



New South Wales

# Real Property Amendment (Electronic Conveyancing) Bill 2013

## Explanatory note

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

## Overview of Bill

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

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

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

## Outline of provisions

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

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

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

### **Amendments making the Act technology-neutral**

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

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

Schedule 1 [7] provides that the powers of the Registrar-General may be exercised with respect to electronic lodgments in conjunction with powers granted under the *Electronic Conveyancing National Law (NSW)*. The amendment also extends the power of the Registrar-General to correct errors to include supplying entries or recordings omitted to be made in the Register if the error or omission resulted from a malfunction of an Electronic Lodgment Network or of any electronic system in which information is communicated between the Electronic Lodgment Network and the Registrar-General.

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

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

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

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

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

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

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

### **Amendments providing for the optional issue of certificates of title**

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

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

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

#### **Amendments relating to the operation and notice of caveats**

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

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

#### **Other minor amendments**

**Schedule 1 [3]** corrects a grammatical error.

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