



New South Wales

Real Property Amendment (Electronic Conveyancing) Bill 2013

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to facilitate the implementation of the *Electronic Conveyancing National Law (NSW)*, which is part of a national scheme to create a single national electronic system for settling real property transactions and for the electronic lodgment and processing of land transactions. To achieve that object, this Bill amends the *Real Property Act 1900*:

- (a) by providing for the optional issue of paper certificates of title, allowing the Registrar-General to determine whether to issue or cancel a certificate in a particular case (replacing the current scheme, under which the Registrar-General issues a certificate of title for all privately owned Torrens title land), and
- (b) by allowing the Registrar-General, in circumstances where a certificate of title is not issued or has been cancelled, to accept an electronic consent to the registration of a matter where currently a certificate of title is required to be produced to the Registrar-General, and
- (c) by making other minor amendments to make the operation of the Act technology-neutral, including by making it clear that, unless otherwise provided, electronic documents lodged through the new system will be processed in the same way and according to the same legal considerations as conventional paper transactions and that the powers of the Registrar-General apply equally to paper and electronic conveyancing documents.

The Bill also makes minor unrelated amendments to the caveat provisions in the *Real Property Act 1900*.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Schedule 1 Amendment of Real Property Act 1900 No 25

Amendments making the Act technology-neutral

Schedule 1 [1] and [2] modify existing definitions of terms, and insert new definitions, to make it clear that:

- (a) a reference to an approved form includes a reference to an electronic data file containing such a form, and
- (b) a reference to a dealing, including a transfer, mortgage, memorandum or other instrument, includes a reference to the electronic form of that document created and lodged under the authority of the *Electronic Conveyancing National Law (NSW)*, and
- (c) a reference to an instrument includes an electronic data file containing any instrument, and
- (d) a reference to lodging an instrument or document includes lodging electronically, and
- (e) a reference to signing includes digitally signing an electronic document.

Schedule 1 [7] provides that the powers of the Registrar-General may be exercised with respect to electronic lodgments in conjunction with powers granted under the *Electronic Conveyancing National Law (NSW)*. The amendment also extends the power of the Registrar-General to correct errors to include supplying entries or recordings omitted to be made in the Register if the error or omission resulted 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.

Schedule 1 [4]–[6] require the Registrar-General to keep records of corrections of the Register.

Schedule 1 [8] empowers the Registrar-General to issue directions in relation to the preparation and lodgment of registry instruments under the *Electronic Conveyancing National Law (NSW)*.

Schedule 1 [10] empowers the Registrar-General to require dealings lodged electronically to be executed and lodged in paper form, if the Registrar-General considers that the dealing cannot, or should not, be processed electronically.

Schedule 1 [11] provides for the Registrar-General to approve a manner of verification of caveats lodged by means of an Electronic Lodgment Network.

Schedule 1 [14] provides that the Registrar-General may approve an electronic version of any approved form, even if there is no paper form.

Schedule 1 [15] provides that the Registrar-General may produce an evidentiary copy of an electronic document in writing, recording information contained in an electronic instrument, and that the document so produced may be taken as evidence of the matters contained in the electronic instrument.

Schedule 1 [19] makes it clear that the special arrangements that the *Electronic Conveyancing National Law (NSW)* specifies for the digital signing and certifying of electronic documents by subscribers to an Electronic Lodgment Network apply instead of the provisions for certification of paper documents in the Act. (The *Electronic Conveyancing National Law (NSW)* provides for solicitors and conveyancers to be authorised to digitally sign documents on their clients' behalf and to generally conduct a transaction electronically. The authority for this will come from a new document called a client authorisation provided for in the *Electronic Conveyancing National Law (NSW)*.) **Schedule 1 [16]–[18]** are consequential amendments.

Amendments providing for the optional issue of certificates of title

Schedule 1 [9] provides (in proposed section 33AA) for the optional issue of paper certificates of title, by empowering the Registrar-General to determine when a certificate of title will be issued. The amendment also empowers the Registrar-General to cancel a certificate of title held by persons on request. Where a certificate of title has not been issued, or has been cancelled, the

Registrar-General is required to make an entry in the Register that no certificate of title has been issued, indicating the name of the person who has control of the right to deal in the land, being the person who would be entitled to be issued with the certificate of title, on request.

