



eConveyancing - Leasing

Consultation Paper



Titles Queensland manages the land and water titles registries for the state of Queensland. Our core purpose is maintaining the reliability and integrity of these registers, protecting people's most valuable assets. Our services are fundamental to the investment in Queensland and for safeguarding records for property owners and interest holders across our past, present, and future.

Each year, over 750,000 lodgements and 2.7 million searches of land and water titles registry dealings across Queensland are managed by our teams.

In June 2021, the Queensland Government announced the state's titles registry services would transfer to the Queensland Future Fund, enabled by the *Queensland Future Fund (Titles Registry) Act 2021*.

The entity of Titles Queensland was established at this time and continues to offer the same products and services to our many customers and stakeholders as before and maintains a firm commitment to service excellence and accuracy.

Titles Queensland respectfully acknowledges the Aboriginal and Torres Strait Islander peoples as the Traditional Owners of Country throughout Queensland. This respect is extended to Elders past and present.

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1. Overview

Queensland introduced electronic conveyancing (eConveyancing) in 2013, under the Electronic Conveyancing National Law (Queensland) to enable the electronic preparation, lodgement, processing and registration of instruments and other documents for the purposes of the *Land Title Act 1994* (Qld), *Land Act 1994* (Qld) and other titling legislation. eConveyancing is an alternative to the traditional 'paper based' conveyancing process which involves the manual completion, execution and lodgement of paper forms.

Instruments and documents have been, and continue to be, progressively enabled for lodgement using eConveyancing. Currently enabled documents include instruments such transfer, mortgage, release of mortgage, caveat etc.

The property industry has adapted well to the eConveyancing framework with over 70 per cent of instruments and documents now lodged via eConveyancing.

As there are significant administrative efficiencies, enhanced accuracy, and immediate confirmation of lodgement with time savings for all parties, Titles Queensland will continue its program of introducing more document types into eConveyancing. In this case it is proposed to expand the 'classes' of instruments or documents able to be lodged or deposited using an ELN, to include lodgement of freehold leases and subleases.

Expanding lodgements through the eConveyancing system to include freehold leases and subleases will align Queensland with other States that have allowed for leasing transactions to be lodged using an ELN.

It is currently proposed that the ability to lodge leases/subleases using eConveyancing will be enabled in late 2023. Corresponding adjustments to the current paper forms and registration processes to align them with the eConveyancing processes will be implemented upon commencement of lodgement of leases/subleases via an ELN.

This consultation paper is seeking your feedback to inform the development of eConveyancing for leases. A summary of the proposed detail of the expansion is outlined below. Submissions on the proposal should be forwarded to Titles Queensland by COB 19 August 2022. How to provide feedback is outlined at end of the paper.

2. Definitions

ELN: Electronic Lodgement Network for eConveyancing i.e., the systems operated by Property Exchange Australia Limited (PEXA) or Sympli Australia Pty Ltd (Sympli).

Form 7: Queensland Titles Registry Lease/Sublease Form 7.

Master sketch: is a sketch plan prepared by a cadastral surveyor that identifies the spatial extent of all existing tenancies together with dealing numbers. See direction 5.3.9 of the Registrar of Titles Directions for the Preparation of Plans for the standards for a master sketch.

Participation Rules: the rules relating to the use of an ELN, determined by the Registrar under the Electronic Conveyancing National Law (Queensland), that a Subscriber is required to comply with.

Subscriber: a subscriber to an ELN (for example solicitors and financial institutions).

Note: This paper is intended to encompass eConveyancing lodgement of both Forms 7 lease and sublease. Unless the context requires otherwise in this paper, 'lease', 'lessor' and 'lessee' should be construed to include 'sublease', 'sublessor' and 'sublessee'.

3. Lease reform proposal

3.1. Executive summary

Like other eConveyancing forms, it is proposed to make modifications to the information provided on the Form 7 and to supporting documentation received to allow collection of information in a suitable electronic format. This will facilitate data verification and increase efficiency of processing leases. It is anticipated the changes will decrease both registration delays and requisition rates.

Electronic and paper processes will also be aligned to the extent possible, to simplify processes for practitioners.

3.2. Proposed form and process for eConveyancing leases

To enable eConveyancing, it is proposed that the changes outlined below will be made to the Form 7 and Titles Registry requirements and processes for both paper and electronic forms of lodgement. The process will also now be the same irrespective of all other factors including the number of leases on the title.

