

Electronic Conveyancing National Law (Queensland) Bill 2012

Explanatory Notes

Short Title

The short title of the Bill is the Electronic Conveyancing National Law (Queensland) Bill 2012.

Policy objectives and the reasons for them

The policy objective of the Bill is to provide a legislative framework in Queensland for the implementation and operation of a national electronic conveyancing system.

Queensland is a participant in the reform to develop and implement a national electronic conveyancing system (national e-conveyancing) which will allow land conveyancing transactions to be completed in an electronic environment and instruments lodged directly into state and territory electronic land registers. The object of the national e-conveyancing reform is to achieve greater efficiency in the conveyancing process throughout Australia by enabling documents in electronic form to be lodged into land registers, removing the need to have paper documents signed and to attend a physical settlement.

Under the 2011 Intergovernmental Agreement for an Electronic Conveyancing National Law, to which Queensland is a party, it was agreed that consistent legislation would be introduced in all participating jurisdictions. It was also agreed that the Electronic Conveyancing National Law would be first enacted in New South Wales as host jurisdiction and then adopted by the other jurisdictions.

Achievement of policy objectives

The Bill will achieve the policy objective by –

- applying as law in Queensland the Electronic Conveyancing National Law as in force from time to time in New South Wales; and
- amending the *Land Title Act 1994* and the *Land Act 1994* to ensure provisions of those Acts interact appropriately with the Electronic Conveyancing National Law

(national law) and provide a complete legislative framework to ensure that national e-conveyancing can be implemented in Queensland.

The national law authorises the registrar of titles or equivalent officer in each jurisdiction (registrar) to operate or authorise the operation of an Electronic Lodgement Network and to set requirements and rules for the operation and use of such a network. The national law also provides for a number of matters required to ensure the security and effectiveness of national e-conveyancing, such as –

- requirements for the authorisation of representatives (legal practitioners) to undertake transactions through the electronic lodgement network on behalf of clients
- the signing of documents by way of digital signatures
- powers of the registrar relating to ensuring compliance with the applicable rules and requirements, including power to conduct compliance examinations and power to revoke or suspend an operator’s approval.

Alternative ways of achieving policy objectives

There is no alternative way of achieving the policy objectives. Primary legislation is required to provide for matters necessary to allow national e-conveyancing to operate, including allowing land titling documents to be lodged into Queensland land registers in digital form and to provide appropriate ongoing governance to ensure the effectiveness and security of national e-conveyancing.

Estimated costs for government implementation

The cost to government in implementing national e-conveyancing relates principally to development costs for an interface between the State’s electronic land title register and an electronic lodgement network approved under the national law. This cost will be met through departmental allocations for this purpose. National e-conveyancing will enable greater use of automated processes within the land registry and there will be less handling of paper documents. Over time, as the number of lodgements through the electronic lodgement network increases, the savings to government from these efficiencies are expected to exceed system development costs.

Consistency with Fundamental Legislative Principles

The Bill is national scheme legislation and issues arise relating to the fundamental legislative principle that legislation must have sufficient regard to the institution of Parliament. Under the Intergovernmental Agreement, the national law can be amended only by agreement of at least 75% of the participating jurisdictions. Queensland Parliament will have no involvement

in any such amendment as an amendment to the New South Wales legislation would be passed by that State's Parliament and would then apply in Queensland. It is considered that the mechanism for amendment of the national law is reasonable as being necessary for a national legislation scheme which requires ongoing consistency. The Bill requires any amendment to the national law to be tabled in Parliament.

The national law provides for operating requirements for operators of electronic lodgement networks and participation rules for subscribers to such a network to be agreed by the registrars of titles (or equivalent officers) from the participating jurisdictions. The individual registrars will then set the participation rules and operating requirements in their own jurisdiction. Having regard to the need to be able to change rules and requirements quickly in response to technological or other developments, it is considered that this delegation of power to the registrar is appropriate and does not breach fundamental legislative principles.

