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## **Transfer of Land (Electronic Transactions) Act 2004**

### **ELECTRONIC CONVEYANCING – VICTORIAN LAND REGISTRY REQUIREMENTS – VERSION 10**

The Registrar of Titles, pursuant to the **Transfer of Land (Electronic Transactions) Act 2004**, hereby sets out the requirements for the use of the Electronic Lodgment Network.

These requirements are set out in the following sections:

Section 1	Introduction
Section 2	Requirements for the Verification of Identity
Section 3	Certifications
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Dated 4 August 2006

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Registrar of Titles

**SPECIAL**

## 1. Introduction

The Land Exchange (LX) Program is developing an Electronic Conveyancing system. This development is based on the vision of Electronic Conveyancing that has been widely accepted by the conveyancing, legal and financial institutions following an intensive consultation program.

The Electronic Conveyancing Project is currently planning to release Electronic Conveyancing for restricted pilot operation, with volume use a number of months thereafter. The current paper based lodgement system will be maintained in parallel for those who do not wish to use electronic conveyancing and for the lodgement of out-of-scope transactions. Legislative change to support Electronic Conveyancing being the **Transfer of Land (Electronic Transactions) Act 2004** came into operation on 19 May 2004.

The proposed system for Electronic Conveyancing is based on the concept of an electronic lodgement file ("ELF"). In essence the ELF is a shared workspace for each separate conveyancing transaction and will be completed by the relevant parties to a transaction.

To ensure safety and integrity, Electronic Conveyancing will be restricted to subscribers, that is, the parties directly involved with the settlement process. The multiple subscribers who will complete the ELF will typically include the representatives of the vendor and the purchaser (their Australian Legal Practitioner ("ALP") or conveyancer) and the representatives of the outgoing and incoming mortgagees.

Each settlement party will contribute the data that they would normally supply to Land Registry in a paper environment – that is, the data included on a transfer of land form together with (if applicable) a discharge of mortgage and registration of mortgage form. To assist the parties and to maintain data integrity, relevant data will be pre-populated from the titles Register and this data will only require confirmation. Electronic Conveyancing may also include financial disbursement of funds, provision of duty to the State Revenue Office (SRO) and settlement via electronic funds transfer.

Electronic Conveyancing will not capture all types of dealings lodged with Land Registry. The initial transactions that Land Registry will accept electronically are Discharges of Mortgage, Transfers, Mortgages, together with Withdrawals of Caveat and Survivorship Applications, either singly or in any combination. These simpler lodgements account for over 80% of the total volume.

Land Registry also proposes to introduce the Electronic Certificate of Title (eCT) in parallel with the implementation of Electronic Conveyancing.

All subscribers (ALPs, conveyancers and financial institutions) will be required to enter into an Accession Deed with the Land Exchange, under which they agree to be bound by the EC System Rules, in order to use the system. Subscribers using the system will be required to act in an agency role on behalf of their clients, and to comply with the LX Public Key Infrastructure security arrangements.

The ELF, together with this security infrastructure, creates the original instruments as required by Land Registry. When provided to the Registrar on electronic lodgement, the information becomes the searchable and auditable item in case of dispute. A non-repudiable digital signature is used to provide this instrument. With Electronic Conveyancing, there are no paper instruments to be lodged with Land Registry.

There is also no physical settlement required with Electronic Conveyancing. Settlement and lodgement can occur electronically at a date and time stipulated and agreed by the parties. The financial settlement data is taken from the ELF and is also digitally signed by the parties. This data is then sent to the Financial Settlement Manager (FSM) for electronic disbursement of funds. Lodgement of electronic data with Land Registry occurs after successful settlement and electronic funds transfer. The data to be provided to the SRO and Valuer General (VG) on a Notice of Acquisition is also transmitted at this time. The data required by the Municipalities and other statutory authorities to update their records may also be transmitted by the Electronic Conveyancing system.

LX has retained the services of the Sydney Futures Exchange as FSM and intends to have these services integrated with Electronic Conveyancing in time for its larger pilot implementations.

The first pilot implementation of Electronic Conveyancing will be confined to discharges of mortgages and mortgages by financial institutions. Subsequently, there will be a series of further pilots until full commercial rollout begins.

As part of the implementation of Electronic Conveyancing, it is necessary for every subscriber to have confidence in the system and its operations. This ensures that every subscriber can be sure that both they and their clients are protected in the event of fraud or negligence by another user of the system. In most circumstances, this is best done by all subscribers holding professional indemnity and fidelity insurance which will be mandatory.

### 1.1 Roles within EC

The following represent the various roles within Electronic Conveyancing:

