

Land Title Regulation 2022

Explanatory notes for SL 2022 No. 124

made under the

Land Title Act 1994

General Outline

Short title

Land Title Regulation 2022.

Authorising law

Section 199(2) of the *Land Title Act 1994* (Land Title Act).

Policy objectives and the reasons for them

Section 199(2) of the Land Title Act provides the Governor in Council with the power to make regulations which require certain instruments or other documents of a stated class to be lodged or deposited by persons of a stated class using an Electronic Lodgment Network (ELN).

The *Land Title Regulation 2022* (Land Title Regulation) is a new regulation that mandates electronic conveyancing (eConveyancing) via an ELN. The Land Title Regulation is subordinate legislation to the Land Title Act, the statute which governs the registration of freehold interest in land and defines the rights extending from freehold interest within Queensland.

Central to the Land Title Regulation is the process of eConveyancing. The term eConveyancing refers to the electronic preparation, lodgement and depositing, of certain instruments and other documents performed via an ELN for the purposes of the Land Title Act. The Land Title Regulation mandates the use of eConveyancing for a class of persons lodging or depositing a class of eligible instruments and other documents (required instruments), unless exempted.

The Land Title Regulation is consistent with the Queensland Government's commitment to national consistency under the Council of Australian Governments Intergovernmental Agreement, the Electronic Conveyancing National Law Agreement 2011. The Intergovernmental Agreement provided for a national law which Queensland adopted in 2013.

Under the *Electronic Conveyancing National Law (Queensland)*, the Registrar of Titles can determine the requirements for ELNs and their operators (operating requirements) and set rules relating to the use of ELNs by participating subscribers (participation rules).

The objectives of the Land Title Regulation are to:

- Realise the full benefits for government, the conveyancing industry and the community from the national eConveyancing system in Queensland.
- Apply a consistent service delivery approach to other Australian jurisdictions.
- Further a seamless national eConveyancing economy; and
- Maintain public confidence in a modern Queensland titles registry.

Achievement of policy objectives

The Land Title Regulation achieves its policy objectives through its main components, which:

- Mandate the class of required instruments that must be lodged or deposited by the means of an ELN.
- Mandate the class of persons.
- Prescribe the exemptions to the mandate.
- Provide a commencement date for when the mandate takes effect.

The class of required instruments that must be lodged or deposited by the means of an ELN

As subordinate legislation to the Land Title Act, required instruments under the Land Title Regulation apply solely to those lodged or deposited for a lot held in fee simple.

The class of required instruments include those which have been enabled for lodgement or depositing using an ELN. This includes:

- An instrument of transfer for a lot.
- An instrument of mortgage for a lot.
- An instrument releasing a mortgage of a lot.
- A caveat lodged for a lot.
- A request to withdraw a caveat lodged over a lot.
- A priority notice deposited for a lot.
- A request to extend a priority notice over a lot.
- A request to withdraw a priority notice over a lot.
- An application to be registered as a personal representative for a registered owner of a lot who has died.

Class of persons subject to the mandate

For the class of persons subject to the Land Title Regulation, the mandate will apply to all eligible eConveyancing subscribers under the Participation Rules (Qld). This includes (but not limited to):

- A law practice.
- An Australian legal practitioner.
- The Crown in right of the Commonwealth, a State or a Territory or a local government organisation.
- An authorised deposit-taking institution.

The mandate does not apply to an individual (a natural person) who is not a subscriber and is not represented by an Australian legal practitioner or incorporated legal practice for the purpose of completing a transaction to which the required instrument relates i.e., the individual is lodging their required instrument/s on their own behalf (self-representing). An exempted individual will continue to be able to paper lodge instruments or other documents.

Other exemptions to the mandate

The Land Title Regulation additionally prescribes a range of exemptions. These exemptions outline when a required instrument does not have to be lodged or deposited using an ELN. If an exemption is applicable, this will permit a person to lodge or deposit a required instrument using paper lodgement.

