may be deposited, stating the interest being dealt with is held in the capacity of custodian and identifying the trust or scheme referred to in the registered power of attorney.

Execution by a legal practitioner

[61-3060]

If a legal practitioner, where permitted by the *Land Title Act 1994* or indicated by an instrument or document, executes on behalf of a party to an instrument or document, the legal practitioner's signature need not be witnessed. The legal practitioner's full name must be printed underneath the signature along with the words, solicitor, barrister or Australian legal practitioner as appropriate. Legal practitioner is defined in Schedule 1 of the Land Title Act.

Execution by a Receiver Appointed by a Mortgagee for an Individual

[61-3070]

Where an instrument or document is executed by a receiver appointed by a mortgagee of the property of a mortgagor who is an individual, the following applies:

- evidence of the appointment must be deposited with the instrument or document or a reference to the instrument or document where the evidence was deposited must be provided;

- the relevant clause(s) in the mortgage (and the deed of appointment if this is where the receiver's power authorising the transaction is stated) must be identified in the form or by letter;
- the name and appointment capacity (e.g. 'Receiver') must be printed adjacent to their signature; and
- a qualified person mentioned in Schedule 1 of the *Land Title Act 1994* must witness the signature.

Execution by an Administrator under the *Guardianship and Administration Act 2000*

[61-3080]

Where an instrument or document is executed by an administrator appointed under the *Guardianship and Administration Act 2000* the execution must be made in the following manner (s. 45(2) of the *Guardianship and Administration Act*):

- executed with the administrator's own signature;
- show that the administrator is executing the form as administrator for the registered owner or holder of an interest for example, John Brian Smith as administrator for Benjamin Keith Jones; and
- a qualified person mentioned in Schedule 1 of the *Land Title Act 1994* must witness the signature.

Execution for a Minor

[61-3090]

There is no authority for a minor (a person who has not yet reached 18 years of age) to execute a transfer as transferor. Accordingly, a transfer by a minor, either as a sole transferor or as one of several transferors is not acceptable unless a Court Order authorises a person to execute the transfer on behalf of the minor (s. 136 of the *Land Title Act*).

The Registrar will accept execution by or for a minor as transferee, or any other instrument that a minor is authorised to execute, in the following ways:

- by a person authorised by Court Order to execute the instrument on behalf of the minor;
- by the minor if the instrument is accompanied by a letter from a solicitor, instructed and employed independently of any other party to the instrument. The letter must state that the solicitor is satisfied the minor understands the nature and effect of the instrument and the minor is entering into the transaction freely and voluntarily;
- by a solicitor acting for the minor.

The above list does not necessarily include all methods of execution permitted by law. The normal witnessing requirements for an individual or a solicitor apply to this type of execution.

See also part 1 – Transfer, [1-2060].

Execution by Public Trustee

[61-3100]

The Public Trustee of Queensland is authorised by the *Public Trustee Act 1978* and various other Acts to execute instruments or documents for individuals in certain circumstances, such as incapacitation or imprisonment.

All instruments or documents must be executed in a way showing the appointment or authority under which the public trustee acts (s. 12 of the Public Trustee Regulation 2012). For example, where the Public Trustee executes an instrument or document for an incapacitated person, a statement to the following effect should be added:

‘Signed in the name of and on behalf of the said [name] by [name and position], Public Trust Office, the Public Trustee being authorised to manage the estate of the said [name] pursuant to Part 6 of the *Public Trustee Act 1978*’.

Seal of the public trustee

[61-3110]

The seal of the Public Trustee may be used in the execution of an instrument or document. However this is not essential and an instrument or document not under seal is still effective at law (s. 11C of the *Public Trustee Act 1978* and s. 227 of the *Property Law Act 1974*).

Execution by delegates of the Public Trustee

[61-3120]

Where such authorisation exists, the execution may be by a delegate of the Public Trustee. The delegate should add after the delegate’s signature a statement to the following effect ‘Signed as delegate for the Public Trustee under section 11A of the *Public Trustee Act 1978*’.