1. A subscriber is a person who has been identified, issued with an ABN DSC and has contracted with LX to comply with the EC System Rules. By agreeing to comply with the System Rules a subscriber also agrees to comply with these LR Requirements. A subscriber may be a party to a transaction in its own right or may represent such a person. A subscriber may participate in an ELF to nominate an eCT **and** retain control of the eCT or participate to obtain either custody of a paper Certificate of Title (pCT) i.e. be the pCT Issue Party or control of an eCT. A subscriber must also be a current customer of the Victorian Online Titles System (VOTS), with a current VOTS customer code.  
A subscriber includes employees, agents and any person using the subscriber's digital signature, where the subscriber enabled such use or failed to take reasonable steps to prevent such use.
2. At the beginning of an ELF, one subscriber will be entitled to control of the eCT. On completion of an ELF, one subscriber will be entitled to be the pCT Issue Party or have control of the eCT. The subscriber with custody or control may be the same at the beginning and the end, for example, where a second mortgage is registered and the first mortgagee retains custody or control. On the other hand, following a transfer, custody or control will change.
3. In relation to the transactions currently in scope, parties to a transaction in their own right would be transferors, transferees, incoming and outgoing mortgagees, surviving proprietors or caveators.
4. A Controller of CT does not sign any instruments in an ELF (other than the Registrar's Instructions). Once all instruments in an ELF have been registered or recorded, the Controller of CT will be the pCT Issue Party or have control of an eCT, where no one else is entitled to custody or control. They participate in the ELF to:
  - a) Either keep control of an eCT. This is equivalent to making a pCT available in paper-based conveyancing. In this case, a Controller of CT would be a first mortgagee or their representative. For example, this would occur where a second mortgage was to be lodged as a result of the ELF.
  - b) Or receive custody of a pCT or control of an eCT. In this case, the Controller of CT could be a second or subsequent mortgagee or their representative, who as a result of the ELF will become the elevated first mortgagee. Alternatively, the Controller of CT could be a registered proprietor or their representative, where all mortgages were being discharged.

**2. Requirements for the Verification of Identity****2.1 Explanatory Information****2.1.1 Guidelines for the Verification of Identity**

Section 27AB of the **Transfer of Land Act 1958** envisages that the Registrar will establish requirements for the verification of identity of any person by or on behalf of whom an instrument was executed.

Under the legislation, these requirements can be established for either paper or electronic instruments or both. The Registrar intends to establish guidelines to set out these requirements for electronic instruments (“the Registrar’s Identity Guidelines”).

The Registrar will also consider whether to establish requirements for the verification of identity for paper instruments, however, this will require a review of a number of administrative and operational considerations before a decision on this is made. These issues include consideration of how to achieve consistency between the paper and electronic systems.

**2.1.2 Conformity with a National Standard**

The Registrar is of the view that it would be inadvisable to have differing requirements to those provided for in the **Financial Transaction Reports Act 1988** (Cth). A different set of requirements would cause confusion and be impractical. It is also intended that the Registrar’s Identity Guidelines would follow any changes in federal legislation so that practitioners, conveyancers and financial institutions would need only to comply with a common system for identification, not a series of different identification requirements for different purposes. Currently the Registrar’s Identity Guidelines follow the requirements of the **Financial Transaction Reports Act 1988** (Cth). However, they will be amended in line with the **Anti-Money Laundering and Counter-Terrorism Financing Bill 2005** (Cth) when it is enacted and associated Rules are published. At present, there is insufficient detail in the bill and draft rules to up-date this section.

**2.1.3 100-Point Face-to-Face Verification**

The Financial Transaction Reports Regulations 1990 (Cth) set out the methods of achieving 100 points, for example:

Birth certificate, certificate of citizenship and a current passport	– 70 points each
Driver’s licence	– 40 points
Confirmation from a current employer	– 35 points
The electoral roll, the record of a public utility, credit cards	– 25 points each

The 100 point system is widely understood and accepted by the general public. Anyone who has opened a bank account or obtained a mortgage will be familiar with the requirements. The system provides flexibility, as there is a wide choice of forms of proof that can be supplied. For example, some older members of the public may have neither a passport nor a driver’s licence but will have other forms of identity that are sufficient to satisfy the requirements of the Act.

Practically, it is anticipated that a subscriber would ask his or her clients to bring the requisite proofs to their initial appointment when they sign a representation agreement and provide instructions.

Where the 100-point face-to-face verification set out in Guideline 1 of the Registrar’s Identity Guidelines is complied with, Land Registry will be satisfied as to the evidence of identity. Accordingly, in the case of error or fraud by a person other than that certifying as to identity, the Registrar of Titles will not raise the defence provided by section 110(3)(a) of the **Transfer of Land Act 1958** against the subscriber.

#### 2.1.4 Retention of Verification of Identity Evidence

In line with the requirements for retention of documents, evidence of the proof supplied must be kept for a minimum of seven years. In the Registrar's experience, claims of fraud are extremely rare in cases where the fraudulent actions arose more than seven years before. As this is a problem that already arises in all transactions, whether conveyancing or not, where documents are destroyed after seven years, the Registrar believes that it would be inappropriate to adopt a special approach in the case of conveyancing transactions alone.

Where a subscriber conducts a verification of identity in accordance with the Registrar's Identity Guidelines for one transaction and then in a later transaction relies on the prior identification, the original evidence will need to be kept for a further seven years from the date of lodgement of the dealing which is ultimately registered or recorded as a result of the supporting documentation.

#### 2.1.5 Listing of Proofs Obtained within Electronic Conveyancing

The EC system design does not accommodate this and Land Registry believes that it is unnecessary given the certifications and document retention requirements.

#### 2.1.6 Verification of Identity for Rural and Interstate Clients

In order to facilitate the verification of clients living either at some distance from the subscriber or interstate without requiring them to make a visit to the offices of the subscriber, the Registrar believes that there are two options available to the subscriber.

First, a subscriber may choose to have another subscriber or an ALP in the relevant jurisdiction verify the identity of their client in compliance with the Registrar's Identity Guidelines. This first method might be particularly useful for those subscribers who are members of large national legal practices.

Secondly, the subscriber may certify as to the identity of that client, where the subscriber has continuously represented the party since prior to the commencement of the **Financial Transaction Reports Act 1988** (Cth).

