

Passed by both Houses



New South Wales

# Real Property Amendment (Electronic Conveyancing) Bill 2014

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*I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.*

*Clerk of the Legislative Assembly.  
Legislative Assembly,  
Sydney,*

*, 2014*



New South Wales

## **Real Property Amendment (Electronic Conveyancing) Bill 2014**

Act No      , 2014

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An Act to amend the *Real Property Act 1900* to facilitate the implementation of, and supplement, the national law relating to electronic conveyancing; to change registration procedures for caveats; and for other purposes.

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*I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.*

*Assistant Speaker of the Legislative Assembly.*

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Real Property Amendment (Electronic Conveyancing) Act 2014*.

**2 Commencement**

This Act commences on the date of assent to this Act.

## Schedule 1 Amendment of Real Property Act 1900 No 25

### [1] Section 3 Definitions

Omit the definitions of *Approved form*, *Dealing* and *Instrument* from section 3 (1) (a).

### [2] Section 3 (1) (a)

Insert in alphabetical order:

**Approved form**—Form approved by the Registrar-General for the purposes of any provision of this or any other Act in relation to which the expression is used (see section 104), including an electronic data file containing such a form.

**Dealing**—Any instrument other than a grant or caveat, including an electronic form of that instrument, being an instrument:

- (a) that is registrable or capable of being made registrable under the provisions of this Act, or
- (b) in respect of which any recording in the Register is by this or any other Act or any Act of the Commonwealth required or permitted to be made.

**Note.** The *Electronic Conveyancing National Law (NSW)* facilitates the electronic lodgment of registry instruments. Dealings are a type of registry instrument.

**Digitally sign**—Has the same meaning as in the *Electronic Conveyancing National Law (NSW)*.

**Electronic Lodgment Network**—An Electronic Lodgment Network under the *Electronic Conveyancing National Law (NSW)*.

**Instrument**—Any grant, certificate of title, conveyance, assurance, deed, map, plan, will, probate, or exemplification of will, or any other document in writing or in electronic form relating to the disposition, devolution or acquisition of land or evidencing title to land.

**Lodge**—Includes lodge electronically in accordance with:

- (a) this Act (see section 3A (Application of Act to electronic form plans and other documents)), or
- (b) the *Electronic Conveyancing National Law (NSW)*.

**Sign**—Includes digitally sign in accordance with the *Electronic Conveyancing National Law (NSW)*.

### [3] Section 3 (1) (b)

Omit “describing”. Insert instead “description of”.

### [4] Section 12 Powers of Registrar-General

Insert “and” at the end of section 12 (3) (a) and (b).

### [5] Section 12 (3) (e)

Insert at the end of section 12 (3) (d):

, and

- (e) the Registrar-General must keep a record of every correction.

### [6] Section 12 (3A) (d)

Insert at the end of section 12 (3A) (c):

, and

- (d) the Registrar-General must keep a record of every correction.

**[7] Section 12 (6) and (7)**

Insert after section 12 (5):

- (6) The powers of the Registrar-General under this section may be exercised with respect to electronic lodgments in conjunction with powers granted under the *Electronic Conveyancing National Law (NSW)*.
- (7) A power to correct errors and omissions conferred by subsection (1) includes a power to correct errors and omissions resulting from a malfunction of an Electronic Lodgment Network or of any electronic system in which information is communicated between the Electronic Lodgment Network and the Registrar-General.

**[8] Section 12D Registrar-General's Directions**

Insert after section 12D (1) (b):

- (b1) the preparation and lodgment of registry instruments under the *Electronic Conveyancing National Law (NSW)*,

**[9] Sections 33AA and 33AB**

Insert after section 33:

**33AA Non-issue of certificate of title: electronic transactions**

- (1) The Registrar-General may, from time to time, determine circumstances when, or classes of persons to whom, certificates of title will not be issued without a request under section 33 (5).
- (2) If the Registrar-General does not issue a certificate of title, the Registrar-General must make an entry in the relevant folio of the Register, in such form and manner as the Registrar-General considers appropriate, indicating:
  - (a) that a certificate of title has not been issued, and
  - (b) the name of the person who has control of the right to deal in the land, being the person whom the Registrar-General considers would be best entitled to be issued with the certificate of title if the issue of a certificate of title were requested.
- (3) The Registrar-General may, on the request of the holder of a certificate of title, cancel the certificate of title and make an entry in the Register under subsection (2) (as if a certificate of title had not been issued).
- (4) The Registrar-General may determine:
  - (a) the circumstances in which a request can be made under subsection (3), and
  - (b) the requirements to be complied with by the person making the request, and
  - (c) the method by which the certificate of title is to be cancelled.

