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WA Next to Implement the National Electronic Conveyancing Scheme

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Creating a new **National Electronic Conveyancing system** is one of the initiatives featured in the **Council of Australian Governments (COAG) National Partnership Agreement to Deliver a Seamless National Economy**.

Although all State and Territory land registries have functioned under the Torrens Title system for around 150 years, over time considerable variation in the detail of both Torrens legislation, and conveyancing laws and practice has developed. This evolution has made the creation of a single national electronic conveyancing system and the accompanying legal framework a complex undertaking. Nevertheless, States and Territories in Australia are endeavouring to develop a procedurally consistent National Electronic Conveyancing (**NEC**) system for the settling of real property transactions in all Australian States and Territories.

Because conveyancing is under State rather than Federal laws, the Commonwealth is not directly involved in the project. Notwithstanding these intricacies, substantial progress has been made and the States and Territories are working towards finalising and implementing the legal framework.

The Framework

The NEC system assists legal practitioners, conveyancers and financial institutions to use electronic online procedures to prepare electronic instruments that create, transfer and remove estates and interests in land, to settle the financial components of a transaction and to lodge instruments with relevant State or Territory Land Registries electronically.

Every Australian State and the Northern Territory signed the Intergovernmental Agreement for an Electronic Conveyancing National Law ("**IGA**") committing to adopt a model law for National Electronic Conveyancing or to implement legislation corresponding to the model law. The IGA came into operation on 21 November 2011 and since then NSW (the host jurisdiction), Victoria, Queensland, Tasmania and Northern Territory have passed the Electronic Conveyancing National Law (the "**National Law**") which implements the NEC.

In WA, the Bill to enact legislation corresponding to the National Law in Western Australia has reached Second Reading in the Legislative Assembly. The **Electronic Conveyancing Bill 2013 (WA) (Bill)** modifies some provisions of the National Law to reflect the statutory functions and duties of the Commissioner of Titles, Registrar and Western Australian Land Information Authority established under the **Land Information Authority Act 2006** (trading as "Landgate").

The Bill also makes alterations to Western Australia's Torrens legislation, in particular the **Transfer of Land Act 1893 (TLA)** to reduce the risk of identity fraud and other improper dealings in property transactions by conferring a direct statutory power on the Commissioner and Registrar to require the conduct of verification of identity and confirmation of authority to deal with land under the TLA. This is to ensure that the person transacting the land is the legal owner of the land. The Bill also proposes amendments to the **Settlement Agents Act 1981**, **Duties Act 2008** and **Taxation Administration Act 2003** required to implement the NEC regime in Western Australia.

Summary of the National Law

The Electronic Conveyancing National Law empowers the Registrar of Titles in each jurisdiction to—

- receive electronic registry instruments and other electronic documents via electronic lodgment; and
- register electronic registry instruments, with the same effect as receiving and registering paper instruments pursuant to the jurisdiction's Torrens legislation;
- permit the Registrar to operate or to authorise persons to operate an Electronic Lodgment Network ("**ELN**") for their jurisdiction;
- empower the Registrar to create conditions for access to and use of an ELN;
- authorise the Registrar, or his or her delegate, to undertake an examination of compliance by the Electronic Lodgment Network Operator ("**ELNO**") with its requirements under the ELN and a subscriber with its obligations in respect to access to and use of an ELN;
- provide 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 else required to finalise the transaction electronically.

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Sources:

ARNECC Discussion Paper (http://www.arnecc.gov.au/_data/assets/pdf_file/0014/161051/ARNECC_ECNL_Discussion_Paper_v_-Final_050811.pdf)

Electronic Conveyancing Bill 2013

([http://www.parliament.wa.gov.au/publications/tabledpapers.nsf/displaypaper/3911111c4a55171b81bdedc748257c39000ee537/\\$file/tp-1111.pdf](http://www.parliament.wa.gov.au/publications/tabledpapers.nsf/displaypaper/3911111c4a55171b81bdedc748257c39000ee537/$file/tp-1111.pdf))

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