Were a subscriber to use this process, the Registrar may use the defences under section 110(3)(a) under the **Transfer of Land Act 1958** where the identification was fraudulent, negligent or otherwise inadequate. This is necessary because the subscriber chose the verifying subscriber or the ALP and the subscriber must be responsible for the failure of his or her agent to act. However, in any action, the subscriber would then be in a position to seek indemnification by way of breach of contract against the verifying subscriber or the ALP for any failure to comply with the Registrar's Identity Guidelines.

Of course, the Registrar would point out that it is open for another ALP to become a subscriber to Electronic Conveyancing and so act directly for a client.

#### 2.1.7 Verification of Identity for Overseas Clients

Overseas clients present special difficulties that are not easily overcome by other arrangements. To assist subscribers in these cases, the Registrar would introduce specific guidelines but these would be provided for use in these cases only.

In these cases, the individual or an officer of a company should provide evidence of their identity to either a notary public or an Australian consular official. The notary public or consular official should be asked to identify the person in accordance with the Registrar's Identity Guidelines, taking copies of the proof on which he or she so relied and then certify as to the identity of the person. This certification of identity would be the verification of identity on which the subscriber relies for his or her own certification.

In the case of a company officer, evidence should then be provided to the subscriber in Australia that the person concerned is a person entitled to sign on behalf of the company and bind the company by his or her signature.

The subscriber would be required to retain the identification documentation for the required period. Were a subscriber to use this process, the Registrar may use the defences under section 110(3)(a) under the **Transfer of Land Act 1958** where the identification was fraudulent, negligent or otherwise inadequate.

#### **2.1.8 Verification of Identity for Corporations**

A subscriber will be required to carry out the verification in accordance with Regulation 5A of the Financial Transaction Reports Regulations 1990 (Cth).

Land Registry understands that the subscriber would need to:

- a) obtain a copy of the company's certificate of registration or incorporation,
- b) obtain a recent company search to verify that those persons holding themselves out to be an officer are in fact current officers and
- c) identify the instructing officer or officers of the company in compliance with the Registrar's Identity Guidelines.

#### **2.1.9 Controllers of CTs**

If representing another, a Controller of CT must verify the identity of the registered proprietor or first mortgagee it represents, in accordance with the Registrar's Identity Guidelines.

#### **2.1.10 The Use of Powers of Attorney**

A power of attorney is a form of agency relationship. Representation agreements under Electronic Conveyancing also create an agency relationship as, *inter alia*, a subscriber will sign on behalf of his or her client and so, in many cases, achieve the same result as is sought by the use of a power of attorney for conveyancing transactions. Electronic Conveyancing is expected to encourage the use of representation agreements in place of many powers of attorney in use today.

The Registrar operates the Permanent Order Book for administrative convenience to accommodate powers of attorney used by large commercial organisations in conveyancing. Under Electronic Conveyancing, it is expected that most of these organisations will become subscribers and will no longer need to use their powers of attorney in relation to the dealings within the scope of Electronic Conveyancing.

Other commercial organisations now using the Permanent Order Book are likely to move to representation agreements and multiple ABN-DSCs to obviate the use of powers of attorney in commercial conveyancing transactions when using Electronic Conveyancing, particularly as this would limit their risk exposure compared to powers of attorney.

For general conveyancing by individuals or companies, the Registrar expects that representation agreements for a subscriber to sign on behalf of his or her client will replace most existing powers of attorney now used for conveyancing. As a process that is simpler for clients and a great deal safer for ALPs, this will be encouraged under Electronic Conveyancing.

There remains a small group of powers of attorney given by individuals, where the donor has lost competence or is overseas. In these cases, either Electronic Conveyancing or paper conveyancing can be used. Existing legal requirements and obligations will be maintained.

#### **2.1.11 Requirements for Powers of Attorney**

Powers of attorney used in paper-based conveyancing carry significant risk for those acting for a donee or for those who deal with a donee, even leaving aside concerns that a power of attorney may be forged.

Both those acting for a donee and those who deal with a donee must ensure that the power of attorney under which execution is authorised is valid and has not been revoked at the time of execution and that the act proposed is within scope.

With all powers of attorney, there are difficulties in assuring oneself that a power of attorney was validly given by a person capable at that time of giving a power of attorney. This is particularly true of donors who may have since lost competence.

There is also a risk that the person claiming to be a donee of a power of attorney may not be the donee so authorised. This is an issue with powers of attorney given before 2004 where there was no legal requirement for a specimen signature of the donee. Even with specimen signatures, this throws the task of examining the signature of a donee onto those acting for a donee or for those who deal with a donee who may have no experience or expertise in examining signatures.

Without any means of formally notifying revocation of a power of attorney, those acting for a donee or for those who deal with a donee are always in the difficult position of ensuring that the power of attorney has not been revoked.

The final responsibility of those acting for a donee or for those who deal with a donee is to assure themselves that the donee is acting within the scope of a power of attorney. The law applicable to powers of attorney is unique in that it requires strict construal of the power and the powers given in the power of attorney are always construed against the donee. In addition, a donee, to act within the scope of a power of attorney, must always act to the benefit of the donor. Both these requirements are difficult to ascertain.

Given Land Registry's experience, these requirements are also often unclear to practitioners and yet a failure to satisfy themselves as to these facts by those acting for a donee or for those who deal with a donee will result in the practitioner being enmeshed in a legal action. Certainly, in any claim made against the Registrar, the Registrar would expect to be able to demonstrate to a Court that either the person acting for a donee or dealing with a donee had failed to prove one of the underlying requirements for the use of a valid power of attorney. This is borne out by the fact that there has not been a successful claim against the Registrar in a case in which a power of attorney was critical.