Schedule 1 [9] also provides (in proposed section 33AB) that any statutory requirement to produce a certificate of title may, if no current certificate is issued or if the certificate of title is cancelled, be satisfied by the party entitled to be issued with the certificate of title (on request) providing an approved electronic consent. The proposed section also provides that the Registrar-General may assume that a person who lodges an electronic consent with the Registrar-General has all necessary authority to lodge it with the Registrar-General or to withdraw it.

Amendments relating to the operation and notice of caveats

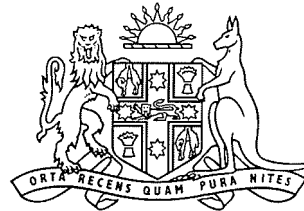
Schedule 1 [12] will mean that the Registrar-General is required in all cases to give the registered proprietor of an interest affected by a caveat notice of the lodgment of a caveat prohibiting the recording of any dealing affecting the estate or interest to which the person lodging the caveat claims to be entitled, the grant of any possessory application, the registration of a delimitation plan, the cancellation of an easement or the extinguishment of a restrictive covenant. Currently, the Registrar-General is not required by the Act to give notice if the registered proprietor's consent to the caveat is endorsed on the caveat, but it is the Registrar-General's practice to give notice in all cases as a fraud mitigation measure. The proposed amendment will align the statutory requirement with the Registrar-General's practice.

Schedule 1 [13] provides that a judgment creditor under a writ relating to land may apply to have a caveat (which would otherwise prevent the recording of the writ) lapsed in so far as necessary to allow the recording of the creditor's writ on title. This makes it clear that judgment creditors, who do not have an interest in land, are afforded the same rights as others to have a caveat lapsed to allow the writ to be recorded and so allow the Sheriff, where appropriate, to sell the land to satisfy debts recognised by the Court through the issue of a writ.

Other minor amendments

Schedule 1 [3] corrects a grammatical error.

Schedule 1 [20] provides for the making of savings and transitional regulations consequent on the enactment of the proposed Act and any other Act that amends the *Real Property Act 1900*.



New South Wales

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New South Wales

Real Property Amendment (Electronic Conveyancing) Bill 2013

No. , 2013

A Bill for

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.

The Legislature of New South Wales enacts:

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1 Name of Act

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This Act is the *Real Property Amendment (Electronic Conveyancing) Act 2013*.

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2 Commencement

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

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Schedule 1	Amendment of Real Property Act 1900 No 25	1
[1] Section 3 Definitions		2
	Omit the definitions of <i>Approved form</i> , <i>Dealing</i> and <i>Instrument</i> from section 3 (1) (a).	3
[2] Section 3 (1) (a)		4
	Insert in alphabetical order:	5
	<i>Approved form</i> —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.	6
	<i>Dealing</i> —Any instrument other than a grant or caveat, including an electronic form of that instrument, being an instrument:	7
	(a) that is registrable or capable of being made registrable under the provisions of this Act, or	8
	(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.	9
	Note. The <i>Electronic Conveyancing National Law (NSW)</i> facilitates the electronic lodgment of registry instruments. Dealings are a type of registry instrument.	10
	<i>Digitally sign</i> —Has the same meaning as in the <i>Electronic Conveyancing National Law (NSW)</i> .	11
	<i>Electronic Lodgment Network</i> —An Electronic Lodgment Network under the <i>Electronic Conveyancing National Law (NSW)</i> .	12
	<i>Instrument</i> —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.	13
	<i>Lodge</i> —Includes lodge electronically in accordance with:	14
	(a) this Act (see section 3A (Application of Act to electronic form plans and other documents)), or	15
	(b) the <i>Electronic Conveyancing National Law (NSW)</i> .	16
	<i>Sign</i> —Includes digitally sign in accordance with the <i>Electronic Conveyancing National Law (NSW)</i> .	17
[3] Section 3 (1) (b)		18
	Omit “describing”. Insert instead “description of”.	19
[4] Section 12 Powers of Registrar-General		20
	Insert “and” at the end of section 12 (3) (a) and (b).	21
[5] Section 12 (3) (e)		22
	Insert at the end of section 12 (3) (d):	23
	, and	24
	(e) the Registrar-General must keep a record of every correction.	25
[6] Section 12 (3A) (d)		26
	Insert at the end of section 12 (3A) (c):	27
	, and	28
	(d) the Registrar-General must keep a record of every correction.	29

