

Introduction of the Electronic Conveyancing National Law

Consultation Regulation Impact Statement

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1 Executive summary

The purpose of this Consultation Regulation Impact Statement (Consultation RIS) is to seek feedback on the proposed Electronic Conveyancing National Law (ECNL) that will facilitate the implementation of National Electronic Conveyancing.

National Electronic Conveyancing is a legislative and business environment for the preparation and lodgment of registry instruments with Land Registries electronically and the settlement of real property transactions electronically.

The decision to introduce a national system for electronic conveyancing was mandated by COAG when National Electronic Conveyancing was included in the *National Partnership Agreement to Deliver a Seamless National Economy 2008* (the COAG Agreement)¹.

This Consultation RIS has been prepared under the oversight of the Australian Registrars' National Electronic Conveyancing Council (ARNECC) and with the assistance of KPMG in accordance with the Council of Australian Governments (COAG's) *Best Practice Regulation Guide* and in consultation with the Office of Best Practice Regulation (OBPR)².

ARNECC is the body established to facilitate the implementation and ongoing management of the regulatory framework for National Electronic Conveyancing to the extent that it enables or relates to the lodgment of documents with the Registrar³, and the relationship between the Registrar and an Electronic Lodgment Network Operator (ELNO).

The ECNL will provide the legislative basis to enable documents in electronic form to be lodged and dealt with under the land titles legislation of each participating jurisdiction and facilitate the introduction of National Electronic Conveyancing.

1.1 Problem or need for government action

Conveyancing has remained largely manual and paper-based despite levels of automation in industry systems and within Land Registries across Australia. The physical exchange of paper documents at settlement is required to complete the transfer of property, as is the physical lodgment of signed and witnessed paper documents to effect changes in the titles register.

“Straight through” processing between conveyancing industry participants and Land Registries where conveyancing documents are lodged electronically is currently not possible. The inability to prepare and lodge electronically prevents the realisation of efficiencies that would arise from minimising manual handling of conveyancing documents.

A common regulatory framework is required to enable documents in an electronic form to be lodged under the Torrens land title legislation in each State and Territory. This will promote economic efficiency in conveyancing throughout Australia and provide significant economic benefits to the industry, particularly to businesses operating nationally.

¹ See

http://www.federalfinancialrelations.gov.au/content/national_partnership_agreements/Other/seamless_national_economy/national_partnership.pdf.

² Information about COAG's regulation impact assessment process can be found at <http://www.finance.gov.au/obpr/proposal/coag-requirements.html>

³ **Registrar** means the Registrar General or similar State or Territory official having responsibility for the jurisdiction's Land Registry function as listed in section 10.

1.2 Objectives

The objective of introducing the ECNL is to facilitate a uniform legislative and business environment for National Electronic Conveyancing. National Electronic Conveyancing is intended to deliver efficiency throughout Australia in real property conveyancing.

The introduction of the ECNL is consistent with and is considered essential to the implementation of National Electronic Conveyancing as agreed in the COAG Agreement.

1.3 Industry Participation Optional

Industry participation in National Electronic Conveyancing should bring benefits to the conveyancing industry that will encourage participation. However, the decision to participate will be up to the individual member of the conveyancing industry. There is no present intention to make participation in National Electronic Conveyancing mandatory or to remove paper based conveyancing.

Also, individuals wanting to complete their own property transactions will need to use the existing paper based process, as it will not be viable for an individual to meet the requirements to become a subscriber for a single transaction.

1.4 Regulatory Options

In line with COAG's Best Practice Regulation Guide, a range of feasible policy options, including non-regulatory, self-regulatory, co-regulatory and government regulatory approaches have been considered, as well as the Do Nothing option as a baseline. These regulatory options have been reviewed against the performance objectives agreed with stakeholders during development of the *NECS Legal Framework Development Report*⁴ (the Report) prepared by Clayton Utz.

Based on assessment of the options against the agreed performance objectives and on the recommendations of the Report, the conclusion is that the proposed ECNL and government regulation of electronic conveyancing is the most favourable option. The proposed ECNL and government regulation of electronic conveyancing is necessary to implement National Electronic Conveyancing and to ensure that it operates with at least the same legal efficacy as the regulated paper-based system.

1.5 ECNL Impact Analysis

No national quantitative analysis of the economic impact associated with the introduction of National Electronic Conveyancing has been undertaken. However, New South Wales did undertake economic analysis of electronic conveyancing and an indicative quantitative analysis of the potential costs and benefits of National Electronic Conveyancing, based on the New South Wales figures proportionately scaled up to reflect the national position, is included at Appendix A.

Based on the analysis outlined in Appendix A, the net savings attributed to the private sector nationally over 17 years are estimated to be \$530m (in NPV⁵ terms) while the net savings attributed to the public sector nationally is estimated to be \$50m (in NPV terms).

⁴ NECS Legal Framework Development Report is available at: <http://www.necs.gov.au/Redesign---Legal-Framework-2/default.aspx>

⁵ Net Present Value (NPV) is the value, as of a specified date, of future cash inflows less all cash outflows (including the cost of investment) calculated using an appropriate discount rate.

1.6 Consultation

Stakeholder consultation has been conducted nationally since 2004. Of particular relevance to this proposal, Clayton Utz undertook extensive stakeholder consultation during 2009 as part of the development of the legal framework for National Electronic Conveyancing. The consultation program involved four major consultation requests with key stakeholders seeking comments and information on specific areas of interest including, but not limited to:

- key differences in regulation of practitioners and of conveyancing practice among jurisdictions;
- identification of current conveyancing processes in jurisdictions and future National Electronic Conveyancing processes;
- statement of purpose and performance objectives for the legal framework for National Electronic Conveyancing;
- proposed legal framework, including the intergovernmental agreement and development of model rules and conditions; and
- insurance and professional liability issues.

Stakeholder views have been considered and incorporated in the development of the legal framework.

1.7 Conclusion and recommended option

Introduction of National Electronic Conveyancing produces a positive NPV over the timeframe of the analysis given the assumptions used. The savings associated with National Electronic Conveyancing have been estimated to exceed costs by \$580m (in NPV terms) during the 17 year period upon which the 2008 economic analysis was based.

The recommended regulatory option is the implementation of a common legal framework that enables documents in electronic form to be lodged and dealt with under the land titles legislation of each jurisdiction. The recommended legal framework is modelled on the recommendations of the Report.

1.8 Implementation and review

The IGA provides governance for the development, implementation and management of the regulatory framework.

To ensure consistency across jurisdictions it has been proposed the ECNL is introduced using an application law scheme (which is commonly used to introduce national legislation). New South Wales will be the host jurisdiction for the national legislation and plans to enact the ECNL in 2012.

As soon as practicably possible following the passing of the ECNL in New South Wales, the other participating jurisdictions will enact an application law or corresponding law to adopt the ECNL.

The IGA provides for the review of the ECNL after seven years.

1.9 How to make a submission

Submissions are invited from interested parties on the proposed ECNL.

Submissions can be provided to the Chair of ARNECC by email through the 'Contact' button on ARNECC's website <http://www.arnecc.gov.au/> by **3rd August 2012**.

Submissions will be publicly available unless marked confidential.

1.10 What happens next?

Following the submission period, all submissions will be considered and the ECNL amended if necessary in response to the submissions. A Decision Regulation Impact Statement (Decision RIS) will then be prepared incorporating information about the stakeholders consulted and submissions received.

The Decision RIS will then be assessed by OBPR prior to finalising the ECNL. The Decision RIS will be made publicly available by the OBPR.

After the ECNL has been approved by all participating jurisdictions, the ECNL will be introduced into the New South Wales Parliament and, presuming it is passed, the other States and Territories will introduce a Bill into their Parliaments to adopt the ECNL or a law corresponding to the ECNL as a law in their jurisdiction.

2 Introduction and Background

2.1 Introduction

The purpose of this Consultation RIS is to seek feedback on the proposed ECNL that will facilitate the implementation of National Electronic Conveyancing.

National Electronic Conveyancing is a legislative and business environment for the:

- preparation and lodgment of registry instruments with Land Registries electronically; and
- settlement of real property⁶ transactions electronically.

The Consultation RIS has been prepared under the oversight of the ARNECC and with the assistance of KPMG in accordance with COAG's *Best Practice Regulation Guide* and in consultation with OBPR.⁷

ARNECC is the body established to facilitate the implementation and ongoing management of the regulatory framework for National Electronic Conveyancing to the extent that it facilitates or relates to the lodgment of documents with the Registrar, and an ELNO's relationship with the Registrar. The ECNL will facilitate the implementation of National Electronic Conveyancing by providing legislative authority for the creation and lodgment of electronic instruments/documents and provide that electronic instruments are to be treated in the same manner as paper instruments.

2.2 Background -Towards National Electronic Conveyancing

Real property conveyancing in every Australian State or Territory operates under the principles of the Torrens title system of land title registration⁸. Each jurisdiction has its own Land Registry that maintains a titles register in accordance with jurisdiction-specific legislation and practices. Generally, a statutory officer appointed under that legislation, referred to in this document as the Registrar, is responsible for the administration of the titles register.

The process for updating the titles register has historically been paper-based though, over the past 25 years, there has been a movement to electronic systems and electronic registers. Similarly, financial institutions and industry practitioners have converted to electronic environments for communication and administration associated with real property transactions.

Since 2001, it has been recognised that the development and implementation within Australia of National Electronic Conveyancing based on a consistent national approach is desirable. There is general agreement between industry and government that now is the time to improve the efficiency of processes associated with real property conveyancing by introducing National Electronic Conveyancing. The move to an electronic business environment for conveyancing will require changes in industry processes and practices in areas such as roles and responsibilities of key participants and technology.

⁶ The term 'real property' is used in this report as a proxy for real estate (except where otherwise noted).

⁷ Information about COAG's regulation impact assessment process can be found at <http://www.finance.gov.au/obpr/proposal/coag-requirements.html>

⁸ The Torrens Title system is a system of title by registration that is guaranteed by the State.

In order to allow the fullest use of electronic systems, the electronic gap between conveyancing industry systems and the Land Registries' systems needs to be bridged. As a result of that gap documents created electronically are required to be printed and signed by the parties, physically exchanged and largely physically lodged with the appropriate Land Registry for updating of the titles register. This means that "straight through" processing is not possible and further efficiency improvements cannot be made.

While some States in Australia have, to some degree, made progress in bridging that gap⁹, there has not been any nationally consistent approach to providing a facility for conveyancing transactions to be managed electronically from the conveyancing process itself right through to registration of the transaction.

While regulatory and administrative responsibilities are State-based, as discussed above, many key industry participants (e.g. major banks, independent mortgage processors) are increasingly national in their operations.

Recognising the opportunity for efficiencies from a national approach to electronic conveyancing, the eight States and Territories in Australia joined with key industry and professional stakeholders in 2005 to co-operatively develop National Electronic Conveyancing.

The National Electronic Conveyancing Office (NECO) was established in 2005 to support the development and implementation of National Electronic Conveyancing.

As part of its role, NECO developed roadmap documents outlining a National Electronic Conveyancing system. This included a National Business Model developed in consultation with stakeholders during 2005-2008. The National Business Model defined and described the overall business context for the conveyancing and mortgage financing industry in Australia.

In July 2008 COAG agreed that National Electronic Conveyancing is to provide an efficient and effective national platform to:

- settle real property transactions electronically;
- prepare and lodge registry instruments electronically with Land Registries; and
- meet associated duty and tax obligations electronically¹⁰.

⁹ Queensland: e-Lodgment and d-Lodgment. E-Lodgment is an internet based platform that gives secure and direct access to the Automated Titles System (ATS) for the electronic lodgment of land registry forms. Scanned documents are uploaded into the system where they are automatically assessed (after optical character recognition) for the applicable fees. The lodger then confirms the lodgment, with an agreement to pay the fees due. D-Lodgment offers the same capabilities and features as e-Lodgment via a web services interface instead of through a web browser. The d-Lodgment system allows lodgment of fully digital documents (i.e. as XML data, rather than scanned images).

Tasmanian: Tasmanian Online Land Dealings System (TOLD), a web-based facility that enables its subscribers to access, complete, print, save and edit land dealings. It also provides the ability for subscribers to electronically lodge priority notices, caveats, withdrawal of caveats and withdrawal of priority notices.

Victoria: Electronic Conveyancing Victoria (ECV), enabling electronic financial settlement and online lodgment of caveats, withdrawal of caveats, mortgages, discharges of mortgages, transfers of land, applications by surviving proprietor, State Revenue Office charges and discharges and a number of administrative notices.

¹⁰ See COAG Communiqué of 3 July 2008 meeting available at http://www.coag.gov.au/coag_meeting_outcomes/2008-07-03/index.cfm

The implementation of National Electronic Conveyancing was then formalised by inclusion by COAG as one of a group of reforms to be delivered pursuant to the COAG Agreement¹¹, to which all States and Territories of Australia are parties. COAG has charged its Business Regulation and Competition Working Group (BRCWG) with responsibility for implementing the COAG Agreement, including National Electronic Conveyancing. As conveyancing is subject to State, rather than Federal laws, the Commonwealth is not otherwise directly involved in the project.

The COAG Agreement includes an implementation plan with agreed milestones for the implementation of 27 deregulation priorities, including National Electronic Conveyancing¹².

2.3 How Will the National Electronic Conveyancing System Work

National Electronic Conveyancing in Australia will be delivered through an online business platform called an Electronic Lodgment Network (ELN). An ELN will essentially be a web-based "hub" for parties to a conveyancing transaction to electronically prepare and settle the transaction and to electronically lodge the documents for registration at the appropriate Land Registry. It is a gateway or channel for documents to be presented for lodgment with the existing Land Registries. In addition to providing a gateway for lodgment of documents with the Land Registries, the ELN is expected to provide a mechanism for the settlement of the financial aspects of a conveyancing transaction.

Because of security requirements, only registered "subscribers" (generally lawyers, conveyancers and lenders) will be entitled to use the system on behalf of their clients or on their own behalf. It is not intended that the electronic conveyancing system be available for use by members of the general public unless they are represented by a subscriber.

A subscriber representing a client will enter into a Client Authorisation agreement authorising the subscriber to act for the client in an electronic transaction. Before entering into the Client Authorisation agreement, the subscriber must verify the identity of the client in accordance with Verification of Identity rules.

A subscriber will create electronic documents (eg registry instruments and instructions, settlement schedule) in an electronic workspace shared with other subscribers acting in relation to, or involved in, a conveyancing transaction. Various data and lodgment verification checks will occur before settlement. The electronic documents will be signed by the subscriber affixing a digital signature to the documents. If the conveyancing transaction is complete and ready to settle on the nominated settlement date, financial settlement will occur automatically by electronic funds transfer. Once settlement has occurred the Land registry instruments will be electronically lodged with the appropriate Land Registry.

¹¹ In 2008, the Commonwealth, States and Territories agreed to a new framework for federal financial relations to provide a foundation for collaboration on policy development and service delivery and facilitate the implementation of economic and social reforms in areas of national importance. The *Intergovernmental Agreement on Federal Financial Relations* changed the focus from prescriptions on service delivery by the States to specific objectives, outcomes, outputs and performance indicators. This included a new form of payment, National Partnership payments, to fund specific projects and to facilitate and/or reward States that deliver on nationally significant reforms. See http://www.coag.gov.au/intergov_agreements/federal_financial_relations/

¹² See COAG website at: http://www.federalfinancialrelations.gov.au/content/national_partnership_agreements/Other/seamless_national_economy/all_states_part1.pdf

3 Problems and need for government action

This section outlines the existing problems and why it is necessary for government action to be taken to introduce National Electronic Conveyancing.

3.1 Need for a National Regulatory Framework

No common regulatory framework exists to enable documents in an electronic form to be lodged under the Torrens land title legislation in each State and Territory. This impedes productivity growth and makes it more difficult for businesses, particularly those operating nationally, to maximise efficiency. In order to facilitate National Electronic Conveyancing, government needs to provide a nationally consistent regulatory framework.

Real property conveyancing in every Australian State or Territory operates under the principles of the Torrens title system of land title registration¹³. Each jurisdiction has its own Land Registry that maintains a titles register in accordance with jurisdiction specific legislation and practices. Generally, a statutory officer appointed under that legislation is responsible for administration of the titles register.

Banks and other mortgage lenders are increasingly operating on a national basis, rather than at the State level. Banks and other mortgage lenders are currently lodging in eight different environments. Approximately, sixty percent of real property transactions processed and recorded each year at the Land Registries are cases that involve mortgages.

A single, national legal framework governing the operation of electronic conveyancing is required to address inefficiencies associated with the different environments. This does not mean that uniform Torrens title legislation is necessary but that a common legal framework throughout Australia will enable documents in electronic form to be lodged and dealt with under the land titles legislation of each jurisdiction in the same way. This will promote economic efficiency throughout Australia in real property conveyancing and provide significant economic benefits to the community as well as provide a sound basis for further harmonisation in the future.

3.2 Paper based medium and the electronic gap

The medium used for conveyancing has remained largely manual and paper-based despite levels of automation in industry systems and within Land Registries across Australia. The physical exchange of paper documents at settlement is required to complete the transfer of property, as is the physical lodgment of signed and witnessed paper documents to effect changes in the titles register.

The requirement that documents created electronically be printed and signed by the parties, physically exchanged and (largely) physically lodged with the Land Registry for registration, prevents “straight through” processing both within conveyancing industry participants, and between conveyancing industry participants and Land Registries. This prevents the efficiencies that would arise from minimising manual handling of conveyancing documents.

Economic efficiencies will be achievable if “straight through” processing of documents in electronic form can be achieved. Doing this means providing the electronic infrastructure to close the “electronic gap” between conveyancing industry systems and Land Registries’ systems.

¹³ The Torrens title system is a system of title registration guaranteed by the State.

While Queensland, Tasmania and Victoria have made progress in bridging that gap with the various provisions facilitating the State based forms of electronic lodgment, there is no consistent approach to closing the electronic gap or facilitating “straight through” processing of electronic property transactions. Those State specific provisions do not provide the needed consistency for a single national system as mandated by the COAG Agreement.

National Electronic Conveyancing will allow the conduct of conveyancing, mortgage financing and other property-related transactions using electronic services provided by an ELNO for the settlement of property transactions and lodgment of registry instruments with Land Registries, effectively bridging the gap between electronic document management and preparation systems used by conveyancing industry participants and the electronic land registry systems.

3.3 Electronic Transactions Acts

All jurisdictions in Australia have an Electronic Transaction Act (ETA) that is modelled on the Commonwealth ETA. The ETA provides that requirements under a law of the jurisdiction may generally be met in an electronic form.

However, the ETA does not of itself permit or validate transactions in electronic form, rather than physical form. The effect of the ETA is to ensure that mere use of electronic communications for a particular transaction does not render the transaction invalid. Significantly, at the time the ETA was passed it was generally accepted that it should not apply to conveyancing transactions which resulted in the exclusion of the application of the ETA to transactions with land in some jurisdictions (New South Wales and South Australia).

While instruments will become indefeasible¹⁴ once registered in the Torrens Register of the jurisdiction, the national land market is a significant part of the national economy and the validity of electronically conducted land transactions must be put beyond doubt.

Accordingly, it is considered that implementation of National Electronic Conveyancing will require a specific authorisation for the Registrars to receive registry instruments by electronic lodgment and to register such instruments with the same effect as receiving and registering paper instruments under the jurisdiction's Torrens legislation. This is considered necessary as there has been some doubt expressed that the ETA in each jurisdiction provides sufficient certainty for the registration of conveyancing transaction instruments in the titles registers.

3.4 How significant is the problem?

The Australian property sector is a multi-billion dollar industry with around \$250 billion in property sales annually. Australia-wide, the residential conveyancing market generated estimated transactional revenue of \$2.4 billion in 2009-10, excluding agent sales fees and taxes.

Receiving documents electronically will allow efficiency in processing and recording of transactions that will be necessary to cope with anticipated increases in document lodgments in the future.

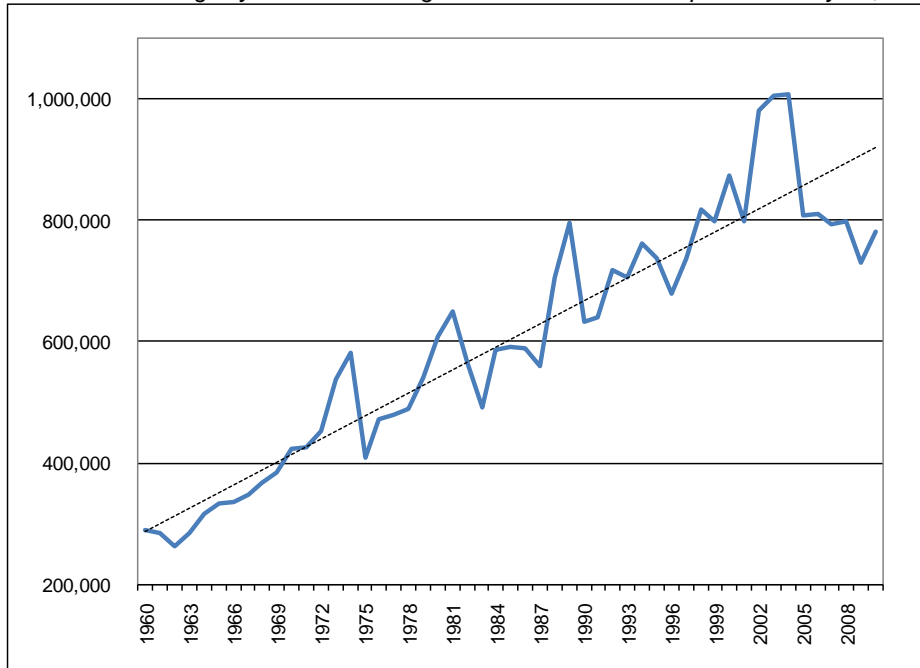
National Electronic Conveyancing has the potential to beneficially affect a significant proportion of conveyancing transactions, even in the earlier stages where limited transaction types will be accepted.¹⁵ In 2009-10, there were approximately 988,000 property transactions across Australia in scope for electronic conveyancing.

¹⁴ Subject to a limited number of statutory exceptions.

¹⁵ It is anticipated that initially limited transaction types will be able to be lodged electronically with the scope being expanded over time. However, some complex paper transaction types may always remain on paper.

Whilst the number of property transactions in recent years has fallen below the long-term trend due to the cyclical nature of the property market and the impact of the global financial crisis, it is expected that the number of property transactions will continue to increase over time as population growth increases the demand for property. Figure 3-1 shows, as an example, the number of registry instruments lodged in New South Wales over the last 50 years, which demonstrates how the number of property transactions continue to increase over time despite fluctuations in the property cycle.

Figure 3-1 Number of registry instruments lodged in New South Wales per financial year, 1960-2010



Source: Land and Property Information NSW a division of the Department of Finance and Services

3.5 What are the impacts of maintaining the status quo?

The main impact of not introducing a common national regulatory framework enabling documents in electronic form to be lodged under the Torrens title legislation in each State and Territory is that National Electronic Conveyancing will not be implemented and the current paper-based conveyancing system will be retained. This gives rise to the following issues.