Electronic Conveyancing, by seeking to use standard forms of representation agreements and multiple ABN-DSCs that are all derived from a common identification undertaken for a subscriber, was designed to minimise the risks for practitioners associated with the use of powers of attorney.

By using standard forms of representation agreements and multiple ABN-DSCs, those who deal with a subscriber signing on behalf of his or her client can be sure that a subscriber signing on behalf of a client was authorised to act and that his or her authority had not been revoked.

If this is incorrect and a subscriber signed without authority, those dealing with the subscriber could be confident of identifying the employee who executed an instrument and his or her organisation. Those dealing with such a situation could be sure that the firm so identified had insurance that made recovery possible for the client. By using a standard form of representation agreement, those who deal with the subscriber could be confident that he or she had the powers claimed, as these would be standard.

Under Electronic Conveyancing, incapacity on the part of a client would remain a question for the subscriber representing that client to determine, as it is today. However, those who might deal with the subscriber representing an incompetent client would, at least, have an identifiable and insured third party that they might join in the event that the incompetence became an issue for the Courts.

There are long standing risks inherent in the use of powers of attorney in paper-based conveyancing. Through Electronic Conveyancing, most of these risks are addressed, so that those acting for a donee or for those who deal with a donee have a greater measure of confidence and a much reduced risk, if a representation agreement is used as the basis of authorising a subscriber to act on behalf of a client.

Where practitioners and their clients continue to use powers of attorney in Electronic Conveyancing, these risks will continue to fall on practitioners who either act for a donee or deal with a donee. These occur today in paper-based conveyancing so, in conformity with an intention of making Electronic Conveyancing the functional equivalent of paper-based conveyancing as far as this is possible, these risks will continue in Electronic Conveyancing where powers of attorney are used.

Where practitioners and their clients choose to use powers of attorney in Electronic Conveyancing, the Registrar's Identity Guidelines will require the donee of the power to be identified. However, identifying the donor of the power, the non-revocation of the power and that the acts are within scope are and will remain an underlying obligation of any practitioner acting for the donee or dealing with a donee.

#### 2.1.12 Existing Obligations of Financial Institutions

Where a subscriber is already under an obligation to comply with the requirements of the **Financial Transaction Reports Act 1988** (Cth) and the Financial Transaction Reports Regulations 1990 (Cth) and does so comply, nothing in these requirements shall impose any obligation to conduct a further verification of a party's identity. However, if a financial institution holds a representation agreement from a person who is not a signatory to an account, for example a guarantor providing a mortgage without opening an account, the financial institution must comply with the Registrar's Identity Guidelines.

#### 2.1.13 Section 110(3)(a) of the Transfer of Land Act 1958

The defence provided by this Sub-Section will only be relied on where a subscriber (or its agent) has been guilty of fraud, neglect or wilful default in applying the Registrar's Identity Guidelines.

Mechanical compliance with the Registrar's Identity Guidelines will not be sufficient. A subscriber will be on notice to make further enquiries, where, for example:

1. The person purporting to be the vendor has a name which is not exactly the same as the current registered proprietor's name, whether they are an individual or a company or
2. The person purporting to be the vendor is a woman but the current registered proprietor is a man or
3. The person purporting to be the vendor is younger than the current registered proprietor (in light of the date that the registered proprietor became registered on title).

NB This list of examples is not exhaustive.

### 2.2 Registrar's Identity Guidelines

#### 1. Verification of Identity

Where the Registrar of Titles requires a subscriber to certify as to the identity of a party, a subscriber must, before so certifying conduct a verification of that party's identity in accordance with the process prescribed in Regulation 3 of the Financial Transaction Reports Regulations 1990 as if:

- a) the subscriber were an "identifying cash dealer",
- b) the Electronic Lodgement File ("ELF") were a "bullion transaction" and
- c) the party whose identity was being verified were a "signatory" to an account held with the subscriber

as these terms are defined under the **Financial Transaction Reports Act 1988** (FTRA) and the Financial Transaction Reports Regulations 1990 (FTRR), but subject to the following limitations, exemptions and meanings –



Known Customer as 40 points towards Verification of Identity

In Regulation 2 (1) of the FTRR for the definition of “known customer” substitute “Known customer, as at a particular time, means a natural person who has been represented by the identifying subscriber for more than 12 months immediately preceding that time.”

Where Party represented has had his or her Identity previously verified

For Regulation 4 (1)(i) of the FTRR substitute:

“An identifying subscriber verifies that he or she has represented a party now represented by him or her in the ELF for more than 3 years and has previously verified that person in compliance with Regulation 3 of the FTRR as amended above, except for Regulation 4 (1)(i). (Verification by this means is worth 100 points).”

All other words and phrases in these Guidelines shall have the same meanings as those set out in the FTRA and the FTRR.

Examples of methods of achieving 100 points are as follows:

Birth certificate, certificate of citizenship and a current passport	– 70 points each
Driver’s licence	– 40 points
Confirmation from a current employer	– 35 points
The electoral roll, the record of a public utility, credit cards	– 25 points each

2. Continuous Representation Since Prior to the Commencement of the FTRA

Nothing in these Identity Guidelines shall require a subscriber to undertake verification of a party represented by him or her in an ELF in accordance with Regulation 3 of the FTRR, where that subscriber has continuously represented the party since prior to the commencement of the FTRA.

3. Existing Obligations of Financial Institutions

Where a subscriber is already under an obligation to comply with the requirements of the FTRA and the FTRR and does so comply, nothing in these requirements shall impose any obligation to conduct a further verification of a party’s identity.