**33AB Alternative to production of a certificate of title**

- (1) A statutory requirement for the lodgment or production of a certificate of title that is imposed in connection with the registration of a matter may, if the relevant folio notes that no certificate of title has been issued, be satisfied by the person recorded in the Register (under section 33AA) as the person having control of the right to deal in the land providing electronic consent to the registration of the matter.

- (2) The electronic consent must:
  - (a) be provided in a form and manner approved by the Registrar-General, and
  - (b) be digitally signed by or on behalf of the person who has control of the right to deal in the land.
- (3) The Registrar-General may assume that a person having control of the right to deal in the land who provides an electronic consent to the registration of a matter has all necessary authority to provide it or to withdraw it.
- (4) In this section:

*electronic consent* means a consent contained in an electronic communication.

*registration* means any recording, entry or notation in the Register, or any other action in connection with the Register, that the Registrar-General is authorised or required to make or take by or under this or any other Act.

*statutory requirement* means a requirement made by or under this or any other Act.

**[10] Section 36 Lodgment and registration of documents**

Insert after section 36 (11):

- (12) If the Registrar-General refuses to register a dealing executed or lodged in electronic form and the parties to the dealing wish to proceed with the registration, the Registrar-General may require the relevant instruments to be executed and lodged for registration in paper form.

**[11] Section 74F Lodgment of caveats against dealings, possessory applications, plans and applications for cancellation of easements or extinguishment of restrictive covenants**

Insert “or, in the case of a caveat lodged by means of an Electronic Lodgment Network, be verified in a way approved by the Registrar-General” after “declaration” in section 74F (5) (c).

**[12] Section 74F (6)**

Omit “unless the consent of the registered proprietor is endorsed on the caveat”.

**[13] Section 74I Lapse of caveat where dealing or delimitation plan is subsequently lodged for recording**

Insert “, by a judgment creditor under any writ that cannot be recorded because of the caveat” after “registered proprietor” in section 74I (1).

**[14] Section 104 Approved forms**

Insert after section 104 (3):

- (4) The Registrar-General may approve an electronic version of any form, including any form approved under this section.

**[15] Section 115A**

Insert after section 115:

**115A Certification of electronic instrument**

- (1) The Registrar-General may, on the application of any interested person and payment of the prescribed fee (if any), produce in a paper form a

representation of any electronic instrument lodged by means of an Electronic Lodgment Network.

- (2) The Registrar-General may certify the electronic representation in any manner determined by the Registrar-General.
- (3) A representation of an electronic instrument certified in accordance with this section is evidence of the contents and nature of the electronic instrument.

**[16] Section 117 Certificate of correctness: paper lodgment**

Insert “lodged in paper form” after “caveat” where firstly occurring in section 117 (1).

**[17] Section 117 (1A)**

Insert “lodged in paper form that is” after “any dealing”.

**[18] Section 117 (1A) (a)**

Insert “(other than through an Electronic Lodgment Network)” after “electronically” where firstly occurring.

**[19] Section 117A**

Insert after section 117:

**117A Certificate of correctness: electronic lodgment**

- (1) The Registrar-General may reject, or may refuse to accept or to take any action in relation to, any primary application, dealing or caveat lodged in electronic form by means of an Electronic Lodgment Network unless it is certified in accordance with the participation rules made under the *Electronic Conveyancing National Law (NSW)*.
- (2) The Registrar-General may reject, or may refuse to accept or to take any action in relation to, any dealing accompanied by a notice (in accordance with section 39 (1B)) that is lodged by means of an Electronic Lodgment Network unless the dealing is accompanied by a certificate in electronic form to the effect that:
  - (a) the notice has been lodged electronically in a form and in the manner approved by the Registrar-General, and
  - (b) the notice is correct for the purposes of this Act.
- (3) A certificate referred to in subsection (2) must be digitally signed by:
  - (a) the person lodging the dealing, or
  - (b) a party to the dealing, or
  - (c) a solicitor or agent acting for the person lodging, or a party to, the dealing.
- (4) A person must not falsely or negligently certify to the correctness of any application, dealing, caveat or notice referred to in this section.  
Maximum penalty: 10 penalty units.
- (5) The conviction of a person under subsection (4) does not prevent a person who may have sustained any damage or loss in consequence of an error or mistake in any such certified application, dealing or caveat from recovering damages against the person who has certified its correctness.

**[20] Schedule 3 Savings and transitional provisions**

Insert at the end of clause 1 (1):

any other Act that amends this Act