- The maintenance of inefficiencies and complexity of conveyancing across the country with 8 differing regimes which exacerbate costs for national conveyancing operators and vendors and purchasers of property across borders.
- No common approach to dealing with inefficiencies and complexities resulting in different approaches across jurisdictions.
- The physical exchange of documents at settlement is required to complete the transfer of property.
- The physical lodgment of signed and witnessed paper documents is required to effect changes in the titles register.

- Banks and other mortgage lenders are increasingly operating on a national basis, rather than at the state level. Banks and other mortgage lenders are currently lodging in eight different environments. Further, while the majority of bank processes are now completed electronically, mortgage financing is still largely paper based, and will remain so for as long as it is necessary for documents to be printed out and manually signed and lodged.
- Remaining with the current systems will put increasing budgetary pressures on Land Registries across Australia needing to maintain manual processes to receive and process large numbers of paper documents. In the absence of investment in new systems for the electronic lodgment and examination of dealings, significant recruitment and training will need to be undertaken to ensure the skills of retiring staff are transferred to new staff, whilst allowing for sufficient time to train new recruits. This process may be costly given the associated difficulties of recruitment of title examiner skills not readily available in the marketplace.

3.6 Why is government action needed to address the problem?

The Torrens system of title ensures real property rights are secure, transparent and readily transferable. Real property rights and the development of an efficient model of maintaining a register of these rights are fundamental to the effective functioning of a market-based economy for all types of property. In the case of real property, these rights ensure that property buyers, vendors, banks and Land Registries have a robust and reliable source of information at all times. This serves to minimise the transaction costs associated with the transfer of rights to real property.

The move to an electronic business environment for conveyancing requires both amendment of existing legislation in some jurisdictions to allow electronic conveyancing as well as new provisions to facilitate the lodgment of electronic documents with the Land Registries for registration in the Torrens title registers.

Given the number of different stakeholder groups involved in the conveyancing process and the significance of each State and Territory in the regulation of the process and operation of the Land Registries, government action is required to:

- implement the common regulatory framework to facilitate the delivery of National Electronic Conveyancing committed to by the COAG Agreement;
- provide the confidence necessary for the significant investment required by all stakeholders in order to maximise the economic benefits from the change;
- achieve maximum efficiencies in property conveyancing and financing nationally;
- maximise the prospects for enabling legislation, Operating Requirements, Participation Rules and jurisdictional practices and requirements to have uniform operation and effect across all jurisdictions, subject to specific jurisdictional variations on certain subject matters where necessary; and
- to provide the required infrastructure and systems in the Land Registries to be able to accept, investigate and register electronic land transaction documents.

4 Objectives

This section outlines the objectives of introducing National Electronic Conveyancing legislation and its consistency with government policy.

4.1 Objective of government action

This proposal implements the COAG Agreement with respect to electronic conveyancing. Through the COAG Agreement the States and Territories are committed to:

- continuing to reduce the level of unnecessary regulation and inconsistent regulation across jurisdictions;
- delivering agreed COAG deregulation and competition priorities; and
- improving processes for regulation making and review.

The COAG Agreement is intended to contribute to the following outcomes:

- creating a seamless national economy, reducing costs incurred by business in complying with unnecessary and inconsistent regulation across jurisdictions;
- enhancing Australia's longer-term growth, improving workforce participation and overall labour mobility; and
- expanding Australia's productive capacity over the medium-term through competition reform, enabling stronger economic growth¹⁶.

The introduction of an efficient and appropriate legislative framework is essential to delivering National Electronic Conveyancing and contributing to the achievement of the COAG Agreement's intended outcomes.

Specifically, the objective of introducing an efficient and appropriate legislative framework is to facilitate a uniform legislative and business environment for National Electronic Conveyancing, which in particular will reduce the level of inconsistent regulation across jurisdictions with regard to conveyancing and reduce costs of doing business in multiple jurisdictions.

The appropriate legislative framework will facilitate a uniform legislative and business environment for National Electronic Conveyancing, that:

- provides a framework for approval and oversight of ELNs;
- allows electronic documents to be accepted for lodgment;
- maximises efficiencies for industry and government by facilitating common rules; and requirements of electronic lodgment across all jurisdictions;
- generates the same confidence in validity and enforceability of transactions as presently exists for paper conveyancing transactions.

¹⁶ See Objectives and Outcomes Part 2 of the National Partnership Agreement To Deliver a Seamless National Economy at: http://www.federalfinancialrelations.gov.au/content/national_partnership_agreements/Other/seamless_national_economy/national_partnership.pdf.

5 Options

A range of regulatory options are available for National Electronic Conveyancing including government controlled regulation, self-regulatory, co-regulatory and non-regulatory approaches. COAG's *Best Practice Regulation Guide* requires any feasible policy options to be considered in preparing a Regulation Impact Statement. The costs and benefits of each option are to be considered and the option that generates the greatest net benefit for the community to be preferred.

5.1 Regulatory options

In this section the four regulatory options referred to above are considered as well as the Do Nothing option as a baseline.

The nature of these options as they relate to National Electronic Conveyancing are outlined in Table 5-1.

Table 5-1: Possible regulatory options for electronic conveyancing

Regulatory option	Summary description of option
Do Nothing	No change to current activities or participants in conveyancing. Continued reliance on the current separate State and Territory systems that are largely paper-based and reliant on a physical meeting for settlement, and or development of differing State and Territory approaches to utilisation of technology for efficiency gains in land title registration.
Options for introduction of National Electronic Conveyancing	
Non-regulation	National Electronic Conveyancing is unregulated, and operates concurrently with a regulated, paper-based conveyancing system.
Self-regulation	Industry develops and implements a voluntary set of rules or code of practice for National Electronic Conveyancing.
Co-regulation	Industry administers its own regulatory arrangements for National Electronic Conveyancing, with backing from legislation developed by the Government.
Government-controlled regulation	Government develops the legislation and regulates National Electronic Conveyancing.

Extensive consultation and review of the most efficient legal framework for National Electronic Conveyancing was undertaken by Clayton Utz in the Report undertaken in 2009 and early 2010¹⁷.

As part of the process of developing a legal framework for National Electronic Conveyancing, Clayton Utz developed and consulted on performance objectives for the legal framework against which possible options could be assessed.

The performance objectives developed by Clayton Utz drew in part on the performance objectives developed for the Risk Management Framework for Electronic Conveyancing contained in the Risk Assessment¹⁸ undertaken by Clayton Utz in 2007. The performance objectives were endorsed by all stakeholders with minor modifications and have been adopted in this RIS for assessment of the possible regulatory options for the legal framework.

¹⁷ NECS Legal Framework Development Report is available at: <http://www.necs.gov.au/Redesign---Legal-Framework-2/default.aspx>

¹⁸ Risk Assessment of the National Electronic Conveyancing System at: <http://www.necs.gov.au/Risk-Management-2/default.aspx>

The Performance Objectives¹⁹ require that the National Electronic Conveyancing legal framework:

1. maximise efficiencies by facilitating common rules across all jurisdictions for the authorisation and operation of ELNOs, the use of ELNOs and the conduct of electronic conveyancing transactions while permitting necessary variations only in relation to certain jurisdiction-specific matters²⁰ or which are required because of local legislative provisions.
2. contribute to generating at least the same confidence in the validity and enforceability of NECS transactions and instruments as presently exists for paper conveyancing transactions and instruments.
3. seek to ensure as far as possible:
 - that its conduct and liability rules are consistent, clear and specific; and
 - that all legal and regulatory mechanisms which impose legal duties and liabilities and incentives on conduct in National Electronic Conveyancing are consistent and provide clear and specific compliance guidance and clear and specific liability allocation to stakeholders.
4. allocate liability among stakeholders so as to be transparent, equitable and efficient, workable and acceptable to stakeholders.
5. be broadly acceptable to stakeholders.

5.2 Assessment of Regulatory Options

Each potential regulatory model has been compared based on how well it satisfies the performance objectives for the legal framework for National Electronic Conveyancing.

Option 1 - No Change

The no change option is included as a baseline. Deciding not to implement National Electronic Conveyancing does not automatically result in there being no changes to conveyancing practices. In fact, experience in the history of diverging paper systems shows it is highly likely that this option would facilitate further divergent development in the 8 jurisdictions seeking efficiency improvements from bridging the “electronic gap” between Land Registries and the conveyancing industry. This is evident from the very different approaches taken in Victoria, Queensland and Tasmania²¹ and, without a coordinated

¹⁹ *NECS Legal Framework Development Report* at section 4.

²⁰ The matters for jurisdiction-specific rules are: Land Registry requirements for document templates and data content to be provided by ELNOs to Land Registry and business rules for ELNO workspaces in preparing such documents and data for Land Registry in respect of land in the jurisdiction, and requirements of ELNOs arising from conveyancing practices specific to that jurisdiction - see National Electronic Conveyancing Office, “NECS Requirements Definition” (version 6, September 2008), paragraphs 6.5.4.1 and 6.5.4.2.

²¹ Queensland: e-Lodgment and d-Lodgment. E-Lodgment is an internet based platform that gives secure and direct access to the Automated Titles System (ATS) for the electronic lodgment of land registry forms. Scanned documents are uploaded into the system where they are automatically assessed (after optical character recognition) for the applicable fees. The lodger then confirms the lodgment, with an agreement to pay the fees due. D-Lodgment offers the same capabilities and features as e-Lodgment via a web services interface instead of through a web browser. The d-Lodgment system allows lodgment of fully digital documents (i.e. as XML data, rather than scanned images).

Tasmanian: Tasmanian Online Land Dealings System (TOLD), a web-based facility that enables its subscribers to access, complete, print, save and edit land dealings. It also provides the ability for subscribers to electronically lodge priority notices, caveats, withdrawal of caveats and withdrawal of priority notices.

Victoria: Electronic Conveyancing Victoria (ECV), enabling electronic financial settlement and online lodgment of caveats, withdrawal of caveats, mortgages, discharges of mortgages, transfers of land, applications by surviving proprietor, State Revenue Office charges and discharges and a number of administrative notices.

approach to National Electronic Conveyancing, it is likely that the other States and Territories would also introduce different State based systems.

The no change option fails to take advantage of the opportunity at this point of time to develop a nationally consistent approach to the regulation of electronic conveyancing where both government and industry are supportive of such an approach.

The no change option inevitably means even more divergence between the 8 jurisdictions in both conveyancing and land title registration practices and accordingly, *performance objectives 1 and 3*, which require the development of common or consistent practices, could not be achieved.

Performance objective 2 is not applicable as it relates to comparison with the present conveyancing systems.

Performance objective 4 would not be achieved as each jurisdiction has differing rules that can mean differing liability arrangements and different results in the same circumstances depending upon where a matter arises.

There is widespread support for a National Electronic Conveyancing system from all stakeholders in the conveyancing industry, especially from organisations that operate in more than one jurisdiction. Also, the government sector is clearly supportive of National Electronic Conveyancing with its introduction being mandated by the COAG Agreement. Accordingly, *performance objective 5* would not be achieved if there is no change to the current jurisdiction based development of regulation of conveyancing practices for electronic conveyancing.

Option 2 – Non regulation

Under this option no new regulatory measures would be implemented to support National Electronic Conveyancing which would operate concurrently with a regulated, paper-based conveyancing system.

Under this option each Land Registry would still have requirements for accepting documents for lodgment and some legislation would be necessary in at least a few jurisdictions (for example, to remove the current exclusion of conveyancing transactions from the operation of the Electronic Transaction Acts in NSW and SA). However, there would be no controls on who could set up and operate an ELN and arrangements in each jurisdiction would be free to develop inconsistently so that *performance objectives 1 and 3*, which require the development of common or consistent practices, could not be achieved.

Without a common regulatory framework and no basis for approval or control of ELNs it is unlikely that stakeholders or the community generally would have sufficient confidence to commit any significant proportion of the \$250 billion worth of annual property sales to the system, nor would professional indemnity insurers cover its use.

Accordingly, other than low risk transactions such as caveats it is unlikely that *performance objective 2* could be achieved, nor would the system be likely to be commercially viable as it would not generate sufficient stakeholder and community confidence to capture a large proportion of conveyancing business over a reasonable take up period.

Performance objective 4 would not be achieved as each jurisdiction would maintain the current arrangement of differing rules that can mean differing liability arrangements and different results in the same circumstances depending upon where a matter arises and this would be further complicated by diverse approaches to unregulated electronic conveyancing practice.

While there is widespread support for a consistent approach to National Electronic Conveyancing from all stakeholders in the conveyancing industry, especially from organisations that operate in more than one jurisdiction, there is no support for differing approaches across jurisdictions, which is inevitable under this option. Also, the government sector is committed to National Electronic Conveyancing by the COAG Agreement and this cannot be achieved without the introduction of common regulatory framework for electronic conveyancing across Australia. Accordingly, *performance objective 5* would not be achieved.

Option 3 – Self Regulation

This option entails the conveyancing industry developing a voluntary set of rules or codes of practice for National Electronic Conveyancing which would again operate concurrently with a regulated, paper-based conveyancing system.

The development of common and consistent rules and codes of practice would prove difficult given the diverse and sometimes conflicting interests of stakeholders involved in the conveyancing industry. Also, within a stakeholder group there, is diversity between jurisdictions which would severely hamper obtaining national consistency, even within a stakeholder group. Also, the voluntary nature of these arrangements would be very unlikely to garner sufficient confidence to realise the level of take up of electronic conveyancing to make National Electronic Conveyancing viable.

The results would be similar to those for option 2 and this option would not achieve any of the performance objectives.

Option 4 – Co-Regulation

In this option the conveyancing industry would administer its own regulatory arrangements for National Electronic Conveyancing, with backing from legislation developed by government.

While legislation would increase certainty and confidence to some degree this option shares most of the issues of options 2 and 3. National consistency would be difficult to achieve with differing legislative schemes in the States and Territories and potentially different approaches from different stakeholder organisations both between stakeholder groups and between jurisdictions. Accordingly, *performance objectives 1 and 3*, which require the development of common or consistent practices, would not be achieved.

In comparison with the current regulated paper based system the self administered regulatory arrangements are unlikely to achieve the same level of confidence in validity and enforceability of transactions so that *performance objective 2* will not be achieved.

The backing of a co-regulatory arrangement by legislation could potentially achieve an arrangement of liability allocation that is relatively transparent and workable. However, it is unlikely to be consistent between jurisdictions. Therefore *performance objective 4* would not be achieved to any degree as each jurisdiction would still have differing rules that can mean differing liability arrangements and different results in the same circumstances depending upon where a matter arises.

This option is unlikely to achieve widespread support from stakeholders or the community. The diverse and sometimes conflicting interests of stakeholders in the conveyancing industry would still cause issues between the various interest groups having a stake in administration of electronic conveyancing. Stakeholder feedback in NSW in 2005²² identified as a key issue the importance to industry and community confidence in electronic conveyancing of continued government sector involvement. This issue is essentially recognition of the success of the Torrens system of title by registration in establishing and maintaining industry and community confidence. Government also would not see this as an effective means of regulating electronic conveyancing and would not support this option as it would not achieve a nationally consistent approach or liability rules. *Performance objective 5* would therefore not be achieved.

Option 5 - Government Controlled Regulation

Under option 5 government develops legislation and regulates National Electronic Conveyancing.

Strong and nationally coordinated government involvement in the development and implementation of the regulatory framework for National Electronic Conveyancing is considered necessary by all stakeholders in order to facilitate the common regulation of electronic conveyancing across all jurisdictions and to maximise efficiencies for both industry and government. This would achieve *performance objective 1*. This option is aimed at ensuring that jurisdictions do not have divergent regulatory approaches to electronic conveyancing.

Similarly, involvement of government in regulating National Electronic Conveyancing will engender the greatest confidence in electronic conveyancing by imposing regulatory requirements across the diverse and often conflicting interests of stakeholders for the benefit of all. Only under option 5 is there the possibility of ensuring that *performance objective 2* will be met.

A clear and consistent framework for liability can be achieved, with *performance objectives 3 and 4* being met, through government controlled legislation and nationally set and applied requirements and rules. Government set requirements and rules will also be transparent as they will be required to be published, will have clear timeframes for implementation of changes and appeal frameworks.

In discussions with stakeholders option 5 has been a clear preference, principally due to its ability to meet *performance objectives 1 to 4*. In addition this option is most acceptable to the government sector due to the need to maintain the integrity of the Torrens land title system operated in all Australian jurisdictions, and the security of ownership as well as the reduced complexity and cost of conveyancing that is made possible under the Torrens system of land administration. Accordingly option 5 will also meet *performance objective 5*.

²² See "Electronic Settlement, Electronic Lodgment and Automatic Registration of Real Property Dealings in NSW Public Consultation Feedback Report" March 2005 at http://necnsw.lpi.nsw.gov.au/_data/assets/pdf_file/0003/143922/PCD_Feedback_Report.pdf

Conclusion

Table 5-2: Assessment of possible regulatory options against objectives

Performance Objective	Do Nothing	Non-regulation	Self-regulation	Co-regulation	Govt-controlled regulation
1. Maximises efficiencies for industry and government by facilitating common regulation of electronic conveyancing across all jurisdictions	x	x	x	x	✓
2. Generates the same confidence in validity and enforceability of transactions as presently exists for paper conveyancing transactions	NA	x	x	x	✓
3. Ensures that:					
(a) conduct and liability rules are consistent, clear and specific	x	x	x	x	✓
(b) all legal and regulatory mechanisms are consistent and provide clear and specific compliance guidance	x	x	x	x	✓
4. Allocates liability in a manner that is transparent, equitable, efficient, and workable	x	x	x	✓	✓
5. Is broadly acceptable to government, industry and the community	x	x	x	x	✓

Of all of the regulatory models available option 5 stands out as the only option that has the capacity to meet the performance objectives set for National Electronic Conveyancing to any degree whatever. Accordingly, the approach represented by Government controlled regulation through the introduction of national legislation is supported.

Based on this comparison and on the recommendations of the Report and its assessment of the requirements for an efficient and effective legal framework to meet the agreed performance objectives, the conclusion is that government regulation of electronic conveyancing through national legislation is the best option. The proposed ECNL and government regulation of electronic conveyancing is necessary to implement National Electronic Conveyancing and to ensure that it operates with at least the same legal efficacy as the regulated paper-based system.

The proposed legal framework for National Electronic Conveyancing is closely modelled on the recommendations of the Report. The foundational elements of the legal framework are:

- an **Intergovernmental Agreement for an Electronic Conveyancing National Law (IGA)** to provide governance for the development, implementation and management of the regulatory framework including the establishment of ARNECC to coordinate the Registrars' activities in relation to the regulatory framework for National Electronic Conveyancing;
- the **ECNL** to be enacted in NSW and then applied in other jurisdictions;
- **ARNECC** which will advise the States and Territories on matters relating to National Electronic Conveyancing and develop nationally agreed Operating Requirements and Participation Rules;

- **Model Operating Requirements** to be set by ARNECC and that will apply to any operator of an Electronic Lodgment Network (ELN);
- **Model Participation Rules** to be set by ARNECC and that will apply to all Subscribers to an ELN.

This recommended legal framework to facilitate National Electronic Conveyancing is being implemented²³. The IGA is operative and ARNECC has been formed to oversee and advise on the implementation of National Electronic Conveyancing. The ECNL that is the subject of this RIS is the next step in implementing the recommended legal framework and provides the legal basis for the operating agreement, model operating requirements and model participation rules.

5.3 Electronic Conveyancing National Law (ECNL)

The proposed ECNL will facilitate the implementation of electronic conveyancing in Australia. The key provisions are summarised below. The object of the ECNL is to promote efficiency throughout Australia in real property conveyancing by providing a common legal framework that enables documents in electronic form to be lodged and dealt with under the land titles legislation of each jurisdiction.

The ECNL provides authority to the Registrar in respect of electronic transactions to supplement the existing powers in each jurisdiction's land titles legislation. In doing so the ECNL has application beyond National Electronic Conveyancing and will enable all forms of electronic lodgment with a Land Registry.

The key provisions of the ECNL are summarised below. The ECNL is attached as Appendix C.

Electronic Lodgment

While real property transactions become indefeasible once registered in the titles register of the respective jurisdiction, the validity of electronically conducted land transactions must be put beyond doubt in view of the significance of a stable and secure land titling system to land owners and the holders of other interests in land and of the national land market to the national economy.

Accordingly, in order to authorise the lodgment and registration of electronic instruments, it is considered necessary that the ECNL include provisions to supplement the ETA.

The ECNL provides that:

- documents may be lodged electronically (in a form and by a means approved by the Registrar);
- the Registrar must receive and deal with documents lodged electronically;
- electronic documents have the same status as the equivalent paper documents; and
- documents signed digitally (by a subscriber) have the same effect as if they had been executed by the relevant party.

Client Authorisations

In National Electronic Conveyancing vendors and purchasers will not themselves sign registry instruments but will engage a subscriber (a solicitor or conveyancer) to represent them. The subscriber will digitally sign registry instruments (and other electronic documents) on behalf of their client.

²³ For further detail on the legal framework developed by Clayton Utz, please refer to *Clayton Utz, NECS Legal Framework Development, Final Report Volume 1*, accessed at <http://www.necs.gov.au/Redesign---Legal-Framework-2/default.aspx>

Where a subscriber is engaged to represent a client, an unequivocal form of client authorisation is necessary. The client authorisation will provide clear authority for a subscriber to digitally sign registry instruments on their client's behalf. The client authorisation will have some similarities to a power of attorney, though for specific purposes. As a result it may be possible to argue that the client authorisation will be subject to various State or Territory provisions setting requirements for powers of attorney. For example, in some jurisdictions a power of attorney must be registered before being used to authorise a land transaction. Accordingly, the ECNL provides that a client authorisation is not subject to any jurisdiction legislation setting requirements for powers of attorney.

The ECNL provides that by entering into an approved form of client authorisation, a transacting party may authorise a subscriber to:

- digitally sign electronic registry instruments and other electronic documents on that transacting party's behalf;
- lodge electronic registry instruments and other electronic documents with the relevant Land Registry;
- authorise any financial settlement involved in the transaction; and
- do anything necessary to complete the transaction electronically.

Reliance on Digital Signatures

Digital signatures are an important part of National Electronic Conveyancing's in-built technical and legal measures to provide confidence in electronic conveyancing, and in particular the integrity of digitally signed electronic documents.

A strong, reliable and trusted structure for digital signatures mitigates the risk of a subscriber, and any client represented by the subscriber, repudiating all or part of a signed electronic document by claiming that the:

- subscriber did not sign the document; or
- document was altered after the subscriber signed it.

The success of National Electronic Conveyancing requires a strong attribution rule²⁴ to apply to digital signatures to ensure subscriber accountability. A strong attribution rule also supports the attribution of the digital signature to a client on whose behalf a subscriber purports to sign.