4. Where Subscriber is acting on its own behalf

Nothing in these requirements shall require a subscriber to conduct a verification of its own identity when:

- a) it is acting as a party to an ELF in its own right and behalf and
- b) will sign all instruments in the ELF in its own right and behalf.

5. Identification of Remote Party by other Subscriber

A subscriber may engage another subscriber or an ALP in the relevant jurisdiction to conduct a verification of identity of a represented party in accordance with Item 1 of these Guidelines.

6. Obligations of Identifying Subscriber

Where a verification is carried out in accordance with Item 5 of these Guidelines, the subscriber requesting the verification, before certifying as to the identity of a party, must ensure:

- a) that all information collected as part of the verification is provided to the subscriber; and
- b) that the subscriber or ALP who carried out the verification certifies to the subscriber representing the party that he or she has complied with the requirements of Item 5.

7. Verification of Identity of Companies

A subscriber will be required to carry out the verification in accordance with Regulation 5A of the FTRR.

8. Verification of Identity of Parties out of Australia

Where the verification of a party's identity is required and that party is out of Australia at the time that such identification is required, a party may ask a notary public or an Australian consular official to conduct a verification of the person's identity in accordance with Item 1 of these Guidelines.

Where the Registrar of Titles requires a subscriber to certify as to the identity of a party who is out of Australia at the time, the subscriber may rely on the verification of the party's identity conducted by a notary public or an Australian consular official, if this verification reasonably appears to satisfy the requirements set out in Item 1.

9. Powers of Attorney

Where a person under a power of attorney authorises a subscriber to act on behalf of a party to an ELF, the Registrar of Titles shall require the subscriber to certify as to the identity of the attorney in accordance with Item 1 of these Guidelines.

10. Controllers of CTs

If representing another, a Controller of CT must verify the identity of the registered proprietor or first mortgagee it represents, in accordance with the Registrar's Identity Guidelines.

11. General

Nothing in these Identity Guidelines shall relieve a subscriber of any other duty, obligation or liability.

3. **Certifications**

Section 44K of the **Transfer of Land Act 1958** envisages that the Registrar will specify matters to be certified by subscribers to Electronic Conveyancing.

3.1 **Explanatory Information**

The certifications will form part of the standard text in each Registrar's Instructions.

Certifications must be provided before a matter can go forward to settlement. It is up to the subscriber giving the certifications to decide when to give them. It is expected that they would be made at the same time as the subscriber signs an instrument and/or the Registrar's Instructions. This requirement will apply to anyone signing an instrument or merely joining an ELF as a Controller of CT. Certifications will be passed to and stored in Land Registry. After settlement the instrument will be passed to and stored in the Register.

Whilst an ABN-DSC is issued to a company, it will contain within it the name of the person authorised by the company to use the ABN-DSC to sign for the company.

Certifications will be required where a person, for example, a conveyancer or ALP, signs on behalf of a represented party and where the person signing is an employee of a financial institution. The only difference will be the nature of the agreement that has been signed, one being a client representation agreement, the second being an authorisation from the subscriber to sign on its behalf.

Because the system rules are designed in such a way that all subscribers to Electronic Conveyancing are a party, it appears to Land Registry that privity of contract exists between the person giving the certifications and the person relying on them. Consequently, if a subscriber were to make a fraudulent or negligent mis-statement as to the certifications, this would seem to be a clear breach of contract.

The certifications are regarded as essential to the operation of Electronic Conveyancing because, within a contractual context, they enable the parties dealing with the person giving the certifications (i.e. other subscribers and the Registrar of Titles) to rely on the truth of the certifications. This has a number of benefits for subscribers. In particular, it gives them a higher measure of security when dealing with other parties to transactions than currently

exists in the paper-based system. The paper system is based on “caveat emptor”, whereas in Electronic Conveyancing there is an underlying contractual relationship between subscribers, which is capable of enforcement, should one subscriber act fraudulently or negligently towards another.

### **3.2 The Certifications**

The following are the certifications required by Land Registry:

#### **3.2.1 Discharge of Mortgage**

Mortgagee’s Certifications:

1. The subscriber certifies that, where the subscriber is representing another, the subscriber is a party to an EC System Rules Representation Agreement with the Mortgagee it represents or by the Mortgagee’s attorney acting under a power of attorney.
2. The subscriber certifies that, where the subscriber is representing another, the subscriber has complied with the relevant Registrar of Title’s Identity Guidelines to verify the identity of the Mortgagee it represents and the corresponding Mortgagor.
3. The subscriber certifies that, where the subscriber is not representing another, it is a party to this transaction and has signed all relevant instruments for this transaction in its own right and behalf and has complied with the relevant Registrar of Title’s Identity Guidelines to verify the identity of the Mortgagor.
4. The subscriber certifies that the subscriber holds all supporting documentation and evidence of the certifications given and that these will be retained for the period specified by the Registrar of Titles.

#### **3.2.2 Transfer**

Transferor’s Certifications:

1. The subscriber certifies that, where the subscriber is representing another, the subscriber is a party to an EC System Rules Representation Agreement with the Transferor it represents or by the Transferor’s attorney acting under a power of attorney.
2. The subscriber certifies that, where the subscriber is representing another, the subscriber has complied with the relevant Registrar of Title’s Identity Guidelines to verify the identity of the Transferor it represents.
3. The subscriber certifies that, where the subscriber is not representing another, it is a party to this transaction and has signed all relevant instruments for this transaction in its own right and behalf.
4. The subscriber certifies that the subscriber holds all supporting documentation and evidence of the certifications given and that these will be retained for the period specified by the Registrar of Titles.