Consultation

Consultation has been undertaken nationally by the Australian Registrars' National E-Conveyancing Council on behalf of the participating jurisdictions. Key stakeholders consulted included representative bodies for the finance industry, legal practitioners and legal indemnity insurers.

In Queensland extensive consultation has been undertaken with stakeholder representatives, including the Queensland Law Society and the Australian Finance Conference and with individual financial institutions.

Consistency with legislation of other jurisdictions

The legislation is part of a national scheme to ensure consistency of legislation in all jurisdictions participating in national e-conveyancing. The Bill applies the national law in force in New South Wales. Under the Intergovernmental Agreement all participating jurisdictions have agreed to either apply the national law or enact legislation in similar terms.

Notes on Provisions

Part 1 Preliminary

Clause 1 establishes the short title of the Act as the *Electronic Conveyancing National Law (Queensland) Act 2012*.

Clause 2 states that the Bill commences on a day or days to be fixed by proclamation, other than the provisions specified which will commence on assent.

Clause 3 defines the terms *local application provisions of this Act* and *Electronic Conveyancing National Law (Queensland)* and states that terms used in both the local application provisions and the Electronic Conveyancing National Law (Queensland) will have the same meaning.

Part 2 Application of Electronic Conveyancing National Law

Clause 4 provides that the Electronic Conveyancing National Law set out in the appendix to the *Electronic Conveyancing (Adoption of National Law) Act 2012* of New South Wales as in force from time to time (national law) applies as a law in Queensland.

Clause 5 requires the Minister to table amendments of Electronic Conveyancing National Law in the Legislative Assembly. This provision is included because amendments to the national law will not be considered by Queensland Parliament before enactment.

Clause 6 sets out the meaning for Queensland of a number of terms used in the national law.

Clause 7 provides that the responsible tribunal for Queensland is QCAT (Queensland Civil and Administrative Tribunal). The national law Part 3 Division 4 provides for appeals against certain decisions of the registrar to be heard by the responsible tribunal, and for related matters.

Clause 8 excludes the application of the *Acts Interpretation Act 1954*.

Part 3 Provision specific to this jurisdiction

Clause 9 provides that references to an appeal against a decision are references to a review of the decision under the QCAT Act.

Part 4 Miscellaneous

Clause 10 provides regulation-making power.

Part 5 Amendment of Acts

Division 1 Amendment of this Act

Clauses 11 and *12* provide for amendment of the long title of the Act.

Division 2 Amendment of Land Act 1994

Clause 13 provides that this division amends the *Land Act 1994*.

Clause 14 amends section 286A to allow the chief executive's approval of forms of electronic conveyancing documents under the national law to be provided in the manual of land title practice kept by the chief executive under that section. This is considered to be an appropriate way for the chief executive to notify the approved form. The manual of land title practice under this section is kept by the registrar under delegation from the chief executive. This amendment is in line with the amendment of section 9A of the Land Title Act.

Clause 15 amends section 287 to substitute a more appropriate term in (1)(b)(i) and exclude the chief executive's power to waive compliance with formal requirements for electronic conveyancing documents. Before an electronic conveyancing document can be lodged, the system will automatically check that the document is in the approved digital form. It would not be practical to allow lodgement of an electronic conveyancing document that does not comply with system rules. This amendment is in line with the amendment of section 10 of the Land Title Act.

Clause 16 amends section 288 to provide that the usual requirements for signing documents creating or transferring interests apply subject to the form approved for the document under the national law. The form approved may, for example, be required to be digitally signed by only one party when that type of instrument in paper form would usually require two parties' signatures under this section. This amendment is in line with the amendment of section 11 of the Land Title Act.

Clause 17 amends section 288A to ensure that a mortgagee's due diligence obligation under the section to take reasonable steps to verify the identity of the person they have been dealing with extends to electronic conveyancing transactions. In these transactions, the lodged instrument of mortgage or amendment of mortgage will not be physically executed by a

person as mortgagor. This amendment is in line with the amendment of section 11A of the Land Title Act.