Without a strong attribution rule for digital signatures, the Land Registry and the parties to a conveyancing transaction could not rely on signatures and certifications made by a subscriber in electronic instruments. The ECNL provides that a digital signature binds the apparent signing subscriber and its client in all circumstances except where a subscriber can prove that:

- the person who used the digital signature is not the subscriber, nor an employee, agent, contractor or officer of the subscriber; and
- the person used the digital signature without the express or implied authority of the subscriber; and
- the person was able to use the digital signature because the security of the IT system of the subscriber was compromised; and

²⁴ An attribution rule is a rule which states when the subscriber, on whose apparent behalf a digital signature certificate has been applied to sign a document, is bound by that signature.

- the subscriber and its employees, agents, contractors and officers complied fully with the participation rules governing system security and took reasonable care to protect the IT system and its security.

Electronic Lodgment Networks and Electronic Lodgment Network Operators

In each jurisdiction it is the Registrar who has responsibility for the administration of the titles register and the registration of registry instruments in the jurisdiction. The Registrars (ARNECC) will collectively set conditions for authorisation of an ELNO and conditions for access and use of an ELN. An ELN is an electronic system or platform that enables the preparation and lodging of registry instruments in electronic form.

The ECNL empowers the Registrar to operate or to authorise one or more persons to operate an ELN in respect of land in the jurisdiction.

National E-Conveyancing Development Limited (NECDL), a company established by the New South Wales, Victoria, Queensland and Western Australian governments, is expected to become the first ELNO once the ECNL is in place²⁵. However, the legal framework does not preclude other organisations from applying to become an ELNO.

In managing electronic conveyancing the Registrar may:

- renew the approval of an ELNO if the ELNO continues to comply with the operating requirements, or revoke or suspend the approval of an ELNO in certain circumstances to be set out in the operating requirements.
- monitor activities in an ELN for any purpose, including ensuring that the integrity of the titles register is maintained.

Operating Requirements and Participation Rules

The ECNL empowers the Registrar to determine requirements relating to the operation of an ELN, known as operating requirements and requires that an ELNO must comply with the operating requirements.

The operating requirements may cover topics such as the financial standing of an ELNO, operational and technical standards, insurance cover to be held by an ELNO, the suspension or revocation of an ELNO's approval and directions to an ELNO to restrict, suspend or terminate a subscriber's use of an ELN.

Similarly, the Registrar may determine rules relating to access to and use of an ELN, known as participation rules, and the ECNL requires that subscribers comply with the participation rules.

The participation rules may cover topics such as the eligibility criteria for subscribers, representations or warranties to be given by subscribers, suspension or termination of a subscriber's access, obligations of subscribers to verify the identity of their client, certification of registry instruments, digital signatures and the retention of documents by subscribers.

If a subscriber fails to comply with the participation rules relating to the subscriber's use of an ELN, the Registrar may restrict, suspend or terminate the subscriber's use of an ELN provided by the Registrar or, in respect of an ELN operated by an ELNO, direct the ELNO to restrict, suspend or terminate the subscriber's use of the ELN.

ARNECC will determine model operating requirements and model participation rules that are intended to be adopted by each Registrar so that they are nationally uniform (although the models may include jurisdiction specific provisions).

²⁵ For further information on NECDL see its website at <http://www.nationaleconveyancing.com.au/>.

The Registrar must make publicly available the current and superseded versions of the operating requirements and participation rules and any changes to the operating requirements or participation rules usually must be published at least 20 business days before the changes take effect.

Appeal Rights

The ECNL provides a right of appeal to a responsible court (to be nominated in each jurisdiction's application law) against the decision of a Registrar to:

- refuse to approve the person as an ELNO;
- refuse to renew the person's approval as an ELNO;
- suspend the person's approval as an ELNO;
- revoke the person's approval as an ELNO;
- restrict, suspend or terminate the person's use, as a subscriber, of an ELN operated by the Registrar; or
- direct an ELNO to restrict, suspend or terminate the person's use, as a subscriber, of the ELN operated by the ELNO.

Compliance Examination

The Registrars operate State guaranteed land title systems, the efficacy and accuracy of which will be reliant upon the certifications given by subscribers²⁶, the accuracy of the electronic instruments they prepare, and on the supporting evidence that subscribers will be required to retain.

Consequently, it will be necessary for the Registrar to have the ability to check compliance with the operating requirements and participation rules, either on a random compliance assurance basis or as part of an investigation into alleged or suspected misconduct. Compliance examinations may be made by attendance at the party's premises, after reasonable notice, to inspect the required documents or by requiring documents to be produced to the Registrar within a specified period, or as otherwise required by the Registrar.

These reviews will not be conducted in person by the Registrar and it may also be the case that such reviews may be included in, or conducted in tandem with, other professional compliance inspections by or on behalf of regulatory bodies such as conveyancing or legal practice regulators or revenue offices. Accordingly, the Registrar will require the ability to delegate the compliance examination function to an appropriate officer or to appoint an agent.

An ELNO or a subscriber must cooperate with any compliance investigation in that they must comply with any reasonable request by the person conducting the compliance examination:

- to furnish specified information or to produce specified documents; or
- to take specified action for the purposes of the compliance examination.

Instead of conducting a compliance examination in relation to any matter, or at any time during a compliance examination or after the completion of a compliance examination in relation to any matter, the Registrar may refer the matter to an appropriate authority.

An appropriate authority includes a law enforcement agency, and a regulatory or disciplinary body for persons engaged in any profession, occupation, calling or business.

²⁶ Under the Participation Rules, a subscriber will be required to give various certifications in relation to an electronic instrument, relating to the verification of the identity of its Client; Client Authorisations; supporting evidence; correctness and compliance with relevant legislation and the Registrar's requirements; and, in the case of a mortgage, an instrument specific certification relating to the signing of the mortgage.

The Registrar is not obliged to conduct any compliance examination or monitor activities in an ELN.

No Compensation for matters arising out of Compliance Examination

The ECNL does not affect or change any existing compensation rights under the States and Territories Torrens title legislation. It does, however, provide that where the Registrar has acted in good faith no person is entitled to receive compensation for any loss or damage arising out of anything done or omitted, or in connection with the monitoring of activities in an ELN or the conduct of a compliance examination by the Registrar (or his or her delegate) including (without limitation) any decision made,:

- not to monitor activities in an ELN or not to conduct a compliance examination, and
- as to how activities in an ELN are to be monitored or how a compliance examination is to be conducted.

Interpretation

To ensure consistency in interpretation nationally, the ECNL excludes the operation of each jurisdiction's usual interpretation laws and instead includes a standard schedule of interpretation provisions to ensure consistent interpretation in all jurisdictions applying the ECNL. This approach, and the interpretation schedule included in the ECNL, is used in a number of other national law schemes.

6 Impact analysis

Notwithstanding that the decision to introduce National Electronic Conveyancing has been taken by COAG, this section analyses the economic impact at a national level associated with the introduction of National Electronic Conveyancing. No national quantitative analysis has been undertaken. However, economic analysis has been undertaken in New South Wales and a quantitative analysis of the potential costs and benefits of National Electronic Conveyancing based on the New South Wales figures is included at Appendix A. This quantitative analysis is indicative only as it is based on figures scaled up according to the New South Wales proportion of the national conveyancing industry.

It is important to note that ELNs will be provided and operated by approved ELNO's that will be commercial entities. The fees charged to an industry participant user of National Electronic Conveyancing will be determined by the ELNO and not by the Land Registries²⁷.

Similarly, it is important to note that the decision to pass on to consumers any savings or costs that accrue to an industry participant user of National Electronic Conveyancing lies with the industry participant and not with the Land Registries.

6.1 Baseline comparison – 'Do nothing'

'Do nothing' is referred to here only for comparison with the costs and benefits of the introduction of National Electronic Conveyancing as decided by COAG. This would have meant no change to current activities or participants and means retaining the current state level, paper-based system for conveyancing.

As discussed in Section 3, the option of doing nothing will lead to the persistence of industry costs in the form of:

- physical document preparation, handling and exchange;
- physical attendance at settlement;
- physical lodgment, compliance assurance and processing of documents; and
- administrative costs, in particular for banks, arising from dealing with different lodgment environments and practices in each jurisdiction.

In the absence of investment by Land Registries in new systems for the electronic lodgment and examination of dealings, significant recruitment and training will need to be undertaken to ensure the skills of retiring Land Registry staff are transferred to new staff, whilst allowing for sufficient time to train new recruits. This process may be costly given the associated difficulties of recruitment of title examiner skills not readily available in the marketplace.

The "Do nothing" option would not produce any net benefits (i.e. cost savings) to the conveyancing industry, nor to the Land Registries in each jurisdiction, as it is the status quo.

6.1.1 Risk

Key risks associated with the current paper based conveyancing system include:

²⁷ The fees for registering land registry documents in the titles register and the fees for obtaining land information from the titles register will continue to be set by the Land Registries.

- failure to settle or delay to settlement – whereby the preparation for settlement was incomplete due to the conduct of one party to the transaction or an inability to make timely settlement arrangements with the transacting party (for example, the bank);
- the time delay between settlement and lodgment presents a risk period in which a writ or caveat can be recorded on the title and prevent registration of the settled transaction;
- documents not in a registrable form – due to documentation errors in the manual preparation process;
- loss of paper documents and title – for example, by the purchaser's or mortgagee's representative after settlement and prior to lodgment;
- the inability (due to rising staff costs) to maintain sufficient staff resources with the requisite skills for compliance assurance of transactions before registration;
- paper based fraud – including fraud in relation to the actual conveyancing process (such as signature forgery, misleading a victim into signing documents and identity fraud), presentation of fraudulent cheques at settlement and cheques cancelled following settlement; and
- reliance on data capture systems (for example manual data entry or optical character recognition) that are not as accurate as digitally signed discrete data items.

6.1.2 Competition effects

Maintaining the status quo would not have any adverse competition effects on the conveyancing or related markets. It will however, not produce any improvements in the efficiency or reduction in the transaction costs (and other benefits) associated with the introduction of National Electronic Conveyancing.

6.2 Who could be affected- key stakeholders in electronic conveyancing

There are a number of key stakeholders in National Electronic Conveyancing. The key stakeholders are set out below.

- An **ELNO** is the operator of the ELN. There will initially be at least one national ELNO and there may be additional ELNOs in the future.
- A **client** can be any individual or organisation with an interest in land/real property or who is a party to a transaction in land/real property. Key examples of clients are registered proprietors, vendors and purchasers.
- A **subscriber** is any individual, or organisation meeting the eligibility requirements for a subscriber in the participation rules and using an ELN to prepare and sign electronic instruments, settlement statements and information reports. An APRA regulated financial institution, legal practitioner, licensed conveyancer are examples of a subscriber.
- **Licensed Service Providers (LSPs)** are providers of tailored user interfaces, integration and support services to subscribers.
- **Land Registries (LR)** are the jurisdiction-based custodians of the Torrens Title Registers of land titles and interests for the properties being dealt with in the transaction and are responsible for the integrity and accuracy of those registers.
- **Revenue Offices (RO)** are the jurisdiction-based collectors of duties and taxes payable on land and property transactions and are responsible for effective systems of compliance with legislated duty and tax obligations.

6.3 Participation Optional

Industry participation in National Electronic Conveyancing should bring benefits to the conveyancing industry that will encourage participation. However, the decision to participate will be up to the individual member of the conveyancing industry. There is no present intention to make participation in National Electronic Conveyancing mandatory or remove paper based conveyancing.

However, individuals wanting to complete their own property transactions will need to use the existing paper based process, as it will not be viable for an individual to meet the requirements to become a subscriber for a single transaction.

The following table outlines the action required by stakeholders to participate in electronic conveyancing. Ongoing participation in electronic conveyancing requires monitoring and maintenance of these actions.

Table 6-1: Participation requirements

Description	Sector						
	LR	RO	ELNO	Fin Inst	Lawyers /Conveyancers	LSP	Client
Legal Framework							
Enact Electronic Conveyancing National Law	✓						
Update jurisdiction legislation to be consistent with electronic conveyancing	✓	✓					
Establish national regulator for electronic conveyancing (ARNECC)	✓						
Establish Model Operating Requirements	✓						
Establish Model Participation Rules	✓						
Implementation of jurisdiction Operating Agreement	✓		✓				
Establish contracts for support services			✓				
Implementation of Participation Agreement between ELNO and subscribers			✓	✓	✓		
Systems							
Provision of ELN			✓				
Enablement of Licensed Service Provider (LSP) systems to support industry use of ELN			✓			✓	
Comply with Data Standard and protocol for information exchange	✓	✓	✓	✓	✓	✓	
Delivery of Land Registry and Revenue Office products and services for electronic transaction compliance assurance	✓	✓	✓				

Description	Sector						
	LR	RO	ELNO	Fin Inst	Lawyers /Conveyancers	LSP	Client
Enablement of electronic lodgment of registry instruments	✓		✓				
Enhancement of Land Registry and Revenue Office systems for processing electronic conveyancing transactions	✓	✓					
Enhancement of subscriber systems for electronic conveyancing ²⁸			✓	✓	✓	✓	
Provision of Financial settlement system			✓	✓			
User of Electronic Lodgment Network							
Application and registration of subscribers			✓	✓	✓		
Acquisition of Digital Signature Certificate for each subscriber and any authorised signers				✓	✓		
Transaction participation							
Selection of subscriber to represent the client and to prepare and execute an electronic conveyancing transaction							✓
Client Authorisation Agreement to provide a subscriber with instructions and authority for an electronic transaction					✓		✓

Key:

LR	Land Registry in each jurisdiction	Lawyers/Conveyancers	Subscribers that are legal practitioners or licensed conveyancers
RO	Revenue Office in each jurisdiction	LSP	Licensed Service Providers
ELNO	Electronic Lodgment Network Operator	Client	Individual or organisation as transacting party
Fin Inst	Subscribers that are Financial Institutions		

6.4 Factors that may affect industry participation

The following table outlines the factors that individual conveyancing industry service providers may perceive as reasons to opt in or out of electronic conveyancing. It will be up to individual conveyancing industry service providers to weigh up the actual and/or perceived costs, savings, risks and liabilities in deciding whether to participate in electronic conveyancing.

²⁸ At its most basic level, an ELN will be accessible via a browser interface and very little, if any, system enhancement will be required if a reasonable internet connection is already available. However, to be able to increase efficiency and reuse data already captured, enhancement of existing document management software will be required. LSPs are expected to provide these upgrades to existing systems.

Table 6-2: Factors that may affect industry participation

	Factor	Reasons to opt in	Reasons to opt out
Cost and service	Upfront investment to adopt electronic conveyancing e.g. subscriber IT investment and registration cost	The investment set-up cost for electronic conveyancing is acceptable and justified by the financial business case	The investment set-up cost for electronic conveyancing is not justified by the financial business case
	Service acceptability	The services provided by the ELN are acceptable to the industry stakeholder and their client	The services provided by the ELN are not acceptable to the industry stakeholder and their client
	ELN transaction costs	The transaction fees provided by the ELN are acceptable to the industry stakeholder and their client	The transaction fees provided by the ELN are not acceptable to the industry stakeholder and their client
	Ongoing subscriber transaction costs	The savings provided by electronic conveyancing outweigh the additional costs incurred	The savings do not provide an adequate business case for adopting electronic conveyancing
Risks and liabilities	Transaction management and due diligence checks	Automated electronic notification of changes to Lodgment Case status and automated completion checks	Loss of opportunity for face to face final settlement due diligence checks
	Lodgment Case compliance checks required	Automated compliance assurance services provided to support practitioner checks	Loss of opportunity for face to face final settlement due diligence checks
	Increasing identity fraud within the community	Agreed practice standards such as Client Identity Verification (CIV) which, if followed, will mitigate the risk of identity fraud being committed and potential liability for that fraud	Additional administration of CIV and Client Authorisation checks
	Financial transaction risks	Features provided in financial settlement functions that reduce the risk of erroneous or fraudulent payments	Practitioner risks associated with electronic funds transfer in electronic settlement
	Signing on behalf of Client	Effective mandatory practices and documentation to support practitioner role	Preference for Client to directly execute transaction documentation
	Electronic security risks	Compliance with agreed security policy standard will mitigate the risk	Additional practitioner skills required and risks associated with having to operate in a fully electronic environment
Savings	Potential for straight-through processing of conveyancing transactions	Electronic conveyancing can facilitate straight-through processing of transactions which is expected to be of particular benefit for lenders	Straight-through processing is of no real benefit to the stakeholder

	Factor	Reasons to opt in	Reasons to opt out
	More convenient facilities for completing property transactions	Electronic systems with business to business communication and interoperability with in-house systems justify adoption of electronic conveyancing	Inadequate interoperability with existing systems to justify adoption of electronic conveyancing
	Less labour intensive dealing preparation, financial settlement and dealing lodgment processes	Electronic conveyancing provides significant time savings in conducting an electronic conveyancing transaction	Inadequate resource time or productivity savings to justify adoption
	Faster lodgment of time-critical dealings, such as caveats	Immediate lodgment of transactions ready for lodgment	Inadequate time saving in preparation and lodgment of time critical dealings
	Electronic transfer of funds for financial settlement and faster access to funds received in settlements	Benefits provided by electronic settlement services provide justification for adoption of electronic conveyancing	Electronic settlement provide no benefits justifying adoption of electronic conveyancing
	Ease of remote access to the Land Registry	Easier access to settlement and lodgment for rural and remote communities	Electronic access to settlement and lodgment is insufficient benefit compared to existing processes
	Greater certainty that dealings are lodged in registrable order	Less dealings lodged with errors, omissions or inconsistencies requiring attention and correction	The task of preparing electronic transactions is greater than the benefits from supporting services provided
	Competitive advantage	Competitive advantage because major industry participants incentivise the adoption of electronic conveyancing	No competitive advantage because of industry and community lack of confidence in electronic conveyancing

Sources:

- *NECO industry consultation*, refer <http://www.necs.gov.au/NPT-Resolutions/default.aspx>
- *Economic Appraisal of electronic conveyancing in NSW*, refer http://necnsw.lpi.nsw.gov.au/_data/assets/pdf_file/0006/143934/NECS_KPMG_final_report_Jan_2009.pdf
- *National E-Conveyancing in NSW – Consultation Feedback Report*, refer http://necnsw.lpi.nsw.gov.au/_data/assets/pdf_file/0012/153021/Consultation_Feedback_Report.pdf

6.5 Competition effects

The potential competition effects of the introduction of electronic conveyancing are set out below.

6.5.1 Increased competition within conveyancing and financial services industries

The National Electronic Conveyancing platform will be a web based “hub” business where subscribers access a shared electronic workspace to prepare documents to effect a conveyancing transaction. Efficiency benefits will be best realised by subscribers conducting as many transactions as possible electronically through the platform. The greater the number of subscribers using the platform and therefore the greater the number of transactions that can be conducted electronically, the greater the benefits to all subscribers using the platform.

Conveyancing industry service providers and financial institutions who decide to implement electronic conveyancing may decide to differentiate between the cost of paper and electronic conveyancing, based on the cost of providing their services through either medium. Assuming that transactions effected electronically can be provided at a lower cost and that the cost savings are passed on to consumers, the introduction of National Electronic Conveyancing may increase competition within each of the conveyancing and financial services industries.

Participation in National Electronic Conveyancing by the major financial institutions may also drive smaller banks to participate, as the smaller financial institutions seek to keep up with changes in the market and remain competitive.

6.5.2 Potential for competing Electronic Lodgment Network Providers

Whilst it is expected that only one ELNO will be established initially, the ECNL allows for the Registrar to provide an ELN or for the Registrar to approve a person to provide and operate an ELN. Accordingly, one or more ELNs may be established to create and electronically lodge registry instruments and other electronic documents with the jurisdiction’s Land Registry and one or more ELNO’s may be authorised to provide and operate an ELN.

The current manual paper based conveyancing system will remain as an alternative to electronic conveyancing. Complete replacement of the paper-based conveyancing system is unlikely as some transactions will not be suitable for electronic lodgment. However, the services provided by settlement and lodgment agents or service providers are likely to be negatively impacted because the volume of paper based conveyancing transactions is likely to be significantly reduced over time following the introduction of electronic conveyancing.

6.6 Impact of introducing National Electronic Conveyancing

The impact of introducing National Electronic Conveyancing is expected to be positive in that it will result in net benefits for the economy as a whole. More detail of the impact of National Electronic Conveyancing can be found in Appendix A.

6.6.1 Quantifiable costs and benefits

The introduction of National Electronic Conveyancing is expected to lead to **cost savings** for the economy as a whole. In terms of quantifying the savings of National Electronic Conveyancing, these are expected to be primarily realised in:

- electronic settlement and lodgment, which removes the need to arrange and physically attend settlement and lodgment;
- reduced duplicated data entry and re-work;
- courier and bank cheque savings.

The introduction of National Electronic Conveyancing will also involve additional costs, which can be broadly summarised as follows:

- industry and Land Registry IT set up, maintenance and staff training costs;
- ELN establishment and operational costs;²⁹
- time required to complete client authorisation and subscriber administration of users of the ELN;
- cost associated with the approval of cleared funds in the ELN; and
- industry support costs, that is, the service costs for licensed service providers who may offer tailored interfaces, integration and support services as an alternative to direct access to the ELN.

Tables 6-3 to 6.5 summarise the estimates of the economic impact of National Electronic Conveyancing on a national level (1-1) and nationally for the private (1-2) and public (1-3) sectors. Based on the outputs scaled up from the 2008 economic appraisal, the economic impact of National Electronic Conveyancing is estimated to deliver a total net benefit of \$582.0m (in NPV terms) during the period between 2011-12 and 2027-28. The private sector share is a net benefit of \$532.4m and the public sector share a net benefit of \$49.60m.

More detail of the indicative quantitative analysis of the potential costs and benefits of National Electronic Conveyancing, based on scaled up NSW figures, is included at Appendix A.

Table 6.3: Summary of Economic Impact of Introduction of National Electronic Conveyancing (\$m, 2011 dollars)

NPV	
National Electronic Conveyancing	
Economic appraisal results	
Capital costs	(\$258.9)
Recurrent costs	(\$1,084.1)
Savings	\$1,924.9
Net Present Value (2011-12 to 2027-28)	\$582.0

Source: Scaled up and adjusted from KPMG 2008 economic appraisal

Table 6.4: Summary of impact of National Electronic Conveyancing on private sector (\$m, 2011 dollars)

NPV	
National Electronic Conveyancing	
Economic appraisal results	
Capital costs	(\$226.9)
Recurrent costs	(\$984.1)
Savings	\$1,743.4
Net Present Value (2011-12 to 2027-28)	\$532.4

Source: Scaled up and adjusted from KPMG 2008 economic appraisal

²⁹ In practice, ELNO capital and operating costs will be recovered through user fees. User fees were discussed in consultation with industry during the preparation of the 2008 economic appraisal, but ELNO projected costs are used in the economic analysis.