Execution for prisoners

[61-3130]

The Public Trustee is the manager of estates of prisoners who are undergoing sentences of imprisonment for over three years and is therefore the proper person to execute instruments or documents dealing with the prisoner’s property, unless the Public Trustee has discontinued management (s. 92 of the *Public Trustee Act 1978*) or has given consent for the prisoner to execute the instrument or document dealing with the property themselves (s. 95 of the Public Trustee Act).

Witnessing requirements

[61-3140]

The usual witnessing requirements apply to the execution.

Execution by Local Government

[61-3200]

General Law

[61-3210]

Section 236(1) of the *Local Government Act 2009* provides that the following persons may sign a document on behalf of a local government:

- (a) the head of the local government (defined in s. 236(2) of the Local Government Act);
- (b) a delegate of the local government (powers of delegation are provided by s. 257 of the Local Government Act);
- (c) a councillor or local government employee who is authorised by the head of the local government, in writing, to sign documents.

Practice

[61-3220]

A document executed by a local government before 1 July 2010 must be signed by either:

- the mayor;
- an authorised councillor;

- the chief executive officer; or
- an authorised employee of the council (i.e. delegate or authorised officer).

A document executed by a local government on or after 1 July 2010 must be signed by either:

- the mayor;
- the chief executive or interim administrator;
- a delegate;
- an authorised councillor; or
- an authorised local government officer.

The name of the local government and designation of the signatory (for example, Mayor, Delegate or Authorised Officer) must be shown adjacent to the signature. The authorising provision of the Act is not required to be stated and the Registrar makes no inquiry as to whether the delegation has been made or a person is so authorised by a local government. There is no requirement for the names of the signatories to be shown.

The execution must be witnessed by a person with a qualification mentioned in Schedule 1 of the *Land Title Act 1994* or s. 73 of the *Land Regulation 2020* where an instrument or document has a witnessing provision. The signing of an approval to a plan of subdivision does not require witnessing.

Style of Local Government Name

[61-3230]

Under the provisions of s. 5(2) of the *Local Government (Operations) Regulation 2010* a local government may be called either–

- ‘Council of the... (*insert /City/Town/Shire/Region*) of... (*insert name of local government area*)’; or
- ‘... (*insert name of local government area*)... (*insert /City/Town/Shire/Regional Council*)’.

Also, an Aboriginal Shire Council may be called ‘(*insert name of local government area*) Aboriginal Shire Council’ (s. 5(3) of the *Local Government (Operations) Regulation 2010*).

The Registrar is not concerned with which of the style names is used. However the name stated in the relevant item of a document that creates an interest in the local government, will be recorded in the register. Where there is ambiguity in style names when recording a local government in the register, for example where a new lot is being created from two lots in different style names, clarification will be required e.g. by way of letter from an authorised officer of the council or the lodger of the document.

Local Government Reform

[61-3240]

The following requirements apply to local governments affected by local government reform in March 2008 brought about by amendments to the *Local Government Act 1993*.

Where an interest is recorded in a previous council’s name and it is not being dealt with, the new council does not need to take any action with regard to that interest.

However, action will be required in instances where an interest is being dealt with and the council will subsequently retain the interest. In such cases, the new council must first vest the interest in the new council by registering a Form 14 – General Request. Item 6 of the form must

state ‘... the interest in item 4 be vested in [*name of new/adjusted council*] pursuant to the *Local Government Act 1993*’. The form is exempt from lodgement fees. A duty notation is not required under special dispensation by the Office of State Revenue.

Where an interest in land is held in the name of a previous council and the new council is disposing of the interest, the new name does not need to first be recorded in the Titles Registry. However, the instrument or document lodged to record the disposing of the interest must contain in the appropriate item on the prescribed form, a statement showing both the new name and the previous council name; and be executed by the new council.

For example, a lot held in the name of the Caboolture Shire Council that is being transferred to another party, the instrument or document 1 – Transfer must state at item 3 – Transferor –

‘Moreton Bay Regional Council (formerly Caboolture Shire Council) pursuant to the *Local Government Act 1993*’

Cross References and Further Reading

[61-9000]

Part 62 – eConveyancing.

Notes in text

[61-9050]

Note ¹ – This numbered section, paragraph or statement does not apply to water allocations.

Note ² – This numbered section, paragraph or statement does not apply to State land.

Note ³ – This numbered section, paragraph or statement does not apply to freehold land.