



## Real Property Amendment (Electronic Conveyancing) Bill 2015 (Proof)

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### Second Reading

**The Hon. CATHERINE CUSACK** (Parliamentary Secretary) [12.57 p.m.], on behalf of the Hon. Niall Blair: I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.

#### Leave granted.

The Real Property Amendment (Electronic Conveyancing) Bill 2015 will allow a number of important reforms in conveyancing. It will implement enhanced risk mitigation arrangements in conveyancing by introducing standard verification of identity arrangements across all conveyancing, closing the gap that currently exists for paper conveyancing. The bill will also introduce a nationally agreed priority notice as a further risk mitigation tool for the conveyancing industry.

The bill will also provide for the alignment of paper and electronic conveyancing processes allowing a single conveyancing process regardless of whether a transaction proceeds electronically or in paper. These reforms in the bill will facilitate a smooth transition between the two mediums, paper and electronic, deliver efficiency savings, and avoid additional complexity and costs to the conveyancing industry.

National electronic conveyancing commenced in New South Wales on 8 October 2013 on a limited basis, with mortgage only transactions being lodged by a few banks.

A major expansion of electronic conveyancing began on 10 November 2014 with the introduction of transfers, caveats and withdrawals of caveat to the electronic system. Adding this functionality to the system opens electronic conveyancing to solicitors and licensed conveyancers and to additional financial institutions. Importantly, it also introduces real time electronic settlement functionality through the Reserve Bank, a world first for conveyancing systems.

Over 13,000 dealings have been successfully lodged electronically since the system commenced and its usage continues to grow steadily. There are now over 500 users registered to lodge documents electronically in New South Wales.

National electronic conveyancing introduces a number of new practices that are different to those that currently apply in paper conveyancing.

The cost and the complexity of conveyancing would increase as a result of the necessity of operating with two different processes, especially with the possibility of a solicitor or conveyancer needing to backtrack and take different steps if a transaction has to change from electronic to paper or from paper to electronic.

The need to be able to change between media will likely be common in the first few years until electronic conveyancing is widely adopted. This is because all four parties in a typical conveyancing transaction, the discharging mortgagee, vendor, purchaser and incoming mortgagee, all need to be agree and be on the electronic system for the transaction to proceed electronically.

The key reforms in this bill allow the adoption of a single conveyancing process, regardless of whether a transaction is electronic or paper or changes mid transaction. This will be achieved by introducing to paper conveyancing new practices such as verification of identity, client authorisations and standardised certifications to align with the new requirements for electronic conveyancing.

These reforms, together with the introduction of priority notices, also provide an enhanced risk mitigation framework for conveyancing generally that will benefit everyone in conveyancing. It will also facilitate the phasing out of paper certificates of title, which will become an anachronism as electronic conveyancing is adopted over the coming years.

The bill introduces a new section 12E into the Real Property Act to allow the Registrar General to make conveyancing rules that will parallel the participation rules for electronic conveyancing and apply the new practices in paper conveyancing. Those participation rules are established nationally under the Electronic Conveyancing National Law and applied consistently in each jurisdiction. The conveyancing rules will deal with matters such as the requirements for identification of clients, the use of client authorisations and standardisation of the certifications that are required on documents lodged for registration with the Registrar General.

At present in New South Wales we have formal requirements for verification of identity that apply in electronic conveyancing, we have formal requirements for a mortgagee to identify the borrower before registering a mortgage and we have formal requirements for a witness to a document identify the party whose signature is being witnessed if they have not known that person for more than 12 months.

In addition to those formal requirements, solicitors and licensed conveyancers have an informal requirement to know their client as part of professional due diligence. Under the reforms to be introduced by this bill, a single verification of identity framework will be introduced to apply the same risk mitigation practices to conveyancing generally. It is intended that the same requirements will also apply in conveyancing nationally.

As a result, practitioners will know what requirements apply regardless of the type or location of the conveyancing transaction. This standardisation of verification of identity frameworks will assist practitioners who will have only one process to comply with. It will make conveyancing more secure for all participants, whether it is an electronic or a paper transaction, with everyone knowing what is expected of them and of the other parties.

The verification of identity requirement is for solicitors and conveyancers to take reasonable steps to verify the identity of their client. The reasonable steps regime allows practitioners the flexibility to adapt to different circumstances. What constitutes reasonable steps may vary according to the circumstances and may require the exercise of some professional judgment by practitioners.