Table 6.5 Summary of impact of National Electronic Conveyancing on public sector (\$m, 2011 dollars)

NPV National Electronic Conveyancing	
Economic appraisal results	
Capital costs	(\$31.9)
Recurrent costs	(\$100.0)
Savings	\$181.5
Net Present Value (2011-12 to 2027-28)	\$49.6

Source: Scaled up and adjusted from KPMG 2008 economic appraisal

The above estimates are based on the following take up rates.

Table 6-6: Assumed take up rates

Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Year 11	Year 12	Year 13 onwards
0%	0%	3%	9%	18%	29%	42%	58%	73%	85%	93%	97%	100%

Source: NECO, Draft Funding Model for a National Electronic Conveyancing System (March 2008), Figure 12

Sensitivity analysis has been undertaken to quantify the impact on the NPV calculations of varying a number of assumptions:

- discount rates of 5, 7 and 10 percent;
- take up rate: +/- 10 percent of the base annual take up rate assumptions (up to a maximum of 100% take up);
- costs: +/- 10 percent of the capital and recurrent cost estimates;
- savings: +/- 10 percent of the recurrent savings estimates; and
- capital costs: increasing the IT and set up capital costs for industry and government by 50 percent.

The sensitivity analysis provided in section 3 of Appendix A shows that variations in the key assumptions still provide a significant net benefit in NPV terms.

6.6.2 Qualitative benefits

In addition to the benefits and costs of National Electronic Conveyancing in the above analysis, a range of qualitative impacts has been identified.

The table below outlines additional qualitative benefits of National Electronic Conveyancing and identifies the likely beneficiaries by stakeholder group.

Table 6-3: Qualitative benefits of National Electronic Conveyancing

Benefits	Means by which benefits achieved	Beneficiary				
		Govt	Financial Inst.	Lawyer/Conveyancer	LSP	Public
Common national conveyancing	<ul style="list-style-type: none"> • Uniform electronic conveyancing legal framework and practices 	✓	✓	✓	✓	

Benefits	Means by which benefits achieved	Beneficiary				
		Govt	Financial Inst.	Lawyer/Conveyancer	LSP	Public
infrastructure	<ul style="list-style-type: none"> Single IT infrastructure and data standard supporting property transactions in all states and territories 					
Improved access for rural and remote communities	<ul style="list-style-type: none"> Practitioner access to electronic conveyancing is only limited by availability of the Internet services 			✓		✓
Transaction assurance	<ul style="list-style-type: none"> Common virtual workspace for all subscribers involved in a transaction ensuring data integrity, sharing of transaction information and transaction preparation status Title activity check and lodgment verification services for on-demand monitoring of transaction assurance Immediate confirmation of lodgment result, and subsequent registration of dealings in registrable form 	✓	✓	✓		✓
Faster transaction processing	<ul style="list-style-type: none"> Electronic financial settlement facilitating earlier availability of cleared funds for payees after settlement Direct lodgment of dealings immediately after settlement mitigating risks associated with lodgment delay inherent in paper-based conveyancing 		✓	✓		✓
Capacity increase within Land Registry	<ul style="list-style-type: none"> Electronic lodgment will increase the capacity within Land Registries to process fluctuating and growing lodgment volumes and decrease processing times 	✓	✓	✓		✓

6.6.3 Risk

The risks associated with the electronic conveyancing process were covered extensively in the risk assessment undertaken by Clayton Utz in 2007³⁰. The process risks identified were consequently addressed in the Report³¹.

The key risks that may affect realisation of the economic benefits associated with the introduction of National Electronic Conveyancing include:

³⁰ Available from the NECS website at <http://www.necs.gov.au/Risk-Management-2/default.aspx>

³¹ For further detail on the legal framework developed by Clayton Utz, please refer to Clayton Utz, NECS Legal Framework Development, Final Report Volume 1, accessed at <http://www.necs.gov.au/Redesign---Legal-Framework-2/default.aspx>

- **Assumed take up rate is over-estimated** – the estimated net savings of National Electronic Conveyancing are largely dependent on the take-up rate. Any change to the assumed take-up rate will consequently change the net savings. For example, if the assumed take-up rate is too optimistic, the net savings modelled in Appendix A³² will be lower than they otherwise would have been.
- **Cost estimates may be under-estimated** - although the 2008 economic appraisal suggests that the results are robust to material changes in other variables (e.g. costs of implementation).

³² These variations are modelled in the Sensitivity Analysis included in Appendix A.

7 Consultation

7.1 Consultation undertaken on National Electronic Conveyancing

From 2004 stakeholder consultation strategies have ranged from awareness raising to direct engagement with identified stakeholders to increase understanding of National Electronic Conveyancing. Specific strategies and tools include meetings, workshops, face-to-face briefings, newsletters, surveys and publication of issues papers³³.

This has enabled policy makers to gain an understanding of the practicalities of National Electronic Conveyancing and its impact on government and industry as well as identifying potential compliance risks and other issues.

Appendix C provides a complete timeline of the consultation history for the broader National Electronic Conveyancing program³⁴.

The findings from stakeholder consultations and responses to issues papers provided input into a number of reports which has fed into the development of the development of National Electronic Conveyancing³⁵. Reports in particular include the NECS Roadmap documents, regulatory reviews conducted by Gilbert and Tobin and Clayton Utz, web services requirements and non-functional requirements definitions.

7.2 Consultation on Development of a Legal Framework for National Electronic Conveyancing

In January 2009, Clayton Utz was engaged by the National Electronic Conveyancing Office to prepare a report on the development of a legal framework necessary to support National Electronic Conveyancing.

In preparing the report Clayton Utz determined:

- the purpose of a single national legal framework (the legal framework) for National Electronic Conveyancing and what it must achieve
- the performance objectives that must be met by the legal framework
- the components of the legal framework necessary for it to be effective in achieving the performance objectives.

The “*NECS Legal Framework Development Report*” (the Report) was published in two volumes in February 2010³⁶.

In preparing the Report, Clayton Utz conducted extensive consultation with stakeholders releasing four consultation packages and request for feedback on various aspects of the legal framework being developed.

³³ See www.necs.gov.au for a comprehensive list of issues papers

³⁴ Unless otherwise stated, information on the consultation program was sourced from NECO documents, presentations and press releases.

³⁵ National Electronic Conveyancing Office, *National Consultation Program*, accessed at <http://www.necs.gov.au/default.aspx?ArticleID=513#Keyinitiatives>

³⁶ <http://www.necs.gov.au/Redesign---Legal-Framework-2/default.aspx>.

The first stakeholder consultation request sought comments regarding the:

- key differences in regulation of practitioners and conveyancing practice among jurisdictions;
- identification of current conveyancing processes in jurisdictions and future electronic conveyancing processes;
- current paper based conveyancing practices; and
- comparison of conveyancing practices in all jurisdictions (except Tasmania and ACT) and a list of key issues and challenges for an effective legal framework for National Electronic Conveyancing.³⁷

The second consultation request sought comment on the:

- draft statement of purpose and performance objectives for the National Electronic Conveyancing legal framework; and
- revised and expanded list of key issues and challenges of defining a legal framework for National Electronic Conveyancing.³⁸

The third consultation report focused on legal relationships which an ELNO has with government and other electronic conveyancing stakeholders. Comments were sought on:

- the statement of purpose and performance objects for the legal framework which was modified following comments on the Second Consultation Package;
- a top-down analysis of how Clayton Utz proposed how the legal framework should operate through National Electronic Conveyancing enabling legislation;
- intergovernmental agreements and development of model rules and conditions which are to be imposed on ELNOs by each jurisdiction and supplemented by permitted jurisdictional requirements; and
- a framework-level description of the subject matter of the participation rules for the National Electronic Conveyancing legal framework.³⁹

The fourth consultation request focused on a range of issues relating to liability and compensation in the National Electronic Conveyancing program. Comments were sought on the:

- updated performance objectives for the risk management framework and the performance objectives relating to liability for the legal framework;
- liability positions of various electronic conveyancing stakeholders;
- general insurance issues; and
- attribution rule to work through fraud scenarios examining the liability of subscribers and certifiers for misuse of private keys to create digital signatures and misdirection of settlement monies were provided.⁴⁰

³⁷ Clayton Utz, *NECS Legal Framework Development Final Report*, 4/02/2010, p112.

³⁸ Clayton Utz, p112.

³⁹ Clayton Utz, p.114.

⁴⁰ Clayton Utz, p.115.

Separate to the consultation requests, a number of briefings as part of the wider Clayton Utz stakeholder consultation program were conducted with the following stakeholders:

- Land Registry representatives;
- bank lender representatives;
- national project team members;
- State project team;
- liability insurers' representatives; and
- regulators of conveyancers and lawyers⁴¹.

7.3 Incorporation of stakeholder views on Legal Framework

As a result of the extensive consultation with stakeholders during development of the Report Clayton Utz incorporated stakeholder views into the Report. Clayton Utz has stated that the acceptability of the legal framework to National Electronic Conveyancing stakeholders has been tested throughout its stakeholder program⁴².

In turn the legal framework for National Electronic Conveyancing that will be implemented by the Electronic Conveyancing National Law is based largely on the Report and subsequent consultation.

Areas where stakeholder views were adopted include:

- The specifics of the implementation of the participation agreement and participation rules. Specific implementation of the rules identified in the report has been directly attributable to stakeholder consultation undertaken throughout the project.⁴³
- Two views were put concerning the obligations of parties to each other in a workspace. Clayton Utz considered that the benefit of those obligations should be extended to Clients of the Subscribers but only to the Subscribers and Clients represented in the relevant Workspace. Stakeholder feedback generally agreed with this proposed limitation⁴⁴.

The diverse and often competing interests of stakeholders also led to conflicting views in some circumstances resulting in some views not being adopted. Examples of this are:

- Clayton Utz raised in stakeholder consultations whether there was a need for the establishment of a first resort separate compensation fund for Clients and registered proprietors who suffer losses in National Electronic Conveyancing. While several stakeholders supported a first resort compensation fund in principle others doubted it would work in practice. Questions were raised as to what losses and claimants would be covered and how it would be funded and how it could be ensured that such a compensation fund was to be the first resort.

Clayton Utz came to the view that there was not a demonstrated case for another compensation fund for National Electronic Conveyancing (regardless of whether it is a first recourse fund)⁴⁵.

⁴¹ Clayton Utz, p.115.

⁴² Clayton Utz, p.20.

⁴³ Clayton Utz. P.34.

⁴⁴ Clayton Utz, pp 59 & 60.

⁴⁵ Clayton Utz, p.19.

- Clayton Utz proposed a strong attribution rule for digital signatures defining very limited circumstances where a subscriber could repudiate such a signature. All stakeholders (industry and government) who commented on this issue (except for one) favoured a strong attribution rule (one or other of the two proposed) and the most favoured proposal was adopted. This would provide confidence to parties in National Electronic Conveyancing that digital signatures relied on by them or their Subscribers were reliable and could only be repudiated in very limited circumstances. The dissenting view, by a professional indemnity insurer, was that a strong attribution rule was not required⁴⁶.

The purpose of this Consultation RIS is to seek stakeholder feedback on the proposed Electronic Conveyancing National Law (ECNL) that will facilitate the implementation of National Electronic Conveyancing.

⁴⁶ Clayton Utz, pp 82-84.

8 Conclusion and recommended option

The introduction of National Electronic Conveyancing is a commitment by COAG. It is supported by economic analysis on the basis that it produces a positive NPV given the assumptions used.

Based on the impact analysis in Appendix A, National Electronic Conveyancing will produce a positive NPV over the timeframe of the analysis given the assumptions used. The savings associated with National Electronic Conveyancing have been estimated to exceed costs by \$580m (in NPV terms) during the 17 year period.

However, it must be recognised there is a degree of uncertainty in the estimates of the economic impacts (both costs and savings) identified in this Consultation RIS.

The principal uncertainties include:

1. The assumed take up rate may be too optimistic – the estimated net savings of National Electronic Conveyancing are largely dependent on the take-up rate. Any change to the assumed take-up rate will consequently change the net savings.
2. Cost estimates may be underestimated.
3. The impact analysis included in this RIS is based on analysis of the economic impact of electronic conveyancing in New South Wales. Those figures have been scaled up to a national level and the overall costs and savings during the 17-year period allocated to the private and public sectors. In estimating the results at a national level, the results from the 2008 economic appraisal on the implementation of electronic conveyancing in NSW were extrapolated based on New South Wales' share of national conveyancing transactions and reflecting known changes in cost from 2008 to 2010. The results are therefore indicative only of the savings National Electronic Conveyancing might provide to the Australian economy. The allocation to public or private sectors was undertaken by estimating on a category-by-category basis, which of the private sector or public sector was likely to bear the additional costs of National Electronic Conveyancing, earn the cost savings, and the approximate share of each category of cost or savings attributable to each sector.

Despite these uncertainties, the sensitivity analysis provided in Appendix A shows that in spite of variations in the key assumptions National Electronic Conveyancing will still provide a significant net benefit in NPV terms.

The recommended regulatory option is the implementation of a common legal framework that enables documents in electronic form to be lodged and dealt with under the Torrens titles legislation of each jurisdiction. The recommended legal framework is modelled on the recommendations of the Report.

The ECNL will facilitate the implementation of electronic conveyancing in Australia and the realisation of the economic benefits forecast.

While the introduction of National Electronic Conveyancing was committed to by COAG it is supported by economic analysis on the basis that it produces a positive NPV over the timeframe of the analysis given the assumptions used. Under this option, the savings associated with electronic conveyancing will exceed costs by \$582.0m (in NPV terms) during the period between 2011-12 and 2027-28.

This option will result in net savings to the private sector and the public sector of approximately \$532.4m and \$49.6m (in NPV terms) respectively, over this period.

9 Implementation and review

9.1 Implementation of legal framework

The IGA provides governance for the development, implementation and management of the regulatory framework.

To ensure consistency across jurisdictions it has been proposed the ECNL is introduced using an application law scheme (which is commonly used to introduce national legislation). New South Wales will function as the host jurisdiction for the national legislation and plans to enact the ECNL in 2012.

As soon as practicably possible following the passing of the ECNL in New South Wales, the other participating jurisdictions will enact an application law or corresponding law to adopt the ECNL.

ARNECC is the body established to facilitate the implementation and ongoing management of the regulatory framework for National Electronic Conveyancing to the extent that it facilitates or relates to the lodgment of documents with the Registrar, and an ELNO's relationship with the Registrar.

ARNECC membership comprises the Registrar or their nominee from each Australian State and Territory.

The principal functions of ARNECC are to:

- advise the State and Territory Governments on any proposed changes to the ECNL;
- provide authoritative advice to the States and Territories about matters relating to National Electronic Conveyancing; and
- ensure that, as far as is practicable, business practices with respect to National Electronic Conveyancing are consistent when implemented by the Registrars in each jurisdiction.

ARNECC is committed to open, accountable and responsive decision making which is informed by effective communication and consultation between ARNECC and key conveyancing stakeholders.

By engaging proactively with stakeholders, both through ARNECC-initiated consultations and through consultations organised by others, ARNECC aims to achieve the best possible outcome for National Electronic Conveyancing by:

- obtaining feedback on the potential impact of the proposed regulatory mechanisms that are applicable to National Electronic Conveyancing;
- benefiting from the expertise of stakeholders, notably in identifying and analysing issues relating to the proposed regulatory mechanisms;
- providing opportunities for alternative approaches to any identified issues regarding the proposed regulatory mechanisms to be considered; and
- promoting understanding of the work of ARNECC and its role.

ARNECC will consult in accordance with its Stakeholder Engagement and Consultation Policy⁴⁷ to ensure that stakeholders' views are considered in making determinations.

⁴⁷ See ARNECC website at <http://www.arnecc.gov.au/publications>

9.2 Provision of a National Electronic Conveyancing Platform

NECDL was established as a company limited by guarantee in January 2010 under a Governance Agreement between the Victorian, New South Wales and Queensland Governments and they were joined later by Western Australia which also became a member of NECDL.

COAG has resolved that NECDL is to create, implement and operate a National Electronic Conveyancing platform.

NECDL has since become a company limited by shares which allows the company to receive industry funding.

NECDL has completed its business case and forecast funding requirement to build and operate an ELN. It has recently acquired relevant intellectual property from several States and has commenced the design and build of the system in August 2011.

For further information about NECDL see <http://www.nationaleconveyancing.com.au/>.

9.3 Review of performance

The IGA provides for the review of the ECNL the after seven years.

10 Definitions and terms

ARNECC means the Australian Registrars' National Electronic Conveyancing Council established by the Intergovernmental Agreement.

Client Authorisation is a document by which a client authorises a subscriber to act on their behalf in an electronic conveyancing transaction and to digitally sign documents on the client's behalf.

COAG means the Council of Australian Governments.

COAG Agreement means the National Partnership Agreement To Deliver A Seamless National Economy between the Commonwealth of Australia and the States and Territories.

Electronic Conveyancing National Law (ECNL) means a national law scheme agreed to be established by the Intergovernmental Agreement that will facilitate the implementation and operation of National Electronic Conveyancing in accordance with the COAG Agreement, as amended from time to time.

Electronic Lodgment Network (ELN) is a network established to create and electronically lodge registry instruments and other electronic documents with the jurisdiction's Land Registry.

Electronic Lodgment Network Operator (ELNO) is a person authorised by a jurisdiction to operate an Electronic Lodgment Network.

Intergovernmental Agreement (IGA) means the Intergovernmental Agreement for a National Electronic Conveyancing Law

Land Registry means the organisation, person or body operated by each of the jurisdictions for the registration, noting and recording of dealings in land and is the jurisdiction-based custodian of the titles register.

Net Present Value (NPV) is the value, as of a specified date, of future cash inflows less all cash outflows (including the cost of investment) calculated using an appropriate discount rate.

Operating Requirements means the requirements set by ARNECC and applied by the Registrar that, pursuant to the ECNL, an ELNO must comply with.

Participation Rules means the rules, set by ARNECC and applied by the Registrar that, pursuant to the ECNL and their Participation Agreement, a Subscriber must comply with.

Registrar means the Registrar General or similar State or Territory official having responsibility for the jurisdiction's Land Registry function as listed below:

- NSW – Registrar General;
- Vic – Registrar of Titles;
- Qld – Registrar of Titles;
- WA – Registrar of Titles and/or other member of the Western Australian Land Information Authority's (trading as Landgate) staff nominated by the Chief Executive of the Authority;
- SA – Registrar-General;
- Tas – Recorder of Titles;
- NT – Registrar-General; and
- ACT – Registrar General.

registry instrument means any document that may be lodged under the land titles legislation for the purpose of:

- (a) creating, transferring, disposing of, mortgaging, charging, leasing or dealing with in any other way an estate or interest in land, or
- (b) getting something registered, noted or recorded in the titles register; or
- (c) getting the registration, note or record of something in the titles register changed, withdrawn or removed.

Subscriber means a person who is authorised under a participation agreement to use an ELN to complete conveyancing transactions on behalf of another person or on their own behalf.

titles register means the public register in each jurisdiction that is maintained by the Land Registry under relevant legislation and containing information related to land.

Verification of Identity rules means the rules applying to Subscribers and mortgagees to be complied with when identifying parties to an electronic conveyancing transaction.

Appendix A

Indicative Impact Analysis of the Introduction of National Electronic Conveyancing

1. Introduction

Notwithstanding that the decision to introduce National Electronic Conveyancing has been taken by COAG, this annexure analyses the economic impact of National Electronic Conveyancing at a national level. The economic impact of implementing National Electronic Conveyancing estimated in this analysis is indicative only.

It is based on the results identified in a KPMG report entitled Economic Appraisal of Electronic Conveyancing in NSW (2008 economic appraisal)⁴⁸ for Land & Property Information (LPI). These estimates were subsequently revised to reflect the 2010 cost estimates in an unpublished business case on the implementation of electronic conveyancing in New South Wales prepared by LPI in March 2010 for budgetary purposes.

These figures have been 'scaled up' to extrapolate the economic impact on a national level, based on the New South Wales share of national conveyancing and reflecting known changes in costs from 2008 to 2011.

1.1. Approach to allocation of the costs and savings of National Electronic Conveyancing

Table A-1: Key modelling assumptions

Modelling input	Assumption
Annual wage growth	3.5% per annum (nominal)
Take-up rate	Incremental growth to 100% in Year 12 ⁴⁹
Discount rate	7%
Model timeframe	17 years (15 years plus two years construction)
Year National Electronic Conveyancing is commercially operational	2013-14
Growth in transaction volumes	2% per annum

The following approach has been undertaken for the analysis in this Analysis.

1.2. Scaling up NSW net savings to a national level

The economic impact of the introduction of National Electronic Conveyancing is based on the results identified in the 2008 economic appraisal. As the report estimated the economic impact of electronic conveyancing in New South Wales only, these results were 'scaled up' to determine an extrapolated national level, based on New South Wales's share of national conveyancing transactions (26.2%)⁵⁰, and reflecting the revisions to the cost estimates made in 2010.

Table A-2: Conveyancing in-scope transactions in Australia

Jurisdiction	Number	Industry share
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⁴⁸ See http://hecnsw.lpi.nsw.gov.au/_data/assets/pdf_file/0006/143934/NECS_KPMG_final_report_Jan_2009.pdf

⁴⁹ This relates to transactions in scope which is 70% of all transactions (equivalent to approximately 988 000).

⁵⁰ NECO, *Draft Funding Model for a National Electronic Conveyancing System* (March 2008), p.35

Jurisdiction	Number	Industry share
NSW	259,105	26.2%
Victoria	253,387	25.6%
Queensland	230,776	23.4%
Western Australia	133,895	13.6%
South Australia	67,908	6.9%
Tasmania	20,678	2.1%
ACT	13,284	1.3%
Northern Territory	8,966	0.9%
Australia	988,000	100.0%

Source: NECO Draft Funding Model for a National Electronic Conveyancing System, March 2008

Some minor adjustments to scaling up have been applied taking account of differences between conveyancing processes in other jurisdictions.

1.3. Allocating net savings to the private and public sectors

To allocate costs and savings to the private and public sectors, a line-by-line analysis was undertaken to consider the parties in the community which are likely to bear the additional costs and earn the cost savings and the approximate share of each cost/saving category (see Table A-8).

A key assumption in the modelling process was that the majority of the categories were likely to be borne either by the private sector or the public sector, with the exception of:

- Industry IT capital and other set up costs – stakeholders identified in consultations for the 2008 economic appraisal that Government agencies (other than Land Registries) would bear some costs relating to the IT infrastructure required by industry stakeholders to interface with the ELN.
- IT maintenance and training costs – stakeholders reported that IT maintenance cost would be approximately 10 to 20% of the initial capital investment per annum. An assumption of 15% has been used for the economic modelling; and
- Data entry and rework savings – assumed that the savings will be split approximately equally between the Government, banks and other financial institutions and conveyancers/solicitors.