3.2.1. Statements regarding existing dealings

To facilitate lodgement through an ELN and electronic examination, it is proposed that the Form 7 include an expanded set of statements, which will provide Titles Queensland with information about the impact of the proposed lease area on title and confirm the proposed lease area does not conflict with any existing leases or options registered on title.

It is proposed that one of the following statements will be selected and confirmed in the Form 7 to ascertain the parties' intentions regarding any existing leases over the same or parts of the same area:

- the time for the exercise of the option in a registered Lease has ended and the option has not been exercised for Lease no.
- this lease of the premises described in item 5 will be concurrent with registered Lease no.
- this lease of the premises described in item 5 will surrender by operation of law registered Lease no.
- the premises described in item 5 are not, either wholly or partly, the subject of any other lease currently lodged or registered.

This information was previously provided in statements on the Form 7 or determined from supporting information.

3.2.2. Master sketch

Currently, where a title is affected by multiple leases, Titles Queensland requires a master sketch to be deposited showing all leased areas of the centre/complex. The master sketch is used as an internal examination aid, primarily to assist in identifying the impacts on prior lease dealings. Information is also provided in items of the paper Form 7 and supporting documents to clarify the intent of the dealing i.e., whether the lease is intended to be a concurrent lease, or the time for the exercise of an option of a prior registered lease has ended and it has not been exercised.

This process can be duplicative for a number of reasons:

- Surveyors are often engaged to prepare master sketches of affected properties containing details of each premises and the registered dealing number of each lease irrespective of a request from Titles Queensland to do so. These are used by lessors/centre managers to maintain detailed

records of leases affecting land and parts of buildings. Surveyors define all lease areas of the property and ensure there is no overlap.

- Solicitors are in a position to check the title for existing leases of premises and to deal with them appropriately when lodging a new lease (e.g. surrender, request to record determination etc), ensuring that leases are capable of immediate registration when lodged.

It is proposed that master sketches will no longer be deposited with Titles Queensland. Instead, the statements in the revised Form 7 will be used to process the lease and update the title accordingly.

Lessors who currently maintain master sketches can continue to do so to enable them to manage their leasing portfolios and make the required statements as to the existence of prior registered dealings referred to above.

3.2.3. Modifications to Lease Sketch Plans

This proposal will require an update to the current requirements for lease sketch plans, to provide clarity as to what is required with particular emphasis on the description of the lease area. Lease sketch plans will still form part of the lease instrument and will still have to be prepared by a registered cadastral surveyor.

It is proposed that there be a requirement for the surveyor to adequately “reference” their sketch plan with a unique reference number that can form part of the description of the premises being leased in the Form 7 to support certainty, consistency, and limit requisitions. This unique surveyor’s reference number will ensure that there is a direct and logical linkage between the description of the premises being leased on the Form 7 and the area defined on the sketch plan. It is proposed that re-use of sketches will be permitted providing that quality is maintained and appropriate statements on the Form 7 are correctly completed.

This proposal will require the implementation of a guideline for the identification of the lease in words, which easily translates from the lease sketch plan to the Form 7, to the endorsement on the indefeasible title. It is anticipated this will reduce the number of requisitions arising from a mismatch between the sketch and the description in item 5 of the Form 7 (description of premises being leased).

3.2.4. Item 5 of the Form 7 Description of premises being leased

It is proposed to review the way in which a lease of part of land/building can be described in item 5 of the Form 7. It is proposed that an exhaustive list of identifiers be prescribed as an exclusive list from which the description of the area to be leased in the sketch plan and item 5 will be formulated.

3.2.5. Digital signing of eConveyancing leases

Currently leases in Queensland are lodged as paper instruments using a Form 7. The Form 7 is signed by both the lessor and the lessee, and their signature is witnessed by a prescribed witness who is required to verify the identity of the signer and entitlement to sign where the lessor or lessee is an individual.

The Electronic Conveyancing National Law (Queensland) and Land Title Act provide for instruments lodged via eConveyancing to be digitally signed by a party or their representative. The Land Title Act also provides for the form to specify which parties have to digitally sign.

3.2.5.1. Who should sign the electronic form?

Consideration is being given to requirements for digital signing of the electronic Form 7 and other requirements, including verification of identity.