The exemptions capture circumstances where:

- No available ELN has the functionality to facilitate the lodgement or depositing.
- Technical difficulties, such as the unavailability of an ELN or an extended lack of internet access, prevent the lodgement or depositing.
- A separate instrument or other document that must be lodged or deposited with a required instrument, cannot be lodged or deposited using the ELN (e.g., a transfer of a lot in fee simple that must be lodged with a plan of survey).
- If a party to a required instrument is an individual to which section 5(3) of the Land Title Regulation applies and the instrument is lodged as part of a group of instruments that form a whole transaction, then all the instruments in the group are exempt from the mandate and will need to be paper lodged.
- The system operated by the land registry does not have the functionality to accept and process a required instrument in electronic form.
- A required instrument that replaces another required instrument that has been requisitioned in the prescribed circumstances.

A further exemption exists to align the Land Title Regulation with exemptions from transfer duty in the *Duties Act 2001*. This exemption provides that a required instrument which does not give effect to a transaction which satisfies the definition for

ELN lodgement or ELN transfer under section 156D of the *Duties Act 2001* is not required to be lodged or deposited using an ELN. This avoids a situation of an ELN workspace being opened for a transaction which is not permitted by the *Duties Act 2001*. For example, transfers of land that are exempt from transfer duty where there is an antecedent agreement for the transfer do not satisfy the definition of an ELN lodgement or ELN transfer and are therefore exempt.

The Land Title Regulation also prescribes a transitional provision where a required instrument has been executed prior to commencement. If a required instrument has been executed in hard copy before the commencement, that instrument is not able to be lodged or deposited with an ELN. However, if that instrument is no longer used as part of the transaction and another required instrument is used in its place that is not executed, the new required instrument may be lodged or deposited using an ELN, if no other exemptions apply.

Commencement of the mandate

The Land Title Regulation will commence on 20 February 2023. This gives those conveyancing professionals that have not yet adopted eConveyancing practices sufficient time to transition.

Consistency with policy objectives of authorising law

The Land Title Regulation is consistent with the objectives of the Land Title Act as it specifically promotes its legislative object to continue and improve the system for registering title to and transferring interests in freehold land.

Inconsistency with policy objectives of other legislation

The Land Title Regulation is consistent with the *Duties Act 2001*.

No inconsistencies with the policy objectives of other legislation have been identified.

Benefits and costs of implementation

In support of the Queensland Government's digital transformation, it is critical that Queensland achieves national consistency to deal with emerging issues and keep pace with technology. Mandating eConveyancing supports Queensland's conveyancing sector to meet digital trends for executing documents and will deliver significant efficiencies for legal practitioners, law practices, the banking and property industries.

The Land Title Regulation will contemporise conveyancing practice across Queensland. This will align Queensland with other states which have mandated eConveyancing including New South Wales, Victoria, South Australia and Western Australia.

eConveyancing allows instruments and documents needed for property transactions to be digitally prepared, signed, settled, and lodged, providing greater efficiencies over paper and manual processes. Other benefits include immediate confirmation of lodgement and once a transaction is complete, a secure environment for settling transactions, and the ability to settle multiple transactions at the same time.

The COVID-19 pandemic witnessed an acceleration by the conveyancing industry towards electronic systems including significant increases to the proportion of property transactions lodged via eConveyancing, which is evidence of the administrative efficiencies over paper and manual processes.

The Office of Best Practice Regulation (OBPR) in the Queensland Productivity Commission advised that the implementation of the Land Title Regulation will involve costs based on the transition of systems and administrative requirements such as employee training and the establishment of security protocols.

However, the Land Title Regulation will also result in further efficiency within the conveyancing industry. This efficiency will arise as a result of the decrease in time required per transaction, lowering the extent of opportunity cost involved in each transaction. Due to the digital nature of eConveyancing, this increase in efficiency also provides further flexibility, allowing it to be sustained even throughout phenomena such as COVID-19 restrictions.