1.4. Timeframe

The estimates of the impact of National Electronic Conveyancing in this analysis have been modelled using the following key timeframe assumptions:

- the timeframe for the analysis is 17 years (15 years plus two years planning / system build);
- National Electronic Conveyancing become commercially operational over the period in 2013-14;
- the results have been presented in 2011 dollars;
- cash flows are nominal;

- a discount rate of 7% has been used for all net present value (NPV) calculations; and
- estimates of IT capital costs required for industry changes have been updated from the 2008 economic appraisal.

As the adoption of National Electronic Conveyancing by stakeholders is not mandatory, the results in this analysis are dependent on the assumed take-up rates (see Table A-3).

Table A-3: Assumed take up rates

Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Year 11	Year 12	Year 13 onwards
0%	0%	3%	9%	18%	29%	42%	58%	73%	85%	93%	97%	100%

Source: NECO, Draft Funding Model for a National Electronic Conveyancing System (March 2008 Unpublished)

If National Electronic Conveyancing is not used by stakeholders (either in part or in full), the impacts (both costs and benefits) identified in this analysis will not be fully realised.

1.5. Assumptions

The table below summarises the costs and benefits of National Electronic Conveyancing used as inputs for the modelling. These assumptions, developed in consultation with government and industry stakeholders as part of the 2008 economic appraisal, have been adjusted for the increase in the consumer price index (CPI) since the 2008 economic appraisal.

Table A-4: Summary of inputs used for modelling

Capital costs	Assumption
IT and set up costs	
Industry IT capital and set up costs	\$0.01m - \$6.5m per industry participant (refer Table A-6 for further detail)
ELN establishment	Approximately \$24m ⁵¹
Recurrent costs	Assumption
IT maintenance and training cost	
Industry IT maintenance cost	15% of IT capital cost per annum
Staff training	\$81.00 per user on set-up (10% per annum thereafter)
ELNO costs	
ELN operating cost	Approximately \$33m per annum (typical mature year)
Administration of users and client authorisation	
Digital Signature Certificate (DSC)	\$101.20 to \$202.50 per administrator/certifier

⁵¹ This was an estimate made in 2008 based on the NECO draft funding model (unpublished).

Subscriber administration of users	\$40.40 per user
Client authorisation	\$10.20 per counterpart
Cleared funds approval	
Cleared funds approval	\$10.80 per cleared funds approval
Industry support costs	
LSP service costs	Approximately \$11.60 per transaction
Recurrent savings	Assumption
Data entry and re-work savings	
Reduced duplicated data entry	\$5.40 per instrument
Reduced re-work / requisitions	\$30.20 per requisition
Settlement and lodgment savings	
Reduced time to organise settlement	\$40.40 per representative at settlement
Settlement agent/attendance savings	\$48.50 per representative at settlement
Lodgment agent/attendance savings	\$14.50 per lodgment
Courier and bank cheque savings	
Reduced courier/postage costs	\$21.50 per case (assumes 20% of cases use a courier)
Bank cheque savings	\$10.80 per cheque
Certificate of Title (CT) related savings	
Reduction in handling /storing CT	\$32.30 per CT
Reduction in replacement CT costs	\$278.90 per replacement CT
Production of CT	\$80.80 per CT production

Source: updated from 2008 Economic Appraisal.

Industry IT costs relate to the IT infrastructure required by industry stakeholders to interface with an ELN. The table below shows the number of national industry participants and the associated estimate of the capital costs relevant to each type of participant. The table shows that IT capital costs have been estimated to vary between \$0.01m and \$6.5m per participant. As noted in the modelling assumptions above, these estimates have been updated since the 2008 economic appraisal⁵² and adjusted for the increase in CPI.

⁵² In 2009 LIXI, a not-for-profit company that develops open IT standards for the Australian mortgage processing industry, commissioned an independent study by Brand Management of the cost and time changes of NECS for major lenders for settlements, see the conference papers at http://www.inassociation.com.au/images/stories/event_44/lixi%20presentations2009.pdf (pages 86-114). This identified a \$70 million investment cost nationally per major bank, however this was also accompanied by significantly higher savings than assumed in the 2008 economic appraisal of National Electronic Conveyancing in NSW. To accommodate for the updated estimate for costs to industry, the investment cost used in the 2008 economic appraisal has been doubled and adjusted to account for annual cost escalation.

Table A-5: Industry IT capital cost estimates

Industry Participant Category	Number of national industry participants	Capital cost per industry participant (\$m)	Total investment cost (\$m)
Licensed Service Providers (LSPs)	12	\$1.1	\$13.0
Major retail banks	4	\$6.5	\$26.0
Other financial institutions	54	\$1.1	\$58.5
Building societies and credit unions	160	\$0.1	\$17.3
Major mortgage processors	20	\$1.1	\$21.7
Mid to large legal practices	50	\$0.4	\$21.7
Legal & conveyancing practices using case management software	2,500	\$0.02	\$54.2
Other practices, industry and government	3,200	\$0.01	\$34.7
Total participants	6,000		\$246.9

Source: updated from 2008 Economic Appraisal

The quantity assumptions used to uplift the costing assumptions are shown in the table below. These have been scaled up from the original NSW quantity assumptions used in the 2008 economic appraisal. Activity levels are assumed to increase by 2% per annum.

Table A-6: Quantity assumptions

Quantity type	Assumption
Total transactions	988,000
Total registry Instrument counterparts	3,341,795
Total registry instruments	2,003,692
Total settlements	809,982
Total industry representative attendances at settlement	1,913,694
Counterparts requiring client authorisation (assumes 49% of instrument counterparts)	1,636,187
Users	94,400
Number of mortgage cases	759,546
Annual applications for a replacement duplicate CT	10,887
Production of CT	108,346
Transactions affected by requisitions	6%
Number of CTs per mortgage case	1.1

Quantity type	Assumption
Number of cheques per transaction	3.8
Number of cleared fund approvals per transaction	1.7
Number of transactions requiring a courier	20%
Proportion of transactions involving an LSP	88%

Source: 20098 Economic Appraisal, updated for national coverage

2. Impact

Table A-7 shows the detailed estimates of the economic impact of National Electronic Conveyancing. The cost and savings categories are briefly explained below.

Table A-7: Economic impact of National Electronic Conveyancing (\$m, 2011 dollars)

NPV National Electronic Conveyancing	
Capital costs	
Industry IT capital and other set up costs	(\$215.7)
ELN establishment costs	(\$22.1)
Land Registry IT costs	(\$21.1)
Total capital costs	(\$258.9)
Recurrent costs	
IT maintenance and training costs	(\$309.6)
Ongoing ELN operating costs	(\$231.9)
Administration of users and client authorisation	(\$245.8)
Cleared funds approval	(\$164.3)
Industry support costs	(\$94.3)
Land Registry ongoing costs	(\$38.1)
Total recurrent costs	(\$1,084.1)
Savings	
Data entry and rework savings	\$101.2
Settlement and lodgment savings	\$1,215.9
Courier and bank cheque savings	\$249.0
CT related savings	\$211.1
Land Registry savings	\$147.8
Total savings	\$1,924.9
NPV	
Net Present Value (2011-12 to 2027-28)	\$582.0

Source: Scaled up and adjusted from KPMG 2008 economic appraisal

In terms of the major cost and savings associated with National Electronic Conveyancing:

- The majority of the savings (63%) will be attributable to 'Settlement and lodgment savings' (\$1,215.9m), because National Electronic Conveyancing will remove the need to arrange and physically attend settlement and lodgment.
- The largest anticipated cost components are 'IT maintenance and training costs' (\$309.6m) and 'Administration of users and client authorisation' (\$245.8m), together comprising approximately 41% of total capital and recurrent costs during the period 2011-12 and 2027-28.

- Upfront total capital costs are estimated to be \$258.9m, with 'Industry IT capital and other set up costs' the largest component (\$215.7m).

2.1. Impact on private sector and public sector

To allocate the quantified costs and savings to the private sector and public sector, a line-by-line analysis was undertaken to consider which parties in the community are likely to bear the additional costs and enjoy the cost savings and to estimate the approximate share of each cost/saving category accruing to each party.

A key assumption made in the modelling for this Analysis is that all National Electronic Conveyancing costs (i.e. 'ELN establishment costs' and 'Ongoing ELN operating costs') are borne by the private sector, the private and government sector investment in the ELN is recovered through ELN user fees.

The modelling for this analysis also assumes that the private sector will bear the majority of costs relating to IT infrastructure, as this will allow industry stakeholders to interface with the ELN. However, stakeholder consultations for the 2008 economic appraisal suggested that some Government users of National Electronic Conveyancing (other than Land Registries) would incur some expenditure to develop the IT infrastructure to allow them to interface with the ELN.

Given that the overwhelming majority of users of the ELN are expected to be industry stakeholders, we have assumed that the approximate split between private sector and public sector share for 'Industry IT capital and other set up costs' will be 95% (private sector) and 5% (public sector).

These assumptions have a significant impact on the allocation of savings across the public and private sector, but not the total savings. The shares should be considered indicative only.

Table A-8: Assumed shares of costs and savings of National Electronic Conveyancing between private and public sectors

Cost/savings category	NPV of (costs)/savings (\$m)	Private sector share	Public sector share
Capital costs			
Industry IT capital and other set up costs	(\$215.7)	95%	5%
ELN establishment costs	(\$22.1)	100%	0%
Land Registry IT costs	(\$21.1)	0%	100%
Recurrent costs			
IT maintenance and training costs	(\$309.6)	80%	20%
Ongoing ELN operating costs	(\$231.9)	100%	0%
Administration of users and client authorisation	(\$245.8)	100%	0%
Cleared funds approval	(\$164.3)	100%	0%
Industry support costs	(\$94.3)	100%	0%

Cost/savings category	NPV of (costs)/savings (\$m)	Private sector share	Public sector share
Land Registry support costs	(\$38.1)	0%	100%
Savings			
Data entry and rework savings	\$101.2	67%	33%
Settlement and lodgment savings	\$1,215.9	100%	0%
Courier and bank cheque savings	\$249.0	100%	0%
CT related savings	\$211.1	100%	0%
Land Registry savings	\$147.8	0%	100%

Source: Scaled up and adjusted from KPMG 2008 economic appraisal. Note: NPV calculated over 2011-12 to 2027-28 period.

Capital costs

- **Industry IT capital and other set up costs** – these costs relate to the IT infrastructure required by industry stakeholders to interface with an ELN.
- **ELN establishment costs** – capital expenditure undertaken by an ELNO to set up a network for National Electronic Conveyancing, as estimated by NECO in the unpublished *NECS Draft Funding Model*.
- **Land Registry IT costs** – these costs relate to the IT system investments and initial costs to establish legislation, practices and to communicate with stakeholders, e.g. information collection IT costs, document preparation IT costs, document lodgment IT costs, instrument registration IT costs, document publication IT costs.

Recurrent costs

- **IT maintenance and training costs** – any maintenance costs incurred in operating the IT system, and any training of staff to become accustomed with National Electronic Conveyancing arrangements.
- **Ongoing ELN operating costs** – those costs incurred in delivering services through outsourced suppliers, salaries and related expenses (including directors' fees) and other expense incurred in supporting operations.
- **Administration of users and client authorisation costs** – these costs relate to the electronic authentication system required to irrefutably identify industry practitioners certifying and signing registry instruments, information reports and settlement statements on behalf of their clients, which are to be carried out through the use of government endorsed digital signature certificates.
- **Cleared funds approval costs** – these costs relate to a new activity and replace the preparation of bank cheques. They relate to the requirement for financial institutions to allocate and certify cleared funds for transactions, which provide the source of funds for the disbursement electronically, rather than in the form of a bank cheque.
- **Industry support costs** – the costs that will be incurred by licensed service providers who will provide tailored interfaces, integration and support services as an alternative to direct (retail) access to the ELN.
- **Land Registry ongoing costs** – recurrent costs incurred by Land Registries relating to information searches and collection, document preparation, document lodgment, instrument registration and document preparation.

Savings

- **Data entry and rework savings** – the savings from reduced data entry as information populated into the ELN Workspace can be re-used, avoiding duplication and reducing the time required for preparing mortgages, transfers, discharges and other instruments.
- **Settlement and lodgment savings** – the savings relating to the reduced time to organise settlement and lodgment.
- **Courier and bank cheque savings** – the reduced time and costs of courier trips required to provide documentation to settlement agents and solicitors/ conveyancers during a transaction.
- **CT related savings** – the savings relating to the introduction of “optional no-CT” where transacting clients who are currently a subscriber to the ELN will be able to elect to not have a CT issued. The savings will be realised through a number of factors including lower transport, administration and storage costs of CTs and lower search and replacement costs for CTs.
- **Land Registry savings** – savings attributable to reduced staff time in processing electronic conveyancing transactions, in areas such as document preparation, document lodgment, instrument registration and document publication.

Table A-9 shows a more detailed breakdown of the parties, including key private sector stakeholders, who are assumed to bear the costs and realise the savings of the introduction of National Electronic Conveyancing.

Table A-9: Anticipated attribution of costs and savings of National Electronic Conveyancing to key stakeholder

Cost/savings category	Government	Financial institutions	Legal	Licensed service providers
Capital costs				
Industry IT capital and other set up costs	✓	✓	✓	✓
ELN establishment costs	x	✓	✓	✓
Land Registry IT costs	✓	x	x	x
Recurrent costs				
IT maintenance and training costs	✓	✓	✓	✓
Ongoing ELN operating costs	x	✓	✓	✓
Administration of users and client authorisation	x	✓	✓	x
Cleared funds approval	x	✓	x	x
Industry support costs	x	x	x	✓
Land Registry support costs	✓	x	x	x
Savings				
Data entry and rework savings	✓	✓	✓	x
Settlement and lodgment	x	✓	✓	✓

Cost/savings category	Government	Financial institutions	Legal	Licensed service providers
savings				
Courier and bank cheque savings	x	✓	✓	x
CT related savings	x	✓	x	x
Land Registry savings	✓	x	x	x

Source: Scaled up and adjusted from KPMG 2008 economic appraisal

The modelling of costs and savings for this analysis does not take into account end-users, or purchasers of properties, as this analysis was not undertaken in the 2008 economic appraisal. As a result, this is likely to understate the net savings realised by the public sector, as the Government is expected to pass through to end-users a portion of the costs it incurs.

Table A-10: Summary of impact of National Electronic Conveyancing on key stakeholder groups (\$m, 2011 dollars)

	NPV Total	NPV Private	NPV Public
Economic appraisal results			
Capital costs	(\$258.9)	(\$226.9)	(\$31.9)
Recurrent costs	(\$1,084.1)	(\$984.1)	(\$100.0)
Savings	\$1,924.9	\$1,743.4	\$181.5
NPV (2010-11 to 2026-27)	\$582.0	\$532.4	\$49.6

Source: Scaled up and adjusted from KPMG 2008 economic appraisal

Table A-11: Summary of impact of National Electronic Conveyancing on key stakeholder groups (% share)

	Share of costs and benefits	
	Private	Public
Economic appraisal results		
Capital costs	88%	12%
Recurrent costs	91%	9%
Savings	91%	9%

Source: Scaled up and adjusted from KPMG 2008 economic appraisal

The modelling suggests that the majority of the savings will be realised by the private sector. This is because it is assumed that most of the public sector's savings will result in limiting upward pressure on fees to end users (all other things being held equal).

2.1.1. Private sector

The following groups were considered in analysing the economic impact of National Electronic Conveyancing on the private sector:

- banks and other financial institutions;
- conveyancers and legal practitioners;
- mortgage processors; and
- licensed service providers of electronic conveyancing.

All of these parties have been grouped together into a general 'private sector' group.

Licensed service providers (LSPs) have been defined in the *NECS Roadmap* documents as businesses that will provide tailored interfaces, integration and support services to subscribers as an alternative to direct access to the ELN. LSPs are anticipated to be a new group in the conveyancing industry and do not currently exist. However, it seems likely that some existing parties, such as information brokers and case management software providers, may seek to enter into this activity as it will be a natural extension of their existing activities. As a result, it has not been possible to determine the change in costs or cost savings for LSPs as these are effectively largely embedded in the costs and savings for the existing parties.

The introduction of National Electronic Conveyancing will negatively impact on settlement and lodgment officers, who attend settlement and act for the mortgagees and practitioners as lodgment agents. While it is recognised that electronic conveyancing will not eliminate the need for settlement and lodgment officers as paper documents will still be required as not all instruments will be in scope, in general the volume of paper-based conveyancing transactions will be significantly reduced. This will lead to a decline in the demand for settlement and lodgment officers in the future.

Based on the analysis outlined in the below table, the net savings attributed to the Australian national private sector are estimated to be \$532.4m (NPV) over the period 2011-12 to 2027-28.

Table A-12: Detailed economic impact by category on private sector (\$m, 2011 dollars)

National Electronic Conveyancing	NPV
Capital costs	
Industry IT capital and other set up costs	(\$204.9)
ELN establishment costs	(\$22.1)
Land Registry IT costs	\$0.0
Total capital costs	(\$226.9)
Recurrent costs	
IT maintenance and training costs	(\$247.7)
Ongoing ELN operating costs	(\$231.9)
Administration of users and client authorisation	(\$245.8)
Cleared funds approval	(\$164.3)
Industry support costs	(\$94.3)
Land Registry ongoing costs	\$0.0
Total recurrent costs	(\$984.1)
Savings	
Data entry and rework savings	\$67.5
Settlement and lodgment savings	\$1,215.9
Courier and bank cheque savings	\$249.0
CT related savings	\$211.1
Land Registry savings	\$0.0
Total savings	\$1,743.4
NPV	
Net Present Value (2011-12 to 2027-28)	\$532.4

Source: Scaled up and adjusted from KPMG 2008 economic appraisal

2.1.2. Public sector

Based on the analysis, the net savings attributed to the Australian national public sector is estimated to be \$49.6m (NPV terms) between 2011-12 and 2027-28.

The consideration of the economic impact of National Electronic Conveyancing on the public sector includes the various Land Registries in each jurisdiction and the Offices of State Revenue (or equivalent).

Table A-13: Detailed economic impact by category on public sector (\$m, 2011 dollars)⁵³

NPV National Electronic Conveyancing	
Capital costs	
Industry IT capital and other set up costs	(\$10.8)
ELN establishment costs	\$0.0
Land Registry IT costs	(\$21.1)
Total capital costs	(\$31.9)
Recurrent costs	
IT maintenance and training costs	(\$61.9)
Ongoing ELN operating costs	\$0.0
Administration of users and client authorisation	\$0.0
Cleared funds approval	\$0.0
Industry support costs	\$0.0
Land Registry ongoing costs	(\$38.1)
Total recurrent costs	(\$100.0)
Savings	
Data entry and rework savings	\$33.7
Settlement and lodgment savings	\$0.0
Courier and bank cheque savings	\$0.0
CT related savings	\$0.0
Land Registry savings	\$147.8
Total savings	\$181.5
NPV	
Net Present Value (2011-12 to 2027-28)	\$49.6

Source: Scaled up and adjusted from KPMG 2008 economic appraisal

3. Sensitivity analysis

Sensitivity analysis has been undertaken to quantify the impact on the NPV calculations of varying a number of assumptions:

- discount rates of 5, 7 and 10 percent;
- take up rate: +/- 10 percent of the base annual take up rate assumptions (up to a maximum of 100% take up);
- costs: +/- 10 percent of the capital and recurrent cost estimates;
- savings: +/- 10 percent of the recurrent savings estimates; and
- capital costs: increasing the IT and set up capital costs for industry and government by 50 percent.

Table A-14 Impact of varying discount rate on Economic Impact – National Electronic Conveyancing (\$m, 2011 dollars)

Economic appraisal results	Discount rate		
	5%	7%	10%
Capital costs	(\$268.5)	(\$258.9)	(\$245.3)
Recurrent costs	(\$1,288.0)	(\$1,084.1)	(\$852.7)
Savings	\$2,409.9	\$1,924.9	\$1,395.4
Net Present Value (2011-12 to 2027-28)	\$853.4	\$582.0	\$297.4

⁵³ The positive net economic benefit to the public sector is not necessarily equivalent to the financial impact on the public sector (i.e. the impacts on the LPI). The results of the 2008 economic appraisal, which included a financial appraisal, outlined the financial impacts of the project for the LPI based on information available at the time.

Table A-15: Impact of varying take up rate on Economic Impact – National Electronic Conveyancing (\$m, 2011 dollars)

Economic appraisal results	Take up rate		
	10% lower than base in each year	Base	10% higher than base in each year
Capital costs	(\$258.9)	(\$258.9)	(\$258.9)
Recurrent costs	(\$1,084.1)	(\$1,084.1)	(\$1,084.1)
Savings	\$1,747.2	\$1,924.9	\$2,005.9
Net Present Value (2011-12 to 2027-28)	\$404.3	\$582.0	\$662.9

Table A-16 Impact of varying costs by +/-10 percent on Economic Impact – National Electronic Conveyancing (\$m, 2011 dollars)

Economic appraisal results	Costs		
	10% lower	Base	10% higher
Capital costs	(\$233.0)	(\$258.9)	(\$284.7)
Recurrent costs	(\$975.7)	(\$1,084.1)	(\$1,192.5)
Savings	\$1,924.9	\$1,924.9	\$1,924.9
Net Present Value (2011-12 to 2027-28)	\$716.3	\$582.0	\$447.7

Table A-17: Impact of varying savings by +/-10 percent on Economic Impact – National Electronic Conveyancing (\$m, 2011 dollars)

Economic appraisal results	Savings		
	10% lower	Base	10% higher
Capital costs	(\$258.9)	(\$258.9)	(\$258.9)
Recurrent costs	(\$1,084.1)	(\$1,084.1)	(\$1,084.1)
Savings	\$1,732.4	\$1,924.9	\$2,117.4
Net Present Value (2011-12 to 2027-28)	\$389.5	\$582.0	\$774.5

Table A-18: Impact of varying capital costs by +50 percent on Economic Impact – National Electronic Conveyancing (\$m, 2011 dollars)

Economic appraisal results	Capital costs		
	Base	50% higher	100% higher
Capital costs	(\$258.9)	(\$388.3)	(\$517.7)
Recurrent costs	(\$1,084.1)	(\$1,084.1)	(\$1,084.1)
Savings	\$1,924.9	\$1,924.9	\$1,924.9
Net Present Value (2011-12 to 2027-28)	\$582.0	\$452.6	\$323.1

Appendix B Consultation conducted since 2004

The broader National Electronic Conveyancing consultation program

Year	Consultation Strategy	Description
2004-2011	Various consultation methods	All jurisdictions have undertaken consultation with State and Territory based stakeholders.
2005 to 2010	National Electronic Conveyancing Office (NECO)	States and Territories agree to the formation of the National Electronic Conveyancing Office (NECO) in Melbourne. NECO initiates and coordinates consultation on electronic conveyancing from August 2005 to June 2010. NECO information is published at www.necs.gov.au
2005 to 2009	National Steering Committee (NSC)	Agreement on formation of National Steering Committee (NSC) with representatives from each jurisdiction and key industry bodies ⁵⁴ . First NSC meeting held in February 2006 approves NECO forward work program plan. Summary of meeting available at http://www.necs.gov.au/National-Steering-Committee-Progress/default.aspx The last NSC meeting occurred in the month following COAG adopting National Electronic Conveyancing as a national initiative under governance supervision of Business Regulation and Competition Working Group (BRCWG)
2005	Draft NECS Roadmap documents published	Versions of National Business Model (NBM), National Governance Arrangements (NGA), and National Implementation Strategy (NIS) published to jurisdictions and NSC for feedback and comment.
2006 to 2010	NECO website and <i>NECSpress</i>	NECO website established to provide information on National Electronic Conveyancing development progress and consultation information. The website provides access to NECS Roadmap documents, independent advice reports and records of consultation forums. The website is available at www.necs.gov.au . The <i>NECSpress</i> newsletter was launched in January 2006 to keep all interested stakeholders aware of developments of the National Electronic Conveyancing program. It also invited stakeholders to provide feedback on published Roadmap documents and raise any issues or concerns they may have with National Electronic Conveyancing development.