However, if a practitioner wants to have more certainty about compliance with the requirement, there is a verification of identity standard, developed and agreed with stakeholders nationally, and anyone following that national standard is deemed to have taken reasonable steps for the purposes of complying with the verification of identity requirements.

The second of the electronic conveyancing practices to be introduced to paper conveyancing is the use of client authorisations.

A client authorisation is a document signed by the client to authorise their solicitor or conveyancer to sign conveyancing documents on their behalf. It was introduced in electronic conveyancing to allow a solicitor or conveyancer to digitally sign an electronic document on the client's behalf because it is not economical or practical for every party to a conveyancing transaction to be required to obtain digital signing credentials to sign electronic documents.

In some respects a client authorisation is similar to a power of attorney, but it is specifically distinguished from a power of attorney so that, unlike a power of attorney, it is not required to be registered prior to dealing with the land.

Accordingly, obtaining a client authorisation is an essential step in the lead up to effecting an electronic conveyancing transaction. However, particularly in the early days of electronic conveyancing, parties are unlikely to know whether all parties are participants in the electronic system so as to allow the transaction to be completed electronically.

The introduction of client authorisations in the paper, as well as the electronic environment, will allow a smooth transition between the two lodgment mediums. If a transaction has been prepared with the intention that it proceed electronically and it is subsequently discovered that it cannot, the solicitor or conveyancer will be able to rely on the existing client authorisation to proceed in the paper environment without needing to have the client come in and sign a new set of documents.

It is important to note that the client authorisation does not replace any retainer or other agreement between the solicitor or conveyancer and their client.

New sections 107 and 108 are introduced into the Real Property Act that parallel existing provisions in the Electronic Conveyancing National Law providing for the nature and effect of client authorisations as they apply in paper. Importantly, the bill also provides that a client authorisation made under the Electronic Conveyancing National Law (NSW) is effective under the Real Property Act.

The next component of the reforms contained in the bill relates to the standardisation of the

certifications that are required on dealings lodged for registration under the Real Property Act, whether the dealings lodged electronically or in paper.

Currently in paper documents certifications are required by the parties as to the correctness of the transaction and by witnesses as to the identity of the person whose signature they have witnessed.

Expanded certifications are required in electronic conveyancing relating to verification of identity having been undertaken and to the holding of a client authorisation and any other evidence required to support the transaction. These are in addition to the normal certification is to correctness.

With the introduction of verification of identity and client authorisations into paper conveyancing, the certifications will be standardised based on the national model using the certifications that are set out in the participation rules for electronic conveyancing.

The final significant reform in the bill is introduction to New South Wales of priority notices. A priority notice is a notification lodged with the Registrar General of the intended registration of specified dealings in respect of the land. The priority notice reserves the priority of the dealings set out in the notice and to that end will temporarily prevent the registration of other dealings with the subject land in order to preserve the priority of the dealings listed in the notice.

Priority notices will protect the priority of the subject dealings for a period of 60 days, with a once only option of extending priority for a further 30 days should there be unexpected delays in lodging the protected dealings.

The objectives for introducing priority notices include:

- providing greater certainty to the transaction for which priority is reserved;
- alerting interested parties who search the register to the fact that an intended dealing or transaction is pending; and
- assisting in fraud prevention as details of a pending transaction will appear on a search of the register and thus increase the likelihood of a fraud being detected.

Also, while priority notices are a useful tool for conveyancing practitioners, they are also being introduced as an added safeguard that will assist in protecting parties' interests when moving towards an electronic environment and the removal of paper certificates of title.

A priority notice provides the confidence incoming parties at a settlement need to assure them that they are protected prior to registration of the transaction. This confidence is currently provided by taking possession of the certificate of title at a physical settlement.

While the lodgment of a priority notice will be optional, it is expected that parties buying a property will seek to protect their interests to the full extent possible by lodging a priority notice. Therefore the use of priority notices will become an integral consideration in prudent conveyancing practice.

The bill also includes some minor amendments including providing for the appointment and functions of a Deputy Registrar General and, for the sake of continuity, to allow a Deputy Registrar General to act in the place of the Registrar General when he or she is absent from duty.

I am pleased to support this bill and its facilitation of beneficial changes to promote efficiencies in the conveyancing industry and I commend it to the House.