Clause 18 amends section 288B to ensure that the due diligence obligation of a transferee of a mortgage extend to the transfer of a mortgage lodged as an electronic conveyancing document. This amendment is in line with the amendment of section 11B of the Land Title Act.

Clause 19 substitutes a new section 289 to provide for a method of providing consent for dealings which can apply to electronic conveyancing documents as well as documents prepared in paper. This clause also omits section 290, which is obsolete. This amendment is in line with the amendment of section 12 and the omission of section 13 of the Land Title Act.

Clause 20 renumbers the existing section 290AA as section 290.

Clause 21 inserts a new Division 3D in Chapter 6 Part 1. This amendment is in line with the insertion of a new Division 2A in Part 2 of the Land Title Act.

New section 290O provides for a reference to certain types of documents to include a reference to an electronic conveyancing form of the document.

New section 290P defines the term ***electronic conveyancing document*** and clarifies that certain other documents lodged or deposited in electronic form are not included in this term. These other documents would include, for example, electronic images of documents originally in paper form, which may be lodged electronically under arrangements with the chief executive. The national law is not relevant to these documents.

New section 290Q provides that an electronic conveyancing document required to be signed or executed under the Land Act must be digitally signed as provided for under the national law. By application of the national law and the participation rules determined under the national law, in some cases an electronic conveyancing document may be digitally signed by only one subscriber if that subscriber provides certification relating to another party not represented by a subscriber. For example, the subscriber may be required to certify that the subscriber holds a paper document in the same terms as the electronic conveyancing document, signed by the other party.

Clause 22 amends section 305 to ensure there is an appropriate requisition process for electronic conveyancing documents. A copy of the electronic conveyancing document may be provided to the lodger as it is not possible for the lodger to borrow the original document under section 307. This amendment is in line with the amendment of section 156 of the Land Title Act.

Clause 23 amends section 306 to clarify that if an electronic conveyancing document is rejected, no original document is returned to the lodger, and to provide that an electronic conveyancing document which has been rejected cannot be re-lodged. This amendment is in line with the amendment of section 157 of the Land Title Act.

Clause 24 amends section 307 to make a minor change to the heading and to clarify that only instruments in paper form may be borrowed under this section. This amendment is in line with the amendment of section 158 of the Land Title Act.

Clause 25 adds a note to section 310 about a provision in the National Law relevant to the execution of electronic conveyancing documents. This amendment is in line with the amendment of section 161 of the Land Title Act.

Clause 26 substitutes a new section 313 which includes reference to delivery of paper “copies” of electronic conveyancing documents as well as documents lodged in paper form. This is in line with the amendment of section 198 of the Land Title Act.

Clause 27 amends section 314 to clarify that it only applies to paper documents. This amendment is in line with the amendment of section 164 of the Land Title Act.

Clause 28 amends section 322A to provide an appropriate way to comply with the section when a transfer in electronic form is registered to sever a joint tenancy. It may not be possible to provide a copy of a transfer before it is lodged. This amendment is in line with the amendment of section 59 of the Land Title Act.

Clause 29 amends schedule 6 (Dictionary) to replace a definition, include notes for certain definitions and include additional definitions of terms used in the amended provisions.

Division 3 Amendment of Land Title Act 1994

Clause 30 provides that this division amends the *Land Title Act 1994*.

Clause 31 amends section 9A to allow the registrar’s approval of forms of electronic conveyancing documents under the national law to be provided for in the manual of land title practice kept by the registrar under that section. This is considered to be an appropriate way for the registrar to notify the approved forms and it is expected that the manual will include copies of ‘templates’ or visual representations of the digital forms.

Clause 32 amends section 10 to substitute a more appropriate term in (1)(b)(i) and exclude the registrar’s power to waive compliance with formal requirements for electronic conveyancing documents. Before an electronic conveyancing document can be lodged, the system will automatically check that the document is in the approved digital form. It would not be practical to allow lodgement of an electronic conveyancing document that does not comply with system rules.