⁵⁴ Details of the membership of the National Steering Committee are available at <http://www.necs.gov.au/National-Steering-Committee/default.aspx>

Year	Consultation Strategy	Description
July 2006	NECS Roadmap documents updated and published	National Roadmap documents updated and re-published on NECO website as a result of feedback from stakeholders. The NECS Operations Description (NOD) published to provide industry and government with an overview of how National Electronic Conveyancing will work. This provided stakeholders information about the practicalities of electronic conveyancing.
August 2006	SPT Forum initiated	State Project Team of jurisdictions formed to consult on Land Registry requirements
2006-07	National Roadshows, Online and Open Forums	In each jurisdiction, NEC Roadshows were held to directly acquaint stakeholders with electronic conveyancing as well as gaining specific insight from stakeholders in identifying barriers to adoption and any other risks or issues. Online forum topics were established as a consultation tool with all stakeholders able to provide feedback on the proposed program. Industry stakeholder groups were invited to comment on jurisdictional uniformity issues addressed by the State Project Teams Open forums were held in Sydney, Brisbane, Melbourne and Adelaide to enable stakeholders to discuss issues and debate concerns.
2006 to February 2007	NECS Risk Assessment	Meetings and workshops conducted in extensive stakeholder consultation by Clayton Utz to complete the risk assessment of the National Electronic Conveyancing program. ⁵⁵ The Final Report for Risk Assessment of the National Electronic Conveyancing System to the National Steering Committee is published at http://www.necs.gov.au/NECS-Independent-Expert-Advice-Reports/default.aspx
2006 to February 2007	NECS Ongoing Governance Arrangements	Stakeholder meetings and workshops in stakeholder consultation for NECS Ongoing Governance Arrangements. Final report Stage 4 - Recommended Governance Arrangements is published at http://www.necs.gov.au/NECS-Independent-Expert-Advice-Reports/default.aspx
2006 to March 2007	Regulatory Review	Consultation and publication of independent advice report by the Allen Consulting Group and Gilbert and Tobin providing a review of the regulatory environment in which the National Electronic Conveyancing will operate. The Regulatory Review Report dated March 2007 is published at http://www.necs.gov.au/NECS-Independent-Expert-Advice-Reports/default.aspx

⁵⁵ Clayton Utz, *Risk assessment of the national electronic conveyancing system*, 2007, p.4.

Year	Consultation Strategy	Description
June 2007	NECS Roadmap documents updated	Updated National Roadmap documents re-published as a result of feedback from stakeholders. The final versions of NECS Roadmap Documents are published at http://www.necs.gov.au/NECS-Roadmap-Documents/default.aspx
August 2007	NECS Requirements Definition (NRD)	Draft NRD published for consultation purposes to defines the functions and features of the software application and its supporting capabilities necessary for a facility that will achieve electronic conveyancing in Australia
2006 – 2010	Independent Expert Advice Reports	Additional independent expert advice reports have been prepared and released for public comment on a range of topics including: scope for Jurisdiction Legal Liability for Losses From Authorising an ELNO; Risk Assessment of DSC Types for Authorised Officers and Certifiers; and Report on Consistent Business Practice Issues.
2008 – 2010	National Project Team (NPT) meetings	The National Project Team was formed as a working group of industry and government stakeholder representatives for input nationally from those stakeholder groups. The National Project Team considered the feedback from stakeholders in response to issues papers released by the NECO. The NPT had 19 meetings to consider issues and negotiate industry compromises regarding the development of National Electronic Conveyancing. Details of the NPT and their meetings are published at http://www.necs.gov.au/National-Project-Team/default.aspx
May to November 2008	Economic Appraisal of NECS in NSW	An independent economic appraisal of the planned National Electronic Conveyancing System (NECS) commissioned by NSW Land Registry from KPMG of the costs and savings of introducing the electronic conveyancing in NSW. The appraisal involved extensive consultation with industry participants. The report is published at http://necsnsw.lands.nsw.gov.au/_data/assets/pdf_file/0012/100056/NECS_KPMG_final_report_Jan_2009.pdf
August 2008	NECS Requirements Definition (NRD) update	Revised version of the NRD published as a result of initial feedback received from jurisdictions and industry stakeholders.
2008 – 2011	National Electronic Conveyancing Data Standard	Consultation arrangements effected through LIXI (Lending Industry XML Initiative) relationship, including NECDS Working Group and the NECS Vocabulary wiki for developing and sharing a national vocabulary.

Year	Consultation Strategy	Description
2009-2010	NECS Glossary	The development and successive re-publication of the NECS Glossary as part of the National Roadmap to produce a uniform national solution. The NECS Glossary was published as a separate document from 2009. The latest version of the NECS Glossary is published at http://www.necs.gov.au/Publications/NECS-Glossary/default.aspx
May 2009-February 2010	NECS Legal Framework	Extensive stakeholder consultation regarding the national legal framework for National Electronic Conveyancing undertaken by Clayton Utz. The final NECS Legal Framework report is in two volumes and is published at http://www.necs.gov.au/NECS-Independent-Expert-Advice-Reports/default.aspx
November 2009 – March 2010	Regulators and insurance forum	NECO held a forum for regulators and insurers to discuss the development of National Electronic Conveyancing, especially the legal framework.
2010-2011	Project consultation	A single Client Identity Verification (CIV) Standard and Application procedure for property transactions for all jurisdictions is currently being undertaken involving extensive stakeholder consultation.
June 2010	National Business Model (NBM)	Revised version of the NBM published as a result of feedback received from jurisdictions and industry stakeholders. The latest version of the NRD is published at: http://www.necs.gov.au/NECS-Roadmap-Documents/default.aspx
December 2010	NECS Requirements Definition (NRD) update	Revised version of the NRD published containing content that has been reviewed with all key stakeholder groups through the National Project Team. The NRD is published at: http://www.necs.gov.au/NECS-Requirements-Definition/default.aspx
2011 -	ARNECC	Consulted with peak bodies including the Australian Bankers Association, Australian Institute of Conveyancers and Law Council of Australia

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Draft

Electronic Conveyancing National Law

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Draft Electronic Conveyancing National Law

An Act to make provision for a national law relating to electronic conveyancing.

Part 1 — Preliminary

1. Name of Act

This Act is the *Electronic Conveyancing National Law Act 2011*.

2. Commencement

This Act commences as follows —

- (a) sections 1 and 2 — on the date of assent,
- (b) the rest of the Act — on a day or days to be appointed by proclamation.

3. Definitions

- (1) For the purposes of this Act, the *local application provisions of this Act* are the provisions of this Act other than the Electronic Conveyancing National Law set out in Schedule 1.
- (2) In the local application provisions of this Act:
Electronic Conveyancing National Law (NSW) means the provisions applying in this jurisdiction because of section 4.

Part 2 — Application of Electronic Conveyancing National Law

4. Application of Electronic Conveyancing National Law

The Electronic Conveyancing National Law set out in Schedule 1:

- (a) applies as a law of this jurisdiction; and
- (b) as so applying may be referred to as the *Electronic Conveyancing National Law (NSW)*; and
- (c) as so applying, is part of this Act.

5. Meaning of generic terms in Electronic Conveyancing National Law for purposes of this jurisdiction

In the *Electronic Conveyancing National Law (NSW)*:

land titles legislation:

- (a) means the following Acts:
 - (i) the *Community Land Development Act 1989*,
 - (ii) the *Conveyancing Act 1919*,
 - (iii) the *Real Property Act 1900*,
 - (iv) the *Strata Schemes (Freehold Development) Act 1973*,
 - (v) the *Strata Schemes (Leasehold Development) Act 1986*,
 - (vi) any other Act prescribed by the regulations for the purposes of this definition, and
- (b) includes any regulations made under any of those Acts, and
- (c) also includes any other law of this jurisdiction that authorises or requires something to be registered, noted or recorded in the titles register.

Registrar means the Registrar-General.

registry instrument means any document that may be lodged under the land titles legislation for the purpose of:

- (a) creating, transferring, disposing of, mortgaging, charging, leasing or dealing with in any other way an estate or interest in land, or
- (b) getting something registered, noted or recorded in the titles register; or
- (c) getting the registration, note or record of something in the titles register changed, withdrawn or removed.

this jurisdiction means New South Wales.

titles register means:

- (a) the Register required to be maintained by section 31B(1) of the *Real Property Act 1900*, or
- (b) any other register prescribed by the regulations for the purposes of this definition.

1 **6. Responsible tribunal for *Electronic Conveyancing National Law (NSW)***

2 The Supreme Court is the responsible tribunal for this jurisdiction for the purposes of the
3 *Electronic Conveyancing National Law (NSW)*.

4 **7. Exclusion of interpretation legislation of this jurisdiction**

5 The *Interpretation Act 1987* does not apply to the *Electronic Conveyancing National Law*
6 (*NSW*) or to the instruments made under that Law.

7 **8. Regulations**

8 The Governor may make regulations, not inconsistent with this Act, for or with respect to
9 any matter that by this Act is required or permitted to be prescribed or that is necessary or
10 convenient to be prescribed for carrying out or giving effect to this Act.

11

Schedule 1 — Electronic Conveyancing National Law

[s. 4]

Part 1 — Preliminary

1. Short title

This Law may be cited as the Electronic Conveyancing National Law.

2. Commencement

This Law commences in a participating jurisdiction as provided by the application law of that jurisdiction.

3. Definitions

(1) In this Law:

application law means a law of a participating jurisdiction that:

- (a) applies this Law, either with or without modifications, as a law of the participating jurisdiction, or
- (b) substantially corresponds to the provisions of this Law.

ARNECC means the Australian Registrars' National Electronic Conveyancing Council established by the Intergovernmental Agreement.

associated financial transaction means a transaction of a financial nature that is associated with a conveyancing transaction.

Examples

1. The payment of the purchase price for the sale and purchase of an interest in land.
2. The advancing of money in return for the granting of a mortgage or charge over an interest in land.
3. The payment of any tax, duty (for example, stamp duty), fee or charge payable in respect of the conveyancing transaction.

client authorisation has the meaning given in section 10.

compliance examination has the meaning given in section 33.

conveyancing transaction means a transaction that involves one or more parties and the purpose of which is:

- (a) to create, transfer, dispose of, mortgage, charge, lease or deal with in any other way an estate or interest in land, or
- (b) to get something registered, noted or recorded in the titles register, or
- (c) to get the registration, note or record of something in the titles register changed, withdrawn or removed.

digital signature means encrypted electronic data intended for the exclusive use of a particular person as a means of identifying that person as the sender of an electronic communication or the signer of a document.

ELN means Electronic Lodgment Network — see section 13.

ELNO means Electronic Lodgment Network Operator — see section 15.

Intergovernmental Agreement means the Intergovernmental Agreement for a National Electronic Conveyancing Law made on [00 00 2011] between the State of New South Wales, the State of Victoria, the State of Queensland, the State of Western Australia, the State of South Australia, the State of Tasmania, the Australian Capital Territory and the Northern Territory of Australia, as in force for the time being.

cl. 4

1 *jurisdiction* means State.

2 *land titles legislation*, for the purposes of the application of this Law as a law of a jurisdiction,
3 has the meaning given by the application law of the jurisdiction.

4 *law*, in relation to a Territory, means a law of, or in force in, that Territory.

5 *law of this jurisdiction* includes the principles and rules of common law and equity to the
6 extent that they have effect in this jurisdiction from time to time.

7 *lodge* includes deposit, present and file.

8 *operating requirements* means the requirements determined under section 22.

9 *participating jurisdiction* means a jurisdiction that is a party to the Intergovernmental
10 Agreement and in which:

- 11 (a) this Law applies as a law of the jurisdiction, either with or without modifications, or
12 (b) a law that substantially corresponds to the provisions of this Law has been enacted.

13 *participation agreement*, in relation to an ELN, means:

- 14 (a) if an ELNO provides and operates the ELN, an agreement between the ELNO and
15 another person under which the other person is authorised to use that ELN, or
16 (b) if the Registrar provides and operates the ELN, an agreement between the Registrar
17 and another person under which the other person is authorised to use that ELN.

18 *participation rules* means the rules determined under section 23.

19 *Registrar*, for the purposes of the application of this Law as a law of a jurisdiction, has the
20 meaning given by the application law of the jurisdiction.

21 *registry instrument*, for the purposes of the application of this Law as a law of a jurisdiction,
22 has the meaning given by the application law of the jurisdiction.

23 *responsible tribunal*, for the purposes of the application of this Law as a law of a jurisdiction,
24 has the meaning given by the application law of the jurisdiction.

25 *State* includes a Territory.

26 *subscriber* means a person who is authorised under a participation agreement to use an ELN
27 to complete conveyancing transactions on behalf of another person or on their own behalf.

28 *Territory* means the Australian Capital Territory or the Northern Territory of Australia.

29 *titles register*, for the purposes of the application of this Law as a law of a jurisdiction, has the
30 meaning given by the application law of the jurisdiction.

- 31 (2) A term used in this Law or a statutory instrument and also in the land titles legislation has the
32 same meaning in this Law or the statutory instrument as it has in that legislation, unless the
33 term is defined in this Law or the statutory instrument or the context requires otherwise.

34 **4. Interpretation generally**

35 Schedule 1 applies in relation to this Law.

36 **5. Object of this Law**

- 37 (1) The object of this Law is to promote efficiency throughout Australia in property conveyancing
38 by providing a common legal framework that enables documents in electronic form to be
39 lodged and dealt with under the land titles legislation of each participating jurisdiction.

40

1 (2) In order to achieve this object, this Law, among other things, authorises the Registrar in each
2 participating jurisdiction to operate or authorise the operation of an Electronic Lodgment
3 Network, and provides for the making of rules relating to the operation of the Electronic
4 Lodgment Network.

5 **6. Law binds the State**

6 (1) This Law binds the State.

7 (2) In this section:

8 *State* means the Crown in right of this jurisdiction, and includes:

- 9 (a) the Government of this jurisdiction, and
10 (b) a Minister of the Crown in right of this jurisdiction, and
11 (c) a statutory corporation, or other entity, representing the Crown in right of this
12 jurisdiction.

Part 2 — Electronic Conveyancing

Division 1 — Electronic lodgment

7. Documents may be lodged electronically

- (1) A document may be lodged electronically for the purposes of the land titles legislation if the document is lodged:
 - (a) in a form approved by the Registrar, and
 - (b) by means of an ELN provided and operated under this Law.
- (2) An approval for the purposes of subsection (1)(a) may be given under the land titles legislation or in some other way that the Registrar considers appropriate.

8. Registrar to process documents lodged electronically

The Registrar must receive and deal with a document in accordance with the land titles legislation if:

- (a) the document is lodged electronically in accordance with section 7, and
- (b) the document otherwise complies with the requirements of the land titles legislation, this Law, and any other law of this jurisdiction.

9. Status of electronic registry instruments

- (1) A registry instrument that is in a form in which it can be lodged electronically under section 7 has the same effect as if that instrument were in the form of a paper document.
- (2) A registry instrument that is digitally signed by a subscriber in accordance with the participation rules applicable to that instrument has the same effect as if a paper document having the equivalent effect had been executed by:
 - (a) if the subscriber signs under a client authorisation, each person for whom the subscriber signs in accordance with the client authorisation, or
 - (b) the subscriber in any other case.
- (3) If a registry instrument is digitally signed in accordance with the participation rules applicable to that instrument:
 - (a) the instrument is to be taken to be in writing for the purposes of every other law of this jurisdiction, and
 - (b) the requirements of any other law of this jurisdiction relating to the execution, signing, witnessing, attestation or sealing of documents must be regarded as having been fully satisfied.

Division 2 — Client authorisations and digital signatures

Subdivision 1 — Client authorisations

10. Client authorisations

- (1) A *client authorisation* is a document by which a party to a conveyancing transaction authorises a subscriber to do one or more things on that party's behalf in connection with the transaction so that the transaction, or part of the transaction, can be completed electronically.

- 1 (2) The following are examples of the things that a client authorisation may authorise a subscriber
2 to do:
- 3 (a) to digitally sign registry instruments or other documents,
 - 4 (b) to present registry instruments or other documents for lodgment electronically,
 - 5 (c) to authorise or complete any associated financial transaction.

6 **11. Effect of client authorisation**

- 7 (1) A properly completed client authorisation that is in the form required by the participation
8 rules:
- 9 (a) has effect according to its terms, and
 - 10 (b) is not a power of attorney for the purposes of any other law of this jurisdiction
11 relating to powers of attorney.
- 12 (2) If a client authorisation that is in the form required by the participation rules is properly
13 completed, the requirements of any other law of this jurisdiction relating to the execution,
14 signing, witnessing, attestation or sealing of documents must be regarded as having been fully
15 satisfied.
- 16 (3) Subsection (2) does not limit or affect the application of any law of this jurisdiction relating to
17 powers of attorney in relation to:
- 18 (a) the execution of a client authorisation under a power of attorney, or
 - 19 (b) a client authorisation executed under a power of attorney.

20 **Subdivision 2 — Digital signatures**

21 **12. Reliance on digital signatures**

- 22 (1) If a subscriber's digital signature is used to sign a registry instrument or other document in
23 connection with a conveyancing transaction, then in relation to that registry instrument or
24 document:
- 25 (a) unless the subscriber repudiates that signature, that signature binds:
 - 26 (i) that subscriber, and
 - 27 (ii) all other persons (if any) for whom that subscriber acts under a client
28 authorisation with respect to that conveyancing transaction, and
 - 29 (b) that signature is binding for the benefit of:
 - 30 (i) each of the parties to that conveyancing transaction, and
 - 31 (ii) each subscriber who acts under a client authorisation with respect to that
32 conveyancing transaction, and
 - 33 (iii) any person claiming through or under any person to whom subparagraph (i)
34 applies, and
 - 35 (iv) the Registrar, once the instrument or document is lodged electronically in
36 accordance with section 7, and
 - 37 (c) that subscriber cannot repudiate that signature except in the circumstances set out in
38 subsection (3).
- 39
40

- 1 (2) Subsection (1) applies regardless of:
- 2 (a) who used the subscriber’s digital signature, and
- 3 (b) the circumstances (including fraud) in which the subscriber’s digital signature was
- 4 used.
- 5 (3) Despite subsection (1), a subscriber may repudiate the subscriber’s digital signature with
- 6 respect to a registry instrument or other document if the subscriber establishes that:
- 7 (a) the person who used the subscriber’s digital signature to sign that instrument or
- 8 document (the *signer*) was none of the following:
- 9 (i) the subscriber,
- 10 (ii) an employee, agent, contractor or officer (however described) of the
- 11 subscriber, and
- 12 (b) the signer did not have the subscriber’s express or implied authority to sign that
- 13 instrument or document using the subscriber’s digital signature, and
- 14 (c) the signer was able to use the subscriber’s digital signature only because the security
- 15 of an electronic system that enables the digital signature to be used (a *system*) was
- 16 compromised, and
- 17 (d) neither of the following enabled the signer to use the subscriber’s digital signature to
- 18 sign that instrument or document:
- 19 (i) a failure by the subscriber, or any of the subscriber’s employees, agents,
- 20 contractors and officers, to fully comply with the requirements of the
- 21 participation rules with respect to the security of the systems and the
- 22 reporting of incidents in which the security of a system was or might have
- 23 been compromised,
- 24 (ii) a failure by the subscriber, or any of the subscriber’s employees, agents,
- 25 contractors and officers, to take reasonable care to ensure that the security of
- 26 the systems was not compromised.

Part 3 — Electronic Lodgment Networks

Division 1 — Preliminary

13. Electronic Lodgment Network

- (1) An Electronic Lodgment Network (*ELN*) is an electronic system that enables the lodging of registry instruments and other documents in electronic form for the purposes of the land titles legislation.
- (2) An ELN may also enable the preparation of registry instruments and other documents in electronic form for lodging under the land titles legislation.

Division 2 — Operation of Electronic Lodgment Networks

14. Registrar may provide and operate ELN

The Registrar may provide and operate an ELN.

15. Registrar may approve ELNO to provide and operate ELN

- (1) The Registrar may approve a person as an Electronic Lodgment Network Operator (*ELNO*) to provide and operate an ELN.
- (2) The Registrar must not approve a person under this section unless the person meets the qualifications for approval set out in the operating requirements.
- (3) An approval under this section must be in writing and must state the period for which it is to have effect.
- (4) The Registrar may grant more than one approval under this section.

16. Conditions of approval as ELNO

- (1) The Registrar may attach conditions to an approval under section 15, and those conditions must be specified in the approval.
- (2) The Registrar may at any time, by notice in writing to the ELNO, vary or revoke the conditions attached to the approval of that ELNO or attach new or additional conditions.

17. Effect of approval as ELNO

- (1) A person who is approved as an ELNO under section 15 may provide and operate an ELN:
 - (a) for the period stated in the approval, and
 - (b) subject to the conditions (if any) attached to the approval, and
 - (c) in accordance with the operating requirements.
- (2) Subsection (1) is subject to sections 19 and 20.
- (3) In performing functions as an ELNO, a person approved under section 15 is not and does not represent the State, and is not an agent of the State.
- (4) The approval of a person as an ELNO does not restrict or prevent the provision, by that person, of services additional to those provided by the ELN.
- (5) Subsection (4) is subject to the operating requirements.

1 **18. ELNO required to comply with operating requirements**

2 A person approved as an ELNO under section 15 must comply with the operating
3 requirements.

4 **19. Renewal of approval as ELNO**

5 (1) The Registrar may renew an approval of a person as an ELNO under section 15 if the
6 Registrar is satisfied that the person continues to meet the qualifications for approval set out in
7 the operating requirements.

8 (2) The renewal of an approval under this section must be in writing and must state the period for
9 which the renewal is to have effect.

10 (3) In renewing an approval, the Registrar may exercise the powers in section 16 to attach
11 conditions to the approval or vary or revoke conditions attached to the approval.

12 **20. Revocation or suspension of approval as ELNO**

13 The Registrar may revoke or suspend the approval of a person as an ELNO in the
14 circumstances set out in the operating requirements.