Based on this, OBPR has advised that both industry and the State will experience broad positive economic impacts which is predicted to outweigh the costs incurred as a result of the mandate.

There are no additional costs associated with the implementation of the Land Title Regulation. Titles Queensland will publish information to support and guide practitioners in implementing the mandate.

Consistency with fundamental legislative principles

The Land Title Regulation has been drafted with regard to fundamental legislative principles as defined in section 4 of the *Legislative Standards Act 1992* and is generally consistent with these provisions.

Section 5(2)(b) of the Land Title Regulation may be perceived to impinge on section 4(3)(b) of the *Legislative Standards Act 1992*, which requires that legislation is consistent with the principles of natural justice, and the principle that a person is entitled to be told of a decision/reason that affects the person.

Section 5(2)(b) of the Land Title Regulation provides an exemption to the requirement to prepare, lodge or deposit a required instrument using an ELN for circumstances where the land registry's system cannot accept or process the required instrument.

This presents potential ambiguity, as it may not be immediately clear where the exemption will be applicable.

Operationally, where the land registry system cannot accept or process the required instrument, the subscriber will receive an automatic message notifying that the required instrument cannot be lodged or deposited using the ELN. If the subscriber receives that message, the exemption will apply.

Titles Queensland will be providing supporting information in relation to the exemptions included in section 5(2) of the Regulation which will provide clarity around the application of the exemptions and when they may apply.

The above measures are considered to provide sufficient certainty to a subscriber as to when the exemption in section 5(2)(b) will apply.

Consultation

On 24 March 2022, the Department of Resources published a consultation paper titled 'Proposed regulation to mandate eConveyancing in Queensland: Consultation Paper' outlining the proposed regulation to mandate eConveyancing in Queensland. The public was provided a six-week period in which to provide a submission. In total, 28 submissions were received in response to the consultation from a range of stakeholders. Of these submissions, two did not support the mandate and four provided responses which were out of scope for the Land Title Regulation. The remainder of the submissions were supportive of the mandate.

Submissions from legal practitioners indicated that the legal industry was largely prepared for and receptive to the Land Title Regulation. Providing further feedback were peak bodies such as Queensland Law Society, Australian Banking Association, and Property Exchange Australia Limited (PEXA). Submissions provided by these bodies provided support for the Land Title Regulation while citing considerations regarding implementation and the timing of the commencement of the mandate. Sympli Australia Pty Ltd understands and appreciates the motivation for the mandating of eConveyancing while also citing similar considerations. No additional amendments to the Land Title Regulation were identified from these submissions specific to achieving the intent and purpose of the Land Title Regulation.

The Department of Resources also consulted public entities including the Local Government Association of Queensland and relevant State government departments including the Department of the Premier and Cabinet; Department of Justice and Attorney-General; Department of Seniors, Disability Services, Aboriginal and Torres Strait Islander Partnerships; Department of Agriculture and Fisheries; Department of Communities, Housing and Digital Economy; Department of Energy and Public Works; Department of Transport and Main Roads; Department of State Development, Infrastructure, Local Government and Planning; and the Department of Regional Development, Manufacturing and Water. Each department provided in principle

support but also highlighted some implementation issues. The Department of Resources and Titles Queensland are committed to collaborating with relevant government departments for the implementation of the mandate.

The Queensland Revenue Office, as part of Queensland Treasury, was consulted to ensure consistency with the *Duties Act 2001*.

A consultation draft of the Land Title Regulation was also released to key industry stakeholders and relevant government departments for feedback. This feedback was considered throughout the drafting of the Land Title Regulation.

OBPR was engaged to assess the proposal to introduce a mandate, advising that the proposal would not benefit from the preparation of a Regulatory Impact Statement, provided that further consultation is undertaken. In response, the Department of Resources undertook the further consultation as outlined above to meet the requirements of the OBPR.