[7] Section 12 (6) and (7)	1
Insert after section 12 (5):	2
(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 <i>Electronic Conveyancing National Law (NSW)</i> .	3 4 5
(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.	6 7 8 9 10
[8] Section 12D Registrar-General's Directions	11
Insert after section 12D (1) (b):	12
(b1) the preparation and lodgment of registry instruments under the <i>Electronic Conveyancing National Law (NSW)</i> ,	13 14
[9] Sections 33AA and 33AB	15
Insert after section 33:	16
33AA Non-issue of certificate of title: electronic transactions	17
(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).	18 19 20
(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:	21 22 23 24
(a) that a certificate of title has not been issued, and	25
(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.	26 27 28 29
(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).	30 31 32
(4) The Registrar-General may determine:	33
(a) the circumstances in which a request can be made under subsection (3), and	34 35
(b) the requirements to be complied with by the person making the request, and	36 37
(c) the method by which the certificate of title is to be cancelled.	38
33AB Alternative to production of a certificate of title	39
(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.	40 41 42 43 44 45

(2)	The electronic consent must:	1
(a)	be provided in a form and manner approved by the Registrar-General, and	2 3
(b)	be digitally signed by or on behalf of the person who has control of the right to deal in the land.	4 5
(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.	6 7 8
(4)	In this section:	9
	<i>electronic consent</i> means a consent contained in an electronic communication.	10 11
	<i>registration</i> 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.	12 13 14
	<i>statutory requirement</i> means a requirement made by or under this or any other Act.	15 16
[10]	Section 36 Lodgment and registration of documents	17
	Insert after section 36 (11):	18
(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.	19 20 21 22
[11]	Section 74F Lodgment of caveats against dealings, possessory applications, plans and applications for cancellation of easements or extinguishment of restrictive covenants	23 24 25
	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).	26 27 28
[12]	Section 74F (6)	29
	Omit “unless the consent of the registered proprietor is endorsed on the caveat”.	30
[13]	Section 74I Lapse of caveat where dealing or delimitation plan is subsequently lodged for recording	31 32
	Insert “, by a judgment creditor under any writ that cannot be recorded because of the caveat” after “registered proprietor” in section 74I (1).	33 34
[14]	Section 104 Approved forms	35
	Insert after section 104 (3):	36
(4)	The Registrar-General may approve an electronic version of any form, including any form approved under this section.	37 38
[15]	Section 115A	39
	Insert after section 115:	40
115A	Certification of electronic instrument	41
(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	42 43

	representation of any electronic instrument lodged by means of an Electronic Lodgment Network.	1 2
(2)	The Registrar-General may certify the electronic representation in any manner determined by the Registrar-General.	3 4
(3)	A representation of an electronic instrument certified in accordance with this section is evidence of the contents and nature of the electronic instrument.	5 6
[16]	Section 117 Certificate of correctness: paper lodgment	7
	Insert “lodged in paper form” after “caveat” where firstly occurring in section 117 (1).	8
[17]	Section 117 (1A)	9
	Insert “lodged in paper form that is” after “any dealing”.	10
[18]	Section 117 (1A) (a)	11
	Insert “(other than through an Electronic Lodgment Network)” after “electronically” where firstly occurring.	12 13
[19]	Section 117A	14
	Insert after section 117:	15
117A	Certificate of correctness: electronic lodgment	16
(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 <i>Electronic Conveyancing National Law (NSW)</i> .	17 18 19 20 21
(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:	22 23 24 25 26
(a)	the notice has been lodged electronically in a form and in the manner approved by the Registrar-General, and	27 28
(b)	the notice is correct for the purposes of this Act.	29
(3)	A certificate referred to in subsection (2) must be digitally signed by:	30
(a)	the person lodging the dealing, or	31
(b)	a party to the dealing, or	32
(c)	a solicitor or agent acting for the person lodging, or a party to, the dealing.	33 34
(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.	35 36 37
(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.	38 39 40 41

[20] Schedule 3 Savings and transitional provisions

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Insert at the end of clause 1 (1):

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any other Act that amends this Act

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