15 **21. Monitoring of activities in ELN**

16 (1) The Registrar may monitor activities in an ELN for any purpose, including (without
17 limitation) for the purpose of maintaining the integrity of the titles register.

18 (2) This section does not limit Division 5.

19 **Division 3 — Operating requirements and participation rules**

20 **22. Operating requirements for ELNOs**

21 (1) The Registrar may determine, in writing, requirements relating to the operation of an ELNO
22 (*operating requirements*).

23 (2) The operating requirements may (without limitation) include provisions relating to the
24 following matters:

25 (a) the financial standing of an ELNO,

26 (b) compliance with the participation rules, including (without limitation):

27 (i) requiring an ELNO to use a participation agreement when authorising persons
28 to use an ELN, and

29 (ii) requiring participation agreements to incorporate the participation rules,

30 (c) the technical and operational requirements for an ELN,

31 (d) the insurance cover to be held by an ELNO,

32 (e) the circumstances in which the Registrar may suspend or revoke the approval of a
33 person as an ELNO,

34 (f) the giving of directions to an ELNO by the Registrar, for example a direction to
35 restrict, suspend or terminate a subscriber's or other person's use of an ELN.

23. Participation rules

- (1) The Registrar may determine, in writing, rules relating to the use of an ELN (*participation rules*).
- (2) The participation rules may (without limitation) include provisions relating to the following matters:
 - (a) the eligibility criteria for subscribers,
 - (b) the obligations of subscribers, including (without limitation) any representations or warranties they are required to give,
 - (c) the circumstances in which a subscriber's authority to use the ELN may be restricted, suspended or terminated,
 - (d) client authorisations,
 - (e) the obligations of subscribers to verify the identity of their clients,
 - (f) the certification of registry instruments and other documents for use in connection with the ELN,
 - (g) digital signing,
 - (h) the retention of documents created or obtained in connection with a subscriber's use of an ELN,
 - (i) compliance by subscribers with the participation rules, including (without limitation) how subscribers demonstrate compliance with the rules, the procedures for notifying non-compliance and how non-compliance may be remedied.

24. Registrar to have regard to nationally agreed model operating requirements and participation rules

- (1) In this section:
model provisions means any model operating requirements or model participation rules from time to time developed and published by ARNECC.
- (2) In determining operating requirements and participation rules under this Law, and in determining changes to those requirements or rules, the Registrar must have regard to the desirability of maintaining consistency with any model provisions.

25. Publication of operating requirements and participation rules

- (1) The Registrar must ensure that the following are made publicly available:
 - (a) the current operating requirements and participation rules,
 - (b) all superseded versions of the operating requirements and participation rules.
- (2) The operating requirements and participation rules, and any changes to either of them, must be made publicly available at least 20 business days before the operating requirements or participation rules or, as the case requires, the changes to them take effect.
- (3) However, changes to the operating requirements or participation rules may take effect within a shorter period (including immediately on being made publicly available), if the Registrar is satisfied that the changes need to take effect urgently because an emergency situation exists.

- 1 (4) For the purposes of subsection (3), an emergency situation exists if the Registrar considers
2 that, because of the occurrence of an event or the existence of particular circumstances, the
3 operation, security, integrity or stability of an ELN or the titles register or the land titles
4 system is being, or is likely to be, jeopardised.
- 5 (5) Documents may be made publicly available in accordance with this section in any manner the
6 Registrar considers appropriate, including (without limitation) by means of a website.

7 **26. Subscribers required to comply with participation rules**

- 8 (1) A subscriber who is authorised under a participation agreement to use an ELN must comply
9 with the participation rules relating to that ELN.
- 10 (2) If a subscriber contravenes those participation rules, the Registrar may:
11 (a) if the Registrar operates the ELN, restrict, suspend or terminate the subscriber's use
12 of the ELN,
13 (b) if an ELNO operates the ELN, direct the ELNO to restrict, suspend or terminate the
14 subscriber's use of the ELN.
- 15 (3) Subsection (2) does not limit or affect any right, power, authority or remedy that the Registrar
16 or an ELNO has under the operating requirements, the participation rules, a participation
17 agreement or any other law of this jurisdiction in relation to contravention of the participation
18 rules.

19 **27. Waiving compliance with operating requirements or participation rules**

- 20 (1) The Registrar may waive compliance with all or any provisions of the operating requirements
21 or participation rules.
- 22 (2) A waiver under this section may —
23 (a) be total or partial, and
24 (b) apply generally to all persons, or be limited in its application to particular persons or
25 particular classes of persons, and
26 (c) apply generally or be limited in its application by reference to specified exceptions or
27 factors, and
28 (d) apply indefinitely or for a specified period, and
29 (e) be unconditional or subject to conditions or restrictions.

30 **Division 4 — Appeals**

31 **28. Appeal against decisions of Registrar**

- 32 A person who is the subject of any of the following decisions (an *appellable decision*) may
33 appeal against the decision to the responsible tribunal:
34 (a) a decision by the Registrar to refuse to approve the person as an ELNO,
35 (b) a decision by the Registrar to refuse to renew the person's approval as an ELNO,
36 (c) a decision by the Registrar to suspend the person's approval as an ELNO,
37 (d) a decision by the Registrar to revoke the person's approval as an ELNO,
38

- 1 (e) a decision by the Registrar to attach a condition to the person's approval as an ELNO,
2 or to vary or revoke a condition of the person's approval as an ELNO, if the
3 attachment, variation or revocation of the condition is done without the person's
4 agreement,
- 5 (f) a decision by the Registrar to restrict, suspend or terminate the person's use, as a
6 subscriber, of an ELN operated by the Registrar,
- 7 (g) a decision by the Registrar to direct an ELNO to restrict, suspend or terminate the
8 person's use, as a subscriber, of the ELN operated by the ELNO.

9 **29. Determination of appeal**

- 10 (1) After hearing the appeal, the responsible tribunal may:
- 11 (a) confirm the appellable decision, or
12 (b) amend the appellable decision, or
13 (c) substitute another decision for the appellable decision.
- 14 (2) In substituting another decision for the appellable decision, the responsible tribunal has the
15 same powers as the Registrar under this Law.

16 **30. Costs**

- 17 (1) The responsible tribunal may make any order about costs it considers appropriate for the
18 proceedings under this Division.
- 19 (2) This section does not apply if the responsible tribunal has power under another law of this
20 jurisdiction to make an order about costs for proceedings under this Division.

21 **31. Relationship with Act establishing responsible tribunal**

22 This Division applies despite any provision to the contrary of the Act that establishes or
23 continues the responsible tribunal, but does not otherwise limit that Act.

24 **Division 5 — Compliance examinations**

25 **32. Definitions**

26 In this Division:

27 *ELNO* includes a former ELNO.

28 *subscriber* includes a former subscriber.

29 **33. Compliance examinations**

30 The Registrar may, on receiving a request or complaint from any person or on the Registrar's
31 own initiative, conduct an investigation (*compliance examination*) under this Part:

- 32 (a) in relation to an ELNO for either or both of the following purposes:
- 33 (i) ascertaining whether or not the operating requirements are being, or have
34 been, complied with,
- 35 (ii) investigating any suspected or alleged case of misconduct with respect to the
36 operation of an ELN,
- 37
38

- 1 (b) in relation to a subscriber for either or both of the following purposes:
2 (i) ascertaining whether or not the participation rules are being, or have been,
3 complied with,
4 (ii) investigating any suspected or alleged case of misconduct with respect to the
5 use of an ELN.

6 **34. Obligation to cooperate with examination**

- 7 (1) An ELNO or a subscriber in relation to whom a compliance examination is being conducted
8 must cooperate fully with the person conducting the compliance examination for the purpose
9 of ensuring that the person is able to conduct a proper compliance examination.
- 10 (2) In particular, an ELNO or a subscriber must comply with any reasonable request by the person
11 conducting the compliance examination:
12 (a) to furnish specified information or to produce specified documents, or
13 (b) to take specified action for the purposes of the compliance examination.
- 14 (3) If an ELNO fails, without reasonable excuse, to cooperate as required by this section, the
15 Registrar may take any action that the Registrar is authorised to take under the operating
16 requirements and that the Registrar considers appropriate, which may include (without
17 limitation) the suspension or revocation of the ELNO's approval under section 20.
- 18 (4) If a subscriber fails, without reasonable excuse, to cooperate as required by this section, the
19 Registrar may take any action that the Registrar is authorised to take under the operating
20 requirements, the participation rules or the land titles legislation and that the Registrar
21 considers appropriate.
- 22 (5) For the purposes of subsections (3) and (4), it is a reasonable excuse for an individual to fail to
23 give stated information, answer a question or to produce a document, if giving the
24 information, answering the question or producing the document might tend to incriminate the
25 individual.

26 **35. Registrar may refer matter to appropriate authority**

- 27 (1) In this section:
28 ***appropriate authority:***
29 (a) means a person, body or organisation who or which is empowered by a law of this
30 jurisdiction or of another State or the Commonwealth to take investigatory,
31 disciplinary or other action, and
32 (b) includes (without limiting paragraph (a)):
33 (i) a law enforcement agency, and
34 (ii) a regulatory or disciplinary body for persons engaged in any profession,
35 occupation, calling or business.
- 36 (2) Instead of conducting a compliance examination in relation to any matter, or at any time
37 during a compliance examination or after the completion of a compliance examination in
38 relation to any matter, the Registrar may refer the matter to an appropriate authority.
- 39 (3) If the Registrar refers a matter to an appropriate authority, the Registrar is not obliged to take
40 any other action in relation to the matter.

1 **36. Land titles legislation not limited**

2 Nothing in this Division limits or affects any provision of the land titles legislation that
3 authorises or permits any investigation, inquiry or examination of any kind.

1 **Part 4 — Miscellaneous**

2 **Division 1 — Delegation**

3 **37. Delegation by Registrar**

4 The Registrar may delegate to any other person:

- 5 (a) the power conferred by section 21 to monitor activities in an ELN,
6 (b) any function under Part 3 Division 5.

7 **Division 2 — Liability of Registrar**

8 **38. Registrar not obliged to monitor ELN or conduct compliance examination**

9 The Registrar is not obliged:

- 10 (a) to monitor activities in an ELN under section 21; or
11 (b) to conduct or complete a compliance examination under Part 3 Division 5.

12 **39. No compensation**

13 No person is entitled to receive compensation for any loss or damage arising out of anything
14 done or omitted in good faith in, or in connection with, the monitoring of activities in an ELN
15 under section 21 or the conduct of a compliance examination under Part 3 Division 5,
16 including (without limitation):

- 17 (a) any decision made, in good faith, not to monitor activities in an ELN or not to
18 conduct a compliance examination, and
19 (b) any decision made, in good faith, as to how activities in an ELN are to be monitored
20 or how a compliance examination is to be conducted.

21 **40. Registrar not responsible for additional services provided by ELNO**

22 The mere fact that an ELNO provides services that are additional to those provided by the
23 ELN operated by that ELNO does not make the Registrar responsible for the regulation or
24 operation of those additional services.

25 **Division 3 — Relationship with other laws**

26 **41. Other laws relating to electronic transactions not affected**

27 This Law is in addition to, and not in substitution for:

- 28 (a) the laws of this jurisdiction in relation to electronic transactions, and
29 (b) any other law of this jurisdiction that authorises or permits the use of electronic
30 documents for the purposes of the land titles legislation.

31
32 *[Note: Jurisdictions applying or enacting this Law will need to consider whether other laws of their*
33 *jurisdiction are inconsistent with it, and how any inconsistency should be resolved.]*

1 **42. Powers may be exercised for purposes of this Law**

2 If any provision of the land titles legislation empowers the making of an instrument of a
3 legislative or administrative character, or the doing of any other act or thing, that power is to
4 be construed (with all necessary changes) as including a general power to make instruments of
5 that character, or to do that act or thing, for the purposes of this Law.

1 **Schedule 1 — Miscellaneous provisions relating to interpretation**

2 [s. 4]

3 **Part 1 — Preliminary**

4 **1. Displacement of Schedule by contrary intention**

5 The application of this Schedule may be displaced, wholly or partly, by a contrary intention
6 appearing in this Law.

7 **Part 2 — General**

8 **2. Law to be construed not to exceed legislative power of Legislature**

9 (1) This Law is to be construed as operating to the full extent of, but so as not to exceed, the
10 legislative power of the Legislature of this jurisdiction.

11 (2) If a provision of this Law, or the application of a provision of this Law to a person, subject
12 matter or circumstance, would, but for this clause, be construed as being in excess of the
13 legislative power of the Legislature of this jurisdiction:

14 (a) it is a valid provision to the extent to which it is not in excess of the power, and

15 (b) the remainder of this Law, and the application of the provision to other persons,
16 subject matters or circumstances, is not affected.

17 (3) This clause applies to this Law in addition to, and without limiting the effect of, any provision
18 of this Law.

19 **3. Every section to be a substantive enactment**

20 Every section of this Law has effect as a substantive enactment without introductory words.

21 **4. Material that is, and is not, part of this Law**

22 (1) The heading to a Part, Division or Subdivision into which this Law is divided is part of this
23 Law.

24 (2) A Schedule to this Law is part of this Law.

25 (3) Punctuation in this Law is part of this Law.

26 (4) A heading to a section or subsection of this Law does not form part of this Law.

27 (5) Notes included in this Law (including footnotes and endnotes) do not form part of this Law.

28 **5. References to particular Acts and to enactments**

29 In this Law:

30 (a) an Act of this jurisdiction may be cited:

31 (i) by its short title, or

32 (ii) by reference to the year in which it was passed and its number, and

33 (b) a Commonwealth Act may be cited:

34 (i) by its short title, or

- 1 (ii) in another way sufficient in a Commonwealth Act for the citation of such an
2 Act,
3 together with a reference to the Commonwealth, and
4 (c) an Act of another jurisdiction may be cited:
5 (i) by its short title, or
6 (ii) in another way sufficient in an Act of the jurisdiction for the citation of such
7 an Act,
8 together with a reference to the jurisdiction.

9 **6. References taken to be included in Act or Law citation etc.**

- 10 (1) A reference in this Law to an Act includes a reference to:
11 (a) the Act as originally enacted, and as amended from time to time since its original
12 enactment, and
13 (b) if the Act has been repealed and re-enacted (with or without modification) since the
14 enactment of the reference, the Act as re-enacted, and as amended from time to time
15 since its re-enactment.
16 (2) A reference in this Law to a provision of this Law or of an Act includes a reference to:
17 (a) the provision as originally enacted, and as amended from time to time since its
18 original enactment, and
19 (b) if the provision has been omitted and re-enacted (with or without modification) since
20 the enactment of the reference, the provision as re-enacted, and as amended from time
21 to time since its re-enactment.
22 (3) Subclauses (1) and (2) apply to a reference in this Law to a law of the Commonwealth or
23 another jurisdiction as they apply to a reference in this Law to an Act and to a provision of an
24 Act.

25 **7. Interpretation best achieving Law's purpose**

- 26 (1) In the interpretation of a provision of this Law, the interpretation that will best achieve the
27 purpose or object of this Law is to be preferred to any other interpretation.
28 (2) Subclause (1) applies whether or not the purpose is expressly stated in this Law.

29 **8. Use of extrinsic material in interpretation**

- 30 (1) In this clause:
31 *extrinsic material* means relevant material not forming part of this Law, including, for
32 example:
33 (a) material that is set out in the document containing the text of this Law as printed by
34 the Government Printer, and
35 (b) a relevant report of a Royal Commission, Law Reform Commission, commission or
36 committee of inquiry, or a similar body, that was laid before the Parliament of this
37 jurisdiction before the provision concerned was enacted, and
38 (c) a relevant report of a committee of the Parliament of this jurisdiction that was made to
39 the Parliament before the provision was enacted, and
40 (d) a treaty or other international agreement that is mentioned in this Law, and

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- 1 (e) an explanatory note or memorandum relating to the Bill that contained the provision,
2 or any relevant document, that was laid before, or given to the members of, the
3 Parliament of this jurisdiction by the member bringing in the Bill before the provision
4 was enacted, and
5 (f) the speech made to the Parliament of this jurisdiction by the member in moving a
6 motion that the Bill be read a second time, and
7 (g) material in the Votes and Proceedings of the Parliament of this jurisdiction or in any
8 official record of debates in the Parliament of this jurisdiction, and
9 (h) a document that is declared by this Law to be a relevant document for the purposes of
10 this clause.

11 **ordinary meaning** means the ordinary meaning conveyed by a provision having regard to its
12 context in this Law and to the purpose of this Law.

- 13 (2) Subject to subclause (3), in the interpretation of a provision of this Law, consideration may be
14 given to extrinsic material capable of assisting in the interpretation:
15 (a) if the provision is ambiguous or obscure, to provide an interpretation of it, or
16 (b) if the ordinary meaning of the provision leads to a result that is manifestly absurd or
17 is unreasonable, to provide an interpretation that avoids such a result, or
18 (c) in any other case, to confirm the interpretation conveyed by the ordinary meaning of
19 the provision.
20 (3) In determining whether consideration should be given to extrinsic material, and in
21 determining the weight to be given to extrinsic material, regard is to be had to:
22 (a) the desirability of a provision being interpreted as having its ordinary meaning, and
23 (b) the undesirability of prolonging proceedings without compensating advantage, and
24 (c) other relevant matters.

25 **9. Effect of change of drafting practice**

26 If:

- 27 (a) a provision of this Law expresses an idea in particular words; and
28 (b) a provision enacted later appears to express the same idea in different words for the
29 purpose of implementing a different legislative drafting practice, including, for
30 example:
31 (i) the use of a clearer or simpler style, or
32 (ii) the use of gender-neutral language,

33 the ideas must not be taken to be different merely because different words are used.

34 **10. Use of examples**

35 If this Law includes an example of the operation of a provision:

- 36 (a) the example is not exhaustive, and
37 (b) the example does not limit, but may extend, the meaning of the provision, and
38 (c) the example and the provision are to be read in the context of each other and the other
39 provisions of this Law, but, if the example and the provision so read are inconsistent,
40 the provision prevails.

11. Compliance with forms

- (1) If a form is prescribed or approved by or for the purpose of this Law, strict compliance with the form is not necessary and substantial compliance is sufficient.
- (2) If a form prescribed or approved by or for the purpose of this Law requires:
- (a) the form to be completed in a specified way, or
 - (b) specified information or documents to be included in, attached to or given with the form, or
 - (c) the form, or information or documents included in, attached to or given with the form, to be verified in a specified way,
- the form is not properly completed unless the requirement is complied with.

Part 3 — Terms and references

12. Terms used

- (1) In this Law:

Act means an Act of the Legislature of this jurisdiction.

adult means an individual who is 18 or more.

affidavit, in relation to a person allowed by law to affirm, declare or promise, includes affirmation, declaration and promise.

amend includes:

- (a) omit or omit and substitute, or
- (b) alter or vary, or
- (c) amend by implication.

appoint includes reappoint.

Australia means the Commonwealth of Australia but, when used in a geographical sense, does not include an external Territory.

business day means a day that is not:

- (a) a Saturday or Sunday, or
- (b) a public holiday, special holiday or bank holiday in the place in which any relevant act is to be or may be done.

calendar month means a period starting at the beginning of any day of one of the 12 named months and ending:

- (a) immediately before the beginning of the corresponding day of the next named month, or
- (b) if there is no such corresponding day, at the end of the next named month.

calendar year means a period of 12 months beginning on 1 January.

commencement, in relation to this Law or an Act or a provision of this Law or an Act, means the time at which this Law, the Act or provision comes into operation.

Commonwealth means the Commonwealth of Australia but, when used in a geographical sense, does not include an external Territory.

confer, in relation to a function, includes impose.

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- 1 **contravene** includes fail to comply with.
- 2 **country** includes:
- 3 (a) a federation, or
- 4 (b) a state, province or other part of a federation.
- 5 **date of assent**, in relation to an Act, means the day on which the Act receives the Royal
- 6 Assent.
- 7 **definition** means a provision of this Law (however expressed) that:
- 8 (a) gives a meaning to a word or expression, or
- 9 (b) limits or extends the meaning of a word or expression.
- 10 **document** means any record of information however recorded, and includes:
- 11 (a) anything on which there is writing, or
- 12 (b) anything on which there are marks, figures, symbols or perforations having a meaning
- 13 for persons qualified to interpret them, or
- 14 (c) anything from which sounds, images or writings can be reproduced with or without
- 15 the aid of anything else, or
- 16 (d) a map, plan, drawing or photograph, or
- 17 (e) any record of information that exists in a digital form and is capable of being
- 18 reproduced, transmitted, stored and duplicated by electronic means.
- 19 **expire** includes lapse or otherwise cease to have effect.
- 20 **external Territory** means a Territory, other than an internal Territory, for the government of
- 21 which as a Territory provision is made by a Commonwealth Act.
- 22 **fail** includes refuse.
- 23 **financial year** means a period of 12 months beginning on 1 July.
- 24 **foreign country** means a country (whether or not an independent sovereign State) outside
- 25 Australia and the external Territories.
- 26 **function** includes a power, authority or duty.
- 27 **Gazette** means the Government Gazette of this jurisdiction.
- 28 **gazetted** means published in the Gazette.
- 29 **Gazette notice** means notice published in the Gazette.
- 30 **Government Printer** means the Government Printer of this jurisdiction, and includes any
- 31 other person authorised by the Government of this jurisdiction to print an Act or instrument.
- 32 **individual** means a natural person.
- 33 **insert**, in relation to a provision of this Law, includes substitute.
- 34 **instrument** includes a statutory instrument.
- 35 **internal Territory** means the Australian Capital Territory, the Jervis Bay Territory or the
- 36 Northern Territory.
- 37 **Jervis Bay Territory** means the Territory mentioned in the *Jervis Bay Territory Acceptance*
- 38 *Act 1915* (Cwlth).
- 39 **make** includes issue or grant.
- 40 **minor** means an individual who is under 18.
- 41 **modification** includes addition, omission or substitution.

