

# Part 62 – eConveyancing

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## Part 62 – eConveyancing

### Introduction

[62-0000]

eConveyancing or Electronic Conveyancing is the term used to refer to the electronic preparation, lodgement, processing and registration of instruments and other documents (Electronic Conveyancing Documents) for the purposes of the *Land Title Act 1994*, *Land Act 1994* and other titling legislation. It is an alternative to the traditional ‘paper based’ conveyancing system which involves the manual completion, execution and lodgement of paper forms either at a Titles Registry lodgement office, by post or through eLodgement.

eConveyancing is facilitated by a national law and national regulatory framework and involves eligible participants (Subscribers), such as Australian legal practitioners and authorised deposit taking institutions, utilising the systems (Electronic Lodgment Networks or ELNs) of approved private operators (Electronic Lodgment Network Operators or ELNOs) to complete conveyancing transactions electronically.

Only eligible Subscribers can utilise Electronic Lodgment Networks to lodge Electronic Conveyancing Documents. Eligibility criteria include specific insurance and character requirements. Non-eligible transacting parties can engage an Australian legal practitioner to lodge Electronic Conveyancing Documents on their behalf.

In accordance with the nature and purpose of the Land Title Practice Manual, the information in this part is limited to general information about the law, regulatory framework and general practice requirements. Additional information relating to specific dealings is available in the relevant part of the Land Title Practice Manual under the heading eConveyancing.

Information about the requirements for using eConveyancing, including becoming a Subscriber, is available online at the [Titles Registry Electronic Conveyancing web page](#) and on the [Australian Registrar’s National Electronic Conveyancing Council \(ARNECC\) website](#).

### Regulatory Framework and ARNECC

[62-1000]

The foundation for the national regulatory framework for electronic conveyancing in Australia is a 2011 intergovernmental agreement entered into by the State and Territory governments and known as the Electronic Conveyancing National Law Agreement 2011.

Amongst other things, the Electronic Conveyancing National Law Agreement 2011 provided for each Australian State and Territory to adopt or implement the Electronic Conveyancing National Law (ECNL) and the formation, composition and operation of the Australian Registrar’s National Electronic Conveyancing Council (ARNECC). ARNECC’s functions include developing and maintaining national Model Operating Requirements (MOR) and Model Participation Rules (MPR) to be implemented as Operating Requirements and Participations Rules respectively in each jurisdiction.

The ECNL was first enacted in New South Wales as an appendix to its *Electronic Conveyancing (Adoption of National Law) Act 2012*. The ECNL was adopted in Queensland by the *Electronic Conveyancing National Law (Queensland) Act 2013*. The *Electronic Conveyancing National Law (Queensland) Act 2013* also made a number of amendments to the *Land Title Act 1994* and *Land Act 1994* to facilitate eConveyancing.

The ECNL provides for, amongst other things:

- the lodgement, processing and registration of instruments and other documents (Electronic Conveyancing Documents) in electronic form for the purposes of the Land Title Act, Land Act and other titling legislation;
- the existence of electronic systems for lodgement of Electronic Conveyancing Documents called Electronic Lodgment Networks (ELNs);
- the Registrar to provide and operate an ELN and / or approve Electronic Lodgment Network Operators (ELNOs) to provide and operate ELNs;
- an attribution rule which provides that a digital signature created for an Electronic Conveyancing Document is binding on certain parties and cannot be repudiated except in very limited circumstances;
- for Subscribers to access and use an ELN to complete conveyancing transactions electronically, either on their own behalf (e.g. financial institutions) or on behalf of transacting parties who have authorised them to do so using a properly completed client authorisation (e.g. Australian Legal Practitioners);
- the Registrar to determine Operating Requirements relating to the operation of an ELNO and the provision and operation, by an ELNO of an ELN;
- the Registrar to determine Participation Rules relating to the use of an ELN by Subscribers;
- the conduct of investigations, called compliance examinations to determine whether the Operating Requirements and Participation Rules are being complied with and investigate any suspected or alleged case of misconduct with respect to the operation of or use of an ELN.

## Participation Rules

[62-1010]

In accordance with section 22 of the Electronic Conveyancing National Law (Queensland) (ECNL) the Registrar of Titles has determined Participation Rules, relating to the use of an Electronic Lodgment Network in Queensland. The Queensland Participation Rules apply to all Subscribers using eConveyancing in Queensland. The Queensland Participation Rules are available on the [Titles Registry Electronic Conveyancing web page](#).

As required by section 24 of the ECNL, the Queensland Participation Rules are consistent with the Model Participation Rules (MPR) published by the Australian Registrar's National Electronic Conveyancing Council (ARNECC) which are available on the [ARNECC Model Participation Rules web page](#). Any Queensland specific Participation Rules are listed in Schedule 1 of the Participation Rules.

ARNECC publishes MPR Guidance Notes to assist Subscribers in understanding what is expected of them in complying with the Registrar's Participation Rules in each jurisdiction. The Model Participation Rule Guidance Notes are available on the [ARNECC Model Participation Rules Guidance Notes web page](#).