Transferee’s Certifications:

1. The subscriber certifies that, where the subscriber is representing another, the subscriber is a party to an EC System Rules Representation Agreement with the Transferee it represents or by the Transferee’s attorney acting under a power of attorney.
2. The subscriber certifies that, where the subscriber is representing another, the subscriber has complied with the relevant Registrar of Title’s Identity Guidelines to verify the identity of the Transferee it represents.
3. The subscriber certifies that, where the subscriber is not representing another, it is a party to this transaction and has signed all relevant instruments for this transaction in its own right and behalf.

4. The subscriber certifies that the subscriber holds all supporting documentation and evidence of the certifications given and that these will be retained for the period specified by the Registrar of Titles.

### 3.2.3 Mortgage

Mortgagor's Certifications:

1. The subscriber certifies that, where the subscriber is representing another, the subscriber is a party to an EC System Rules Representation Agreement with the Mortgagor it represents or by the Mortgagor's attorney acting under a power of attorney.
2. The subscriber certifies that, where the subscriber is representing another, the subscriber has complied with the relevant Registrar of Title's Identity Guidelines to verify the identity of the Mortgagor it represents.
3. The subscriber certifies that, where the subscriber is not representing another, it is a party to this transaction and has signed all relevant instruments for this transaction in its own right and behalf.
4. The subscriber certifies that the subscriber holds all supporting documentation and evidence of the certifications given and that these will be retained for the period specified by the Registrar of Titles.

Mortgagee's Certifications:

1. The subscriber certifies that, where the subscriber is representing another, the subscriber is a party to an EC System Rules Representation Agreement with the Mortgagee it represents or by the Mortgagee's attorney acting under a power of attorney.
2. The subscriber certifies that, where the subscriber is representing another, the subscriber has complied with the Registrar of Title's Identity Guidelines to verify the identity of the Mortgagee it represents and the corresponding Mortgagor.
3. The subscriber certifies that, where the subscriber is not representing another, it is a party to this transaction and has signed all relevant instruments for this transaction in its own right and behalf and has complied with the relevant Registrar of Title's Identity Guidelines to verify the identity of the Mortgagor.
4. The subscriber certifies that the subscriber holds a paper counterpart signed by the Mortgagor of the electronic Mortgage signed by the Mortgagee.
5. The subscriber certifies that the subscriber holds all supporting documentation and evidence of the certifications given and that these will be retained for the period specified by the Registrar of Titles.

### 3.2.4 Applications by Surviving Proprietors

Applicant's Certifications:

1. The subscriber certifies that, where the subscriber is representing another, the subscriber is a party to an EC System Rules Representation Agreement with the Applicant it represents or by the Applicant's attorney acting under a power of attorney.
2. The subscriber certifies that, where the subscriber is representing another, the subscriber has complied with the relevant Registrar of Title's Identity Guidelines to verify the identity of the Applicant it represents.
3. The subscriber certifies that, where the subscriber is not representing another, it is a party to this transaction and has signed all relevant instruments for this transaction in its own right and behalf.

4. The subscriber certifies that the subscriber holds either the death certificates (issued by the Registrar of Birth, Deaths and Marriages) of all deceased registered proprietors where survivorship is claimed in this transaction or certified copies of these death certificates.
5. The subscriber certifies that, where a name on the death certificate (issued by the Registrar of Birth, Deaths and Marriages) for a deceased registered proprietor does not match the name shown on the folio of the Register for that person, the subscriber holds sufficient evidence to reasonably satisfy the subscriber that the deceased registered proprietor is the same person as the person shown in the death certificate.
6. The subscriber certifies that the subscriber holds all supporting documentation and evidence of the certifications given and that these will be retained for the period specified by the Registrar of Titles.

### **3.2.5 Withdrawal of Caveats**

Caveator's Certifications:

1. The subscriber certifies that, where the subscriber is representing another, the subscriber is a party to an EC System Rules Representation Agreement with the Caveator it represents or by the Caveator's attorney acting under a power of attorney.
2. The subscriber certifies that, where the subscriber is representing another, the subscriber has complied with the relevant Registrar of Title's Identity Guidelines to verify the identity of the Caveator it represents.
3. The subscriber certifies that, where the subscriber is not representing another, it is a party to this transaction and has signed all relevant instruments for this transaction in its own right and behalf.
4. The subscriber certifies that the subscriber holds all supporting documentation and evidence of the certifications given and that these will be retained for the period specified by the Registrar of Titles.

### **3.2.6 Controller of CT**

First Mortgagee's Certifications:

1. The subscriber certifies that either itself or the person whom the subscriber represents in this ELF is or will be the First Mortgagee, having control of the eCT or custody of the pCT, after registration of all the instruments in this ELF.
2. The subscriber certifies that, where the subscriber is representing another, the subscriber is a party to an EC System Rules Representation Agreement with the First Mortgagee it represents or by the First Mortgagee's attorney acting under a power of attorney.
3. The subscriber certifies that, where the subscriber is representing another, the subscriber has complied with the relevant Registrar of Title's Identity Guidelines to verify the identity of the First Mortgagee it represents.
4. The subscriber certifies that, where the subscriber is not representing another, that it is participating in this transaction and has signed the Registrar's Instructions in this transaction in its own right and behalf.
5. The subscriber certifies that the subscriber holds all supporting documentation and evidence of the certifications given and that these will be retained for the period specified by the Registrar of Titles.

Registered Proprietor's Certifications:

1. The subscriber certifies that either itself or the person whom the subscriber represents in this ELF either is or will be the Registered Proprietor, having control of the eCT or custody of the pCT, after registration of all instruments in this ELF.