Clause 33 amends section 11 to provide that the usual requirements for signing instruments creating or transferring interests apply subject to the form approved for the instrument under the national law. The form approved may, for example, be required to be digitally signed by only one party when that type of instrument in paper form would usually require two parties’ signatures under this section.

Clause 34 amends section 11A to ensure that a mortgagee's due diligence obligation under the section to take reasonable steps to verify the identity of the person they have been dealing with extends to electronic conveyancing transactions. In these transactions, the lodged instrument of mortgage or amendment of mortgage will not be physically executed by a person as mortgagor.

Clause 35 amends section 11B to ensure that the due diligence obligation of a transferee of a mortgage extend to the transfer of a mortgage lodged as an electronic conveyancing document.

Clause 36 substitutes a new section 12 to provide for a method of providing consent for dealings which can apply to electronic conveyancing documents as well as documents prepared in paper. This clause also omits section 13, which is obsolete.

Clause 37 inserts a new Division 2A in Part 2.

New section 14A provides for a reference to certain types of documents to include a reference to an electronic conveyancing form of the document.

New section 14B defines the term ***electronic conveyancing document*** and clarifies that certain other documents lodged or deposited in electronic form are not included in this term. These other documents would include, for example, electronic images of documents originally in paper form, which may be lodged electronically under arrangements with the registrar. The national law is not relevant to these documents.

New section 14C provides that an electronic conveyancing document required to be signed or executed under the Land Title Act must be digitally signed as provided for under the national law. By application of the national law and the participation rules determined under the national law, in some cases an electronic conveyancing document may be digitally signed by only one subscriber if that subscriber provides certification relating to another party not represented by a subscriber. For example, the subscriber may be required to certify that the subscriber holds a paper document in the same terms as the electronic conveyancing document, signed by the other party.

Clause 38 amends section 42 to give the registrar discretion as to whether to issue a certificate of title (CT) for a lot. CTs have been optional since the commencement of the Land Title Act and the number of lots for which CTs exist has gradually decreased since that time. This amendment will facilitate future dealings with the lot by electronic conveyancing documents without the need for a CT to be physically returned for cancellation under section 154.

Clause 39 makes minor changes to section 44 to make the wording more appropriate for an electronic register.

Clause 40 amends section 50 to refer to a method of recording consent of the Minister for certain plans of subdivision, which is appropriate for plans in electronic form as well as those prepared in paper form.

Clause 41 amends section 59 to provide an appropriate way to comply with the section when a transfer in electronic form is registered to sever a joint tenancy. It may not be possible to provide a copy of a transfer before it is lodged.

Clause 42 amends section 155 to clarify that subsection (1) only applies to a plan of survey in paper form.

Clause 43 amends section 156 to ensure there is an appropriate requisition process for electronic conveyancing documents. A copy of the electronic conveyancing document may be provided to the lodger as it is not possible for the lodger to borrow the original document under section 158.

Clause 44 amends section 157 to clarify that if an electronic conveyancing document is rejected, no original document is returned to the lodger and to provide that an electronic conveyancing document which has been rejected cannot be re-lodged.

Clause 45 amends section 158 to make a minor change to the heading and to clarify that only instruments in paper form may be borrowed under this section.

Clause 46 adds a note to section 161 about a provision in the national law relevant to the execution of electronic conveyancing documents.

Clause 47 amends section 164 to clarify that it only applies to paper documents and to provide for an additional circumstance in which the Registrar may dispense with production of a CT, namely when it is held by a registered mortgagee of the relevant lot. This will facilitate future dealings with the lot by electronic conveyancing documents without the need for the CT to be physically returned for cancellation under section 154.

Clause 48 makes consequential amendments to section 185, related to the amendment of sections 11A and 11B.

Clause 49 amends section 198 to include reference to delivery of paper “copies” electronic conveyancing documents as well as documents lodged in paper form.

Clause 50 amends schedule 2 (Dictionary) to replace a definition, include notes for certain definitions and include additional definitions of terms used in the amended provisions.