## Operating Requirements

[62-1020]

In accordance with section 22 of the Electronic Conveyancing National Law (Queensland) (ECNL) the Registrar of Titles has determined Operating Requirements relating to the operation of an Electronic Lodgment Network Operator (ELNO) and the provision and operation by an

ELNO of an Electronic Lodgment Network. The Queensland Operating Requirements are available on the [Titles Registry Electronic Conveyancing web page](#).

As required by section 24 of the ECNL, the Queensland Operating Requirements are consistent with the Model Operating Requirements (MOR) published by the Australian Registrar's National Electronic Conveyancing Council (ARNECC) which are available on the [ARNECC Model Operating Requirements web page](#). Any Queensland specific Operating Requirements will be listed in Schedule 4 of the Operating Requirements.

ARNECC publishes MOR Guidance Notes to assist ELNOs in understanding what is expected of them in complying with the Registrar's Operating Requirements in each jurisdiction. The Model Operating Requirements Guidance Notes are available on the [ARNECC Model Operating Requirements Guidance Notes web page](#).

## eConveyancing (electronic) Forms

[62-2000]

An Electronic Conveyancing Document must be lodged through an Electronic Lodgment Network in the form approved by the Registrar under s. 7 of the Electronic Conveyancing National Law (Queensland).

Refer to [59-4000] for a list of the current electronic forms approved by the Registrar.

A representation of each electronic form approved by the Registrar is shown in each relevant part of the Land Title Practice Manual.

## Witnessing and Execution of Electronic Conveyancing Documents

[62-3000]

If the *Land Title Act 1994* or the *Land Act 1994* provides for an instrument or document to be signed or executed and the instrument or document is an Electronic Conveyancing Document, the Electronic Conveyancing Document must be digitally signed as provided for under the Electronic Conveyancing National Law (Queensland) (s. 14C of the Land Title Act and s. 290Q of the Land Act).

If an instrument or document is digitally signed in accordance with the Queensland Participation Rules, the requirements of any other Queensland law relating to the execution, signing, witnessing, attestation or sealing of documents must be regarded as having been fully satisfied (s. 9(3)(b) of the Electronic Conveyancing National Law (Queensland)).

## Requisitions of Electronic Conveyancing Documents

[62-4000]

An instrument or document that is lodged as an Electronic Conveyancing Document, and is subsequently requisitioned, will be printed as a rendered paper version of the Electronic Conveyancing Document with a dealing number attached (the **rendered paper form**) and forwarded to the lodger of the document.

To respond to the requisition notice the rendered paper form must be returned to a Titles Registry lodgement office and may not be relogged electronically.

If the deficiencies identified in the requisition notice result in changes needing to be made to the rendered paper form then generally the electronic conveyancing document will need to be withdrawn and a new electronic conveyancing document or paper dealing will need to be lodged. Any changes which alter the nature and effect of the Electronic Conveyancing

Document or are otherwise of a substantial nature (adding or deleting parties or lots etc.) will require the Electronic Conveyancing Document to be withdrawn. Refer to [60-0150] for information on the process for withdrawing a lodged instrument or document prior to registration.

If, however, the deficiencies identified in the requisition are very minor (e.g. the transposition of two digits in the dealing number of a standard terms document referenced in the Electronic Conveyancing Document), once the deficiencies are addressed, the amended rendered paper form may be returned for further examination. Please note however that no assurances can be provided as to whether the Electronic Conveyancing Document will be capable of registration. Any changes made to the rendered paper form must comply with the requirements detailed in [59-2040].

Refer to [60-0000] to [60-0040] for more information on requisitions.

## **Withdrawn or rejected Electronic Conveyancing Documents cannot be relodged**

[62-4010]

An Electronic Conveyancing Document that has been withdrawn or rejected cannot be relodged (s. 157(5) of the *Land Title Act 1994* and s. 306(5) of the *Land Act 1994*).

A new Electronic Conveyancing Document or paper dealing will need to be lodged.

## **Available transactions (scope restrictions)**

[62-5000]

Not all instruments and documents are capable of being lodged using eConveyancing and not all instruments and documents are available for lodgement through all Electronic Lodgment Networks (ELNs).

A list of transactions that can currently be lodged using eConveyancing in Queensland, through an ELN operated by one or more of the current Electronic Lodgment Network Operators is available on the [Titles Registry Electronic Conveyancing web page](#).

Subscribers should also check with each ELNO as to which transactions can be lodged through their ELN.

## **Attachments to Electronic Conveyancing Documents (Supporting Evidence or other documents)**

[62-6000]

Including an attachment with an Electronic Conveyancing Document is only permitted in limited circumstances.

Unlike paper instruments or documents, in most instances, Electronic Conveyancing Documents are not required to be accompanied by supporting evidence or other documentation.

The Registrar relies on certifications made by the Subscriber who digitally signs the Electronic Conveyancing Document under the Participation Rules, including certifications that they have retained evidence supporting the Electronic Conveyancing Document and that they have taken reasonable steps to ensure that the Electronic Conveyancing Document is correct and compliant with relevant legislation.

Information on the attachments to be included with each dealing type is detailed in each relevant part of the Land Title Practice Manual under the heading eConveyancing.

# Cross References and Further Reading

[62-9000]

Part 59 – Forms

Part 60 – Miscellaneous