2. The subscriber certifies that, where the subscriber is representing another, the subscriber is a party to an EC System Rules Representation Agreement with the Registered Proprietor it represents or by the Registered Proprietor's attorney acting under a power of attorney.
3. The subscriber certifies that, where the subscriber is representing another, the subscriber has complied with the relevant Registrar of Title's Identity Guidelines to verify the identity of the Registered Proprietor it represents.
4. The subscriber certifies that, where the subscriber is not representing another, it is participating in this transaction and has signed the Registrar's Instructions in this transaction in its own right and behalf.
5. The subscriber certifies that the subscriber holds all supporting documentation and evidence of the certifications given and that these will be retained for the period specified by the Registrar of Titles.

#### **4. Requirements for the Retention of Supporting Documentation**

##### **4.1 Explanatory Information**

Section 44B(2) of the **Transfer of Land Act 1958** envisages that the Registrar will establish requirements for access to the electronic lodgement network. One of the requirements that may be determined relates to the retention of supporting documents.

Land Registry requires supporting documentation to be retained for 7 years from the date of lodgement of the dealing that is ultimately registered or recorded as a result of the supporting documents. This is in line with Section 7.2.16 of the **Legal Profession Act 2004** (Vic.), which obviously takes into account the requirements of Section 286 of the **Corporations Act 2001** (Cth). Whilst the retention period set out in Sections 900–165 and 900–170 of the **Income Tax Assessment Act 1997** (Cth) is shorter, there is also an uncertain extension period. The Registrar of Titles has therefore decided to settle on a stated period of 7 years from the date of lodgement of the dealing that is ultimately registered or recorded as a result of the supporting documents. However, if the Anti-Money Laundering and Counter-Terrorism Financing Bill 2005 (Cth) once enacted specifies a period of longer than 7 years, these requirements will be amended to that period.

Where necessary, in accordance with Section 104 of the **Transfer of Land Act 1958**, the Registrar may call for supporting documentation to be provided to support a registration or recording.

##### **4.2 Requirements**

Any documentation supporting an instrument is to be retained for 7 years from the date of lodgement of the dealing that is ultimately registered or recorded as a result of the supporting documents.

#### **5. Requirements for Eligible Persons**

##### **5.1 Explanatory Information**

Section 44C of the **Transfer of Land Act 1958** envisages that the Registrar will establish eligibility requirements for an "eligible person".

##### **5.2 Requirements**

An eligible person is anyone who:

1. is and continues to be a current Subscriber to EC;
2. has been identified in accordance with the Registrar's Identity Guidelines and issued with an ABN DSC;
3. is and continues to be a current registered customer in VOTS and
4. complies and continues to comply with the insurance requirements established by the Registrar of Titles.

## **6. Insurance Requirements**

### **6.1 Explanatory Information**

Section 44(2) of the **Transfer of Land Act 1958** envisages that the Registrar will establish requirements for access to the electronic lodgement network. One of the requirements is the insurance necessary for a person to gain access to the electronic lodgement network.

These insurance requirements will apply to all subscribers of Electronic Conveyancing. Each requirement must be complied with for access to Electronic Conveyancing, unless a subscriber is otherwise excluded from the operation of a requirement by means of an exemption contained within that requirement.

### **6.2 Requirements**

#### **6.2.1 Requirements for Professional Indemnity Insurance**

Before becoming a subscriber to Electronic Conveyancing, all subscribers to Electronic Conveyancing shall obtain professional indemnity insurance obtained from a mutual fund or other insurer and shall hold and maintain such insurance during the term of their membership on terms not worse than those set out below –

- An insured amount of \$1.5 million per claim held under a policy written either by an insurer licensed by the Australian Prudential Regulation Authority or by Victoria's Legal Practitioners Liability Committee or the equivalent in other States and Territories.
- The total amount of claims insured in any one year shall be no less than \$1.5 million.
- The excess payable by the insured shall not be greater than \$50,000 in any case.
- The insurance includes coverage for conveyancing transactions.

On ceasing to be a subscriber, all subscribers agree to maintain, for three years after ceasing to be a subscriber, professional indemnity insurance on the above terms for claims that might be made against them as a result of actions or inactions by them at any time whilst they were subscribers.

ALPs with a current Practising Certificate issued by the Victorian Legal Services Board are deemed to meet the above requirements.

##### **6.2.1.1 Exemptions**

###### *a) Authorised Deposit-Taking Institutions*

Where a subscriber is an authorised deposit-taking institution, as defined in Section 3 of the FTRA, that subscriber is not required to hold and maintain professional indemnity insurance required by the Registrar provided –

- The subscriber complies with all prudential requirements and guidance notes made by the Australian Prudential Regulation Authority, including lodgement of returns, payment of levies and the treatment of funds; and
- The subscriber does not enter into liquidation, any scheme of arrangement or any other form of voluntary or involuntary liquidation; and
- The subscriber remains a deposit-taking institution authorised by the Australian Prudential Regulation Authority; and
- The subscriber otherwise complies with any requirements set out in the System Rules for Electronic Conveyancing for authorised deposit-taking institutions.

Where an institution once authorised by the Australian Prudential Regulation Authority as a deposit-taking institution is no longer exempt from the need to hold and maintain appropriate professional indemnity insurance, it shall immediately take out and maintain professional indemnity insurance otherwise required by the Registrar of Titles.

A failure by a previously authorised deposit-taking institution to take out and maintain professional indemnity insurance required by the Registrar of Titles will result in that subscriber's access to Electronic Conveyancing being immediately terminated.