The possible options for digital signing of the electronic Form 7 are:

1. the electronic Form 7 be digitally signed by both the lessor and the lessee (as principal Subscribers or by their representatives); or
2. the electronic Form 7 be digitally signed by the lessor only with a certification that they hold a lease on the same terms as the electronic Form 7 (a 'same terms lease') accepted by the lessee; or
3. the electronic Form 7 be digitally signed by the lessee only with a certification that they hold a lease on the same terms as the electronic Form 7 (a 'same terms lease') granted by the lessor; or
4. the electronic Form 7 be digitally signed by either: both parties; the lessor only; or the lessee only with a certification that they hold a 'same terms lease' i.e. any one of options 1, 2 or 3.

Titles Queensland's preferred option is option 1, electronic Form 7 digitally signed by both the lessor and the lessee (as principal Subscribers or by their representatives).

If the electronic Form 7 is to be digitally signed by only one party, it is proposed that the requirements be similar to the requirements for electronic conveyancing mortgages which are currently signed by the mortgagee only (see Participation Rule 6.13) i.e.:

- the electronic Form 7 will only be required to be digitally signed by the participating Subscriber (as principal Subscriber) or their representative;
- the participation rules will require the participating Subscriber to:
 - ensure that the lessor leases and the lessee accepts a lease on the same terms as the lease digitally signed by the lessor/lessee or their representative; and
 - ensure that the lessor/lessee or the lessor/lessee's representative holds the lease granted by the lessor and accepted by the lessee; and
 - provide a certification along the following lines:

The Certifier, or the Certifier is reasonably satisfied that the lessor it represents, has granted and holds a lease accepted by the lessee on the same terms as this Registry Instrument or Document [OR that the lessee it represents, has accepted and holds a lease granted by the lessor on the same terms as this Registry Instrument or Document accepted by the lessee].

3.2.5.2. Verification of identity

The following options are being considered with respect to requirements for Verification of Identity:

- No additional verification of identity requirements. In accordance with Participation Rule 6, a Subscriber will be required to verify the identity of the client.
- If only the lessor or lessee or their representative digitally signs (options 2,3 & 4 above) the signing party will be required to verify the identity of the other party and may be required to make a certification to that effect.

3.2.6. Grant/Execution

It is proposed that Form 7 item 8 Grant/Execution and item 9 Acceptance be replaced with a single statement as below:

Grant / Execution

The Lessor leases the premises described above to the Lessee on the terms and conditions in this lease and acknowledges the amount payable or other consideration for the lease.

3.2.7. Limitation upon eligible dealings for eConveyancing

3.2.7.1. Dealings broadly within scope

At this stage it is proposed only the following dealings will be enabled for lodgement through an ELN:

- leases of the whole or part of the fee simple. Dealings under Land Act or *Water Act 2000* are not proposed to be included at this stage; and
- leases of whole/part of the land and/or buildings and subleases of such leases.

These dealings involve lodgement of a Form 7.

3.2.7.2. Dealings broadly out of scope

At this stage, the following dealings associated with leases are not currently proposed to be enabled for lodgement through an ELN:

- Form 8 - Surrender/Partial Surrender of lease
- Form 14 - General Request (to record determination, to remove expired lease etc)
- Form 13 - Amendment of lease
- Form 1 - Transfer of lease
- National Mortgage Form – Mortgage of lease
- Form 3 - Release of mortgage of lease
- Form 05/5A/6 - Transmission by death of lease

These dealings will therefore require manual completion and lodgement outside of the eConveyancing platform.

Other exclusions generally applying to eConveyancing dealings are also proposed to apply to eConveyancing leases. Refer to Titles Queensland's eConveyancing webpage for more information under the heading 'General Exclusions' ([eConveyancing - Titles Queensland \(titlesqld.com.au\)](https://titlesqld.com.au)).

Form 7 – Leases are not intended to be included in the proposed regulation to mandate eConveyancing intended to commence in early 2023.

4. Alignment of requirement for paper dealings

The form and requirements for paper leases lodged at a Titles Registry lodgement office, by post or through eLodgement will be aligned to the extent possible.

However, paper Forms 7 will continue to need to be wet signed and witnessed as required under the Land Title Act.

5. Your feedback is welcomed

Titles Queensland welcomes written feedback on the matters outlined above as well as any other issues or concerns relating to lodging leases (electronic Forms 7) through an ELN or alignment of paper processes.

How to provide your feedback

Please email your feedback to titlesinfo@titlesqld.com.au by COB 19 August 2022 with the subject line 'eConveyancing lease reform feedback'.