- 1 **month** means a calendar month.
- 2 **named month** means 1 of the 12 months of the year.
- 3 **Northern Territory** means the Northern Territory of Australia.
- 4 **number** means:
- 5 (a) a number expressed in figures or words, or
- 6 (b) a letter, or
- 7 (c) a combination of a number so expressed and a letter.
- 8 **oath**, in relation to a person allowed by law to affirm, declare or promise, includes
- 9 affirmation, declaration or promise.
- 10 **office** includes position.
- 11 **omit**, in relation to a provision of this Law or an Act, includes repeal.
- 12 **party** includes an individual or a body politic or corporate.
- 13 **penalty** includes forfeiture or punishment.
- 14 **person** includes an individual or a body politic or corporate.
- 15 **power** includes authority.
- 16 **printed** includes typewritten, lithographed or reproduced by any mechanical or electronic
- 17 means.
- 18 **proceeding** means a legal or other action or proceeding.
- 19 **provision**, in relation to this Law or an Act, means words or other matter that form or forms
- 20 part of this Law or the Act, and includes:
- 21 (a) a Chapter, Part, Division, Subdivision, section, subsection, paragraph, subparagraph,
- 22 sub-subparagraph or Schedule of or to this Law or the Act, or
- 23 (b) a section, clause, subclause, item, column, table or form of or in a Schedule to this
- 24 Law or the Act, or
- 25 (c) the long title and any preamble to the Act.
- 26 **record** includes information stored or recorded by means of a computer.
- 27 **repeal** includes:
- 28 (a) revoke or rescind, or
- 29 (b) repeal by implication, or
- 30 (c) abrogate or limit the effect of this Law or instrument concerned, or
- 31 (d) exclude from, or include in, the application of this Law or instrument concerned any
- 32 person, subject matter or circumstance.
- 33 **sign** includes the affixing of a seal or the making of a mark.
- 34 **statutory declaration** means a declaration made under an Act, or under a Commonwealth Act
- 35 or an Act of another jurisdiction, that authorises a declaration to be made otherwise than in the
- 36 course of a judicial proceeding.
- 37 **statutory instrument** means an instrument made or in force under or for the purposes of this
- 38 Law, and includes an instrument made or in force under any such instrument.
- 39 **swear**, in relation to a person allowed by law to affirm, declare or promise, includes affirm,
- 40 declare or promise.
- 41 **word** includes any symbol, figure or drawing.
- 42 **writing** includes any mode of representing or reproducing words in a visible form.

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- 1 (2) In a statutory instrument:
2 *the Law* means this Law.

3 **13. Provisions relating to defined terms and gender and number**

- 4 (1) If this Law defines a word or expression, other parts of speech and grammatical forms of the
5 word or expression have corresponding meanings.
6 (2) Definitions in or applicable to this Law apply except so far as the context or subject matter
7 otherwise indicates or requires.
8 (3) In this Law, words indicating a gender include each other gender.
9 (4) In this Law:
10 (a) words in the singular include the plural, and
11 (b) words in the plural include the singular.

12 **14. Meaning of “may” and “must” etc.**

- 13 (1) In this Law, the word *may*, or a similar word or expression, used in relation to a power
14 indicates that the power may be exercised or not exercised, at discretion.
15 (2) In this Law, the word *must*, or a similar word or expression, used in relation to a power
16 indicates that the power is required to be exercised.
17 (3) This clause has effect despite any rule of construction to the contrary.

18 **15. Words and expressions used in statutory instruments**

- 19 (1) Words and expressions used in a statutory instrument have the same meanings as they have,
20 from time to time, in this Law, or relevant provisions of this Law, under or for the purposes of
21 which the instrument is made or in force.
22 (2) This clause has effect in relation to an instrument except so far as the contrary intention
23 appears in the instrument.

24 **16. Effect of express references to bodies corporate and individuals**

- 25 In this Law, a reference to a person generally (whether the expression “person”, “party”,
26 “someone”, “anyone”, “no-one”, “one”, “another” or “whoever” or another expression is
27 used):
28 (a) does not exclude a reference to a body corporate or an individual merely because
29 elsewhere in this Law there is particular reference to a body corporate (however
30 expressed), and
31 (b) does not exclude a reference to a body corporate or an individual merely because
32 elsewhere in this Law there is particular reference to an individual (however
33 expressed).

34 **17. Production of records kept in computers etc.**

- 35 (1) If a person who keeps a record of information by means of a mechanical, electronic or other
36 device is required by or under this Law:
37 (a) to produce the information or a document containing the information to a court,
38 tribunal or person, or

(b) to make a document containing the information available for inspection by a court, tribunal or person,

then, unless the court, tribunal or person otherwise directs:

- (c) the requirement obliges the person to produce or make available for inspection, as the case may be, a document that reproduces the information in a form capable of being understood by the court, tribunal or person, and
- (d) the production to the court, tribunal or person of the document in that form complies with the requirement.

18. References to this jurisdiction to be implied

In this Law:

- (a) a reference to an officer, office or statutory body is a reference to such an officer, office or statutory body in and for this jurisdiction, and
- (b) a reference to a locality or other matter or thing is a reference to such a locality or other matter or thing in and of this jurisdiction.

19. References to officers and holders of offices

In this Law, a reference to a particular officer, or to the holder of a particular office, includes a reference to the person for the time being occupying or acting in the office concerned.

20. Reference to certain provisions of Law

If a provision of this Law refers:

- (a) to a Part, section or Schedule by a number and without reference to this Law, the reference is a reference to the Part, section or Schedule, designated by the number, of or to this Law, or
- (b) to a Schedule without reference to it by a number and without reference to this Law, the reference, if there is only one Schedule to this Law, is a reference to the Schedule, or
- (c) to a Division, Subdivision, subsection, paragraph, subparagraph, sub-subparagraph, clause, subclause, item, column, table or form by a number and without reference to this Law, the reference is a reference to:
- (i) the Division, designated by the number, of the Part in which the reference occurs, and
 - (ii) the Subdivision, designated by the number, of the Division in which the reference occurs, and
 - (iii) the subsection, designated by the number, of the section in which the reference occurs, and
 - (iv) the paragraph, designated by the number, of the section, subsection, Schedule or other provision in which the reference occurs, and
 - (v) the paragraph, designated by the number, of the clause, subclause, item, column, table or form of or in the Schedule in which the reference occurs, and
 - (vi) the subparagraph, designated by the number, of the paragraph in which the reference occurs, and
 - (vii) the sub-subparagraph, designated by the number, of the subparagraph in which the reference occurs, and

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- 1 (viii) the section, clause, subclause, item, column, table or form, designated by the
2 number, of or in the Schedule in which the reference occurs,
3 as the case requires.

4 **21. Reference to provisions of this Law or an Act is inclusive**

5 In this Law, a reference to a portion of this Law or an Act includes:

- 6 (a) a reference to the Chapter, Part, Division, Subdivision, section, subsection or other
7 provision of this Law or the Act referred to that forms the beginning of the portion,
8 and
9 (b) a reference to the Chapter, Part, Division, Subdivision, section, subsection or other
10 provision of this Law or the Act referred to that forms the end of the portion.

11 **Example:** A reference to "sections 5 to 9" includes both section 5 and section 9.

12 It is not necessary to refer to "sections 5 to 9 (both inclusive)" to ensure that the reference is given an inclusive interpretation.

13 **Part 4 — Functions and powers**

14 **22. Performance of statutory functions**

- 15 (1) If this Law confers a function or power on a person or body, the function may be performed,
16 or the power may be exercised, from time to time as occasion requires.
17 (2) If this Law confers a function or power on a particular officer or the holder of a particular
18 office, the function may be performed, or the power may be exercised, by the person for the
19 time being occupying or acting in the office concerned.
20 (3) If this Law confers a function or power on a body (whether or not incorporated), the
21 performance of the function, or the exercise of the power, is not affected merely because of
22 vacancies in the membership of the body.

23 **23. Power to make instrument or decision includes power to amend or repeal**

24 If this Law authorises or requires the making of an instrument or decision:

- 25 (a) the power includes power to amend or repeal the instrument or decision, and
26 (b) the power to amend or repeal the instrument or decision is exercisable in the same
27 way, and subject to the same conditions, as the power to make the instrument or
28 decision.

29 **24. Matters for which statutory instruments may make provision**

- 30 (1) If this Law authorises or requires the making of a statutory instrument in relation to a matter, a
31 statutory instrument made under this Law may make provision for the matter by applying,
32 adopting or incorporating (with or without modification) the provisions of:
33 (a) an Act or statutory instrument, or
34 (b) another document (whether of the same or a different kind),
35 as in force at a particular time or as in force from time to time.
36 (2) If a statutory instrument applies, adopts or incorporates the provisions of a document, the
37 statutory instrument applies, adopts or incorporates the provisions as in force from time to
38 time, unless the statutory instrument otherwise expressly provides.

- 1 (3) A statutory instrument may:
- 2 (a) apply generally throughout this jurisdiction or be limited in its application to a
- 3 particular part of this jurisdiction, or
- 4 (b) apply generally to all persons, matters or things or be limited in its application to:
- 5 (i) particular persons, matters or things, or
- 6 (ii) particular classes of persons, matters or things, or
- 7 (c) otherwise apply generally or be limited in its application by reference to specified
- 8 exceptions or factors.
- 9 (4) A statutory instrument may:
- 10 (a) apply differently according to different specified factors, or
- 11 (b) otherwise make different provision in relation to:
- 12 (i) different persons, matters or things, or
- 13 (ii) different classes of persons, matters or things.
- 14 (5) A statutory instrument may authorise a matter or thing to be from time to time determined,
- 15 applied or regulated by a specified person or body.
- 16 (6) If this Law authorises or requires a matter to be regulated by statutory instrument, the power
- 17 may be exercised by prohibiting by statutory instrument the matter or any aspect of the matter.
- 18 (7) If this Law authorises or requires provision to be made with respect to a matter by statutory
- 19 instrument, a statutory instrument made under this Law may make provision with respect to a
- 20 particular aspect of the matter despite the fact that provision is made by this Law in relation to
- 21 another aspect of the matter or in relation to another matter.
- 22 (8) A statutory instrument may provide for the review of, or a right of appeal against, a decision
- 23 made under the statutory instrument, or this Law, and may, for that purpose, confer
- 24 jurisdiction on any court, tribunal, person or body.
- 25 (9) A statutory instrument may require a form prescribed by or under the statutory instrument, or
- 26 information or documents included in, attached to or given with the form, to be verified by
- 27 statutory declaration.

28 **25. Presumption of validity and power to make**

- 29 (1) All conditions and preliminary steps required for the making of a statutory instrument are
- 30 presumed to have been satisfied and performed in the absence of evidence to the contrary.
- 31 (2) A statutory instrument is taken to be made under all powers under which it may be made, even
- 32 though it purports to be made under this Law or a particular provision of this Law.

33 **26. Appointments may be made by name or office**

- 34 (1) If this Law authorises or requires a person or body:
- 35 (a) to appoint a person to an office, or
- 36 (b) to appoint a person or body to exercise a power, or
- 37 (c) to appoint a person or body to do another thing,
- 38 the person or body may make the appointment by:
- 39 (d) appointing a person or body by name, or

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- 1 (e) appointing a particular officer, or the holder of a particular office, by reference to the
2 title of the office concerned.
- 3 (2) An appointment of a particular officer, or the holder of a particular office, is taken to be the
4 appointment of the person for the time being occupying or acting in the office concerned.
- 5 **27. Acting appointments**
- 6 (1) If this Law authorises a person or body to appoint a person to act in an office, the person or
7 body may, in accordance with this Law, appoint:
- 8 (a) a person by name, or
9 (b) a particular officer, or the holder of a particular office, by reference to the title of the
10 office concerned,
11 to act in the office.
- 12 (2) The appointment may be expressed to have effect only in the circumstances specified in the
13 instrument of appointment.
- 14 (3) The appointer may:
- 15 (a) determine the terms and conditions of the appointment, including remuneration and
16 allowances, and
17 (b) terminate the appointment at any time.
- 18 (4) The appointment, or the termination of the appointment, must be in, or evidenced by, writing
19 signed by the appointer.
- 20 (5) The appointee must not act for more than one year during a vacancy in the office.
- 21 (6) If the appointee is acting in the office otherwise than because of a vacancy in the office and
22 the office becomes vacant, then, subject to subclause (2), the appointee may continue to act
23 until:
- 24 (a) the appointer otherwise directs, or
25 (b) the vacancy is filled, or
26 (c) the end of a year from the day of the vacancy,
27 whichever happens first.
- 28 (7) The appointment ceases to have effect if the appointee resigns by writing signed and delivered
29 to the appointer.
- 30 (8) While the appointee is acting in the office:
- 31 (a) the appointee has all the powers and functions of the holder of the office, and
32 (b) this Law and other laws apply to the appointee as if the appointee were the holder of
33 the office.
- 34 (9) Anything done by or in relation to a person purporting to act in the office is not invalid merely
35 because:
- 36 (a) the occasion for the appointment had not arisen, or
37 (b) the appointment had ceased to have effect, or
38 (c) the occasion for the person to act had not arisen or had ceased.

- 1 (10) If this Law authorises the appointer to appoint a person to act during a vacancy in the office,
2 an appointment to act in the office may be made by the appointer whether or not an
3 appointment has previously been made to the office.

4 **28. Powers of appointment imply certain incidental powers**

- 5 (1) If this Law authorises or requires a person or body to appoint a person to an office:
6 (a) the power may be exercised from time to time as occasion requires, and
7 (b) the power includes:
8 (i) power to remove or suspend, at any time, a person appointed to the office,
9 and
10 (ii) power to appoint another person to act in the office if a person appointed to
11 the office is removed or suspended, and
12 (iii) power to reinstate or reappoint a person removed or suspended, and
13 (iv) power to appoint a person to act in the office if it is vacant (whether or not the
14 office has ever been filled), and
15 (v) power to appoint a person to act in the office if the person appointed to the
16 office is absent or is unable to discharge the functions of the office (whether
17 because of illness or otherwise).
- 18 (2) The power to remove or suspend a person under subclause (1)(b) may be exercised even if this
19 Law provides that the holder of the office to which the person was appointed is to hold office
20 for a specified period.
- 21 (3) The power to make an appointment under subclause (1)(b) may be exercised from time to
22 time as occasion requires.
- 23 (4) An appointment under subclause (1)(b) may be expressed to have effect only in the
24 circumstances specified in the instrument of appointment.

25 **29. Delegation of functions**

- 26 (1) If this Law authorises a person or body to delegate a function, the person or body may, in
27 accordance with this Law and any other applicable law, delegate the function to:
28 (a) a person or body by name, or
29 (b) a specified officer, or the holder of a specified office, by reference to the title of the
30 office concerned.
- 31 (2) The delegation may be:
32 (a) general or limited, and
33 (b) made from time to time, and
34 (c) revoked, wholly or partly, by the delegator.
- 35 (3) The delegation, or a revocation of the delegation, must be in, or evidenced by, writing signed
36 by the delegator or, if the delegator is a body, by a person authorised by the body for the
37 purpose.
- 38 (4) A delegated function may be exercised only in accordance with any conditions to which the
39 delegation is subject.

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- 1 (5) The delegate may, in the performance of a delegated function, do anything that is incidental to
2 the delegated function.
- 3 (6) A delegated function that purports to have been exercised by the delegate is taken to have
4 been properly exercised by the delegate unless the contrary is proved.
- 5 (7) A delegated function that is properly exercised by the delegate is taken to have been exercised
6 by the delegator.
- 7 (8) If, when exercised by the delegator, a function is dependent on the delegator's opinion, belief
8 or state of mind, then, when exercised by the delegate, the function is dependent on the
9 delegate's opinion, belief or state of mind.
- 10 (9) If:
- 11 (a) the delegator is a specified officer or the holder of a specified office, and
12 (b) the person who was the specified officer or holder of the specified office when the
13 delegation was made ceases to be the holder of the office,
- 14 then:
- 15 (c) the delegation continues in force, and
16 (d) the person for the time being occupying or acting in the office concerned is taken to
17 be the delegator for the purposes of this clause.
- 18 (10) If:
- 19 (a) the delegator is a body, and
20 (b) there is a change in the membership of the body,
- 21 then:
- 22 (c) the delegation continues in force, and
23 (d) the body as constituted for the time being is taken to be the delegator for the purposes
24 of this clause.
- 25 (11) If a function is delegated to a specified officer or the holder of a specified office:
- 26 (a) the delegation does not cease to have effect merely because the person who was the
27 specified officer or the holder of the specified office when the function was delegated
28 ceases to be the officer or the holder of the office, and
29 (b) the function may be exercised by the person for the time being occupying or acting in
30 the office concerned.
- 31 (12) A function that has been delegated may, despite the delegation, be exercised by the delegator.
- 32 (13) The delegation of a function does not relieve the delegator of the delegator's obligation to
33 ensure that the function is properly exercised.
- 34 (14) Subject to subclause (15), this clause applies to a subdelegation of a function in the same way
35 as it applies to a delegation of a function.
- 36 (15) If this Law authorises the delegation of a function, the function may be subdelegated only if
37 the Law expressly authorises the function to be subdelegated.

1 **30. Exercise of powers between enactment and commencement**

2 (1) If a provision of this Law (the *empowering provision*) that does not commence on its
3 enactment would, had it commenced, confer a power:

- 4 (a) to make an appointment, or
5 (b) to make a statutory instrument of a legislative or administrative character, or
6 (c) to do another thing,

7 then:

- 8 (d) the power may be exercised, and
9 (e) anything may be done for the purpose of enabling the exercise of the power or of
10 bringing the appointment, instrument or other thing into effect,

11 before the empowering provision commences.

12 (2) If a provision of a New South Wales Act (the *empowering provision*) that does not commence
13 on its enactment would, had it commenced, amend a provision of this Law so that it would
14 confer a power:

- 15 (a) to make an appointment, or
16 (b) to make a statutory instrument of a legislative or administrative character, or
17 (c) to do another thing,

18 then:

- 19 (d) the power may be exercised, and
20 (e) anything may be done for the purpose of enabling the exercise of the power or of
21 bringing the appointment, instrument or other thing into effect,

22 before the empowering provision commences.

23 (3) If:

- 24 (a) this Law has commenced and confers a power to make a statutory instrument (the
25 *basic statutory instrument-making power*), and
26 (b) a provision of a New South Wales Act that does not commence on its enactment
27 would, had it commenced, amend this Law so as to confer additional power to make a
28 statutory instrument (the *additional instrument-making power*),

29 then:

- 30 (c) the basic instrument-making power and the additional instrument-making power may
31 be exercised by making a single instrument, and
32 (d) any provision of the instrument that required an exercise of the additional
33 instrument-making power is to be treated as made under subclause (2).

34 (4) If an instrument, or a provision of an instrument, is made under subclause (1) or (2) that is
35 necessary for the purpose of:

- 36 (a) enabling the exercise of a power mentioned in the subclause, or
37 (b) bringing an appointment, instrument or other thing made or done under such a power
38 into effect,

39 the instrument or provision takes effect:

- 40 (c) on the making of the instrument, or

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- 1 (d) on such later day (if any) on which, or at such later time (if any) at which, the
2 instrument or provision is expressed to take effect.
- 3 (5) If:
- 4 (a) an appointment is made under subclause (1) or (2), or
- 5 (b) an instrument, or a provision of an instrument, made under subclause (1) or (2) is not
6 necessary for a purpose mentioned in subclause (4),
- 7 the appointment, instrument or provision takes effect:
- 8 (c) on the commencement of the relevant empowering provision, or
- 9 (d) on such later day (if any) on which, or at such later time (if any) at which, the
10 appointment, instrument or provision is expressed to take effect.
- 11 (6) Anything done under subclause (1) or (2) does not confer a right, or impose a liability, on a
12 person before the relevant empowering provision commences.
- 13 (7) After the enactment of a provision mentioned in subclause (2) but before the provision's
14 commencement, this clause applies as if the references in subclauses (2) and (5) to the
15 commencement of the empowering provision were references to the commencement of the
16 provision mentioned in subclause (2) as amended by the empowering provision.
- 17 (8) In the application of this clause to a statutory instrument, a reference to the enactment of the
18 instrument is a reference to the making of the instrument.

Part 5 — Distance, time and age

31. Matters relating to distance, time and age

- 20 (1) In the measurement of distance for the purposes of this Law, the distance is to be measured
21 along the shortest road ordinarily used for travelling.
- 22 (2) If a period beginning on a given day, act or event is provided or allowed for a purpose by this
23 Law, the period is to be calculated by excluding the day, or the day of the act or event, and:
- 24 (a) if the period is expressed to be a specified number of clear days or at least a specified
25 number of days, by excluding the day on which the purpose is to be fulfilled, and
26 (b) in any other case, by including the day on which the purpose is to be fulfilled.
- 27 (3) If the last day of a period provided or allowed by this Law for doing anything is not a business
28 day in the place in which the thing is to be or may be done, the thing may be done on the next
29 business day in the place.
- 30 (4) If the last day of a period provided or allowed by this Law for the filing or registration of a
31 document is a day on which the office is closed where the filing or registration is to be or may
32 be done, the document may be filed or registered at the office on the next day that the office is
33 open.
- 34 (5) If no time is provided or allowed for doing anything, the thing is to be done as soon as
35 possible, and as often as the prescribed occasion happens.
- 36 (6) If, in this Law, there is a reference to time, the reference is, in relation to the doing of anything
37 in a jurisdiction, a reference to the legal time in the jurisdiction.
- 38 (7) For the purposes of this Law, a person attains an age in years at the beginning of the person's
39 birthday for the age.
- 40

Part 6 — Effect of repeal, amendment or expiration

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2 **32. Time of Law ceasing to have effect**

3 If a provision of this Law is expressed:

- 4 (a) to expire on a specified day, or
5 (b) to remain or continue in force, or otherwise have effect, until a specified day,

6 the provision has effect until the last moment of the specified day.

7 **33. Repealed Law provisions not revived**

8 If a provision of this Law is repealed or amended by a New South Wales Act, or a provision
9 of a New South Wales Act, the provision is not revived merely because the New South Wales
10 Act or the provision of the New South Wales Act:

- 11 (a) is later repealed or amended, or
12 (b) later expires.

13 **34. Saving of operation of repealed Law provisions**

14 (1) The repeal, amendment or expiry of a provision of this Law does not:

- 15 (a) revive anything not in force or existing at the time the repeal, amendment or expiry
16 takes effect, or
17 (b) affect the previous operation of the provision or anything suffered, done or begun
18 under the provision, or
19 (c) affect a right, privilege or liability acquired, accrued or incurred under the provision,
20 or
21 (d) affect a penalty incurred in relation to an offence arising under the provision, or
22 (e) affect an investigation, proceeding or remedy in relation to such a right, privilege,
23 liability or penalty.

24 (2) Any such penalty may be imposed and enforced, and any such investigation, proceeding or
25 remedy may be begun, continued or enforced, as if the provision had not been repealed or
26 amended or had not expired.

27 **35. Continuance of repealed provisions**

28 If a New South Wales Act repeals some provisions of this Law and enacts new provisions in
29 substitution for the repealed provisions, the repealed provisions continue in force until the new
30 provisions commence.

31 **36. Law and amending Acts to be read as one**

32 This Law and all New South Wales Acts amending this Law are to be read as one.
33

Part 7 — Instruments under Law

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37. Schedule applies to statutory instruments

- (1) This Schedule applies to a statutory instrument, and to things that may be done or are required to be done under a statutory instrument, in the same way as it applies to this Law, and things that may be done or are required to be done under this Law, except so far as the context or subject matter otherwise indicates or requires.
- (2) The fact that a provision of this Schedule refers to this Law and not also to a statutory instrument does not, by itself, indicate that the provision is intended to apply only to this Law.

1 **Schedule 2 — Consequential amendment to other legislation**

2 **Electronic Transactions Regulation 2007**

3 **Clauses 4 and 7**

4 Omit “*Conveyancing Act 1919*, section 23C” wherever occurring.