*b) Entities operating an Exchange Settlement account with the Reserve Bank of Australia.*

Exchange Settlement accounts are the means by which providers of payment services settle obligations which they have accrued in the claims process.

Where a subscriber is an entity operating an Exchange Settlement account with the Reserve Bank of Australia, that subscriber is not required to hold and maintain professional indemnity insurance required by the Registrar *provided* –

- The subscriber complies with all prudential and liquidity requirements established by the Reserve Bank of Australia for the operation of an Exchange Settlement account; and
- The subscriber does not enter into liquidation, any scheme of arrangement or any other form of voluntary or involuntary liquidation; and
- The subscriber remains the operator of an Exchange Settlement account with the Reserve Bank of Australia; and
- The subscriber otherwise complies with any requirements set out in the System Rules for Electronic Conveyancing for entities operating an Exchange Settlement account with the Reserve Bank of Australia.

Where an entity once operating an Exchange Settlement account with the Reserve Bank of Australia is no longer exempt from the need to hold and maintain appropriate professional indemnity insurance, it shall immediately take out and maintain the levels of professional indemnity insurance otherwise required by the Registrar of Titles.

A failure by an entity previously operating an Exchange Settlement account with the Reserve Bank of Australia to take out and maintain the levels of professional indemnity insurance required by the Registrar of Titles will result in that subscriber's access to Electronic Conveyancing being immediately terminated.

#### **6.2.2 Requirements for Fidelity Insurance**

Before becoming a subscriber to Electronic Conveyancing, all subscribers to Electronic Conveyancing shall obtain fidelity insurance obtained from a mutual fund or other insurer and shall hold and maintain such insurance during the term of their membership on terms not worse than those set out below –

- Insured amount of \$1.5 million per claim held under a policy written by an insurer licensed by the Australian Prudential Regulation Authority.
- The total amount of claims insured in any one year shall be no less than \$1.5 million.
- The excess payable by the insured shall not be greater than \$50,000 in any case.
- Where a subscriber's fidelity insurance is held through a mutual fund such as is currently operated by the Law Institute of Victoria, a subscriber may agree with the mutual fund to pay a levy instead of an annual insurance premium.
- The insurance includes coverage for conveyancing transactions.

On ceasing to be a subscriber, all subscribers agree to maintain, for three years after ceasing to be a subscriber, fidelity insurance on the above terms for claims that might be made against them as a result of actions or inaction by them at any time whilst they were subscribers.

ALPs with a current Practising Certificate issued by the Victorian Legal Services Board are deemed to meet the above requirements.



#### 6.2.2.1 Exemptions

##### a) *Non-operation of a Trust Account*

A subscriber is not required to comply with the Registrar's requirements for fidelity fund provided –

- The subscriber provides a statutory declaration to the LX, at the time of applying for registration as a subscriber to Electronic Conveyancing declaring that the subscriber does not operate a trust account or otherwise hold money or funds on behalf of another; and
- The subscriber provides a statutory declaration to the LX, at each anniversary of becoming a subscriber to Electronic Conveyancing declaring that the subscriber does not operate a trust account or otherwise hold money or funds on behalf of another, and has not operated a trust account or otherwise hold money or funds on behalf of another during the past year; and
- The subscriber does not operate a trust account or otherwise hold money or funds on behalf of another during the time that the subscriber subscribes to Electronic Conveyancing.

Where a subscriber, at any time whilst a subscriber, opens a trust account or holds any money or funds on behalf of another, the subscriber shall immediately take out and maintain a fidelity insurance policy of the type and for the amount required by the Registrar of Titles.

A failure by a subscriber to notify the LX when a subscriber opens a trust account or holds any money or funds on behalf of another or a failure by a subscriber in such circumstances to take out and maintain fidelity insurance policy as required by the Registrar of Titles will result in that subscriber's access to Electronic Conveyancing being immediately terminated.

##### b) *ALP who contributes to the Legal Practitioners' Fidelity Fund or other mutual insurance scheme approved by the Registrar*

Where a subscriber is an ALP, that subscriber is not required to hold and maintain fidelity insurance required by the Registrar if the subscriber contributes to the Victorian Legal Practitioners' Fidelity Fund or other mutual insurance scheme approved by the Registrar at the level established for that person or class of persons approved by the Registrar and that contribution continues to be made during the time a person remains a subscriber.

Where a subscriber is no longer exempt from the need to hold and maintain appropriate fidelity insurance because that person is no longer an ALP or no longer contributes to the Victorian Legal Practitioners' Fidelity Fund or other mutual insurance scheme approved by the Registrar at the level established for that person or class of persons approved by the Registrar, the subscriber shall immediately take out and maintain fidelity insurance otherwise required by the Registrar of Titles.

A failure by a subscriber in such circumstances to take out and maintain fidelity insurance required by the Registrar of Titles will result in that subscriber's access to Electronic Conveyancing being immediately terminated.

##### c) *Authorised Deposit-Taking Institutions*

Where a subscriber is an authorised deposit-taking institution, that subscriber is not required to hold and maintain fidelity insurance required by the Registrar provided –

- The subscriber complies with all prudential requirements and guidance notes made by the Australian Prudential Regulation Authority, including lodgement of returns, payment of levies and the treatment of funds; and
- The subscriber does not enter into liquidation, any scheme of arrangement or any other form of voluntary or involuntary liquidation; and

- The subscriber remains a deposit-taking institution authorised by the Australian Prudential Regulation Authority; and
- The subscriber otherwise complies with any requirements set out in the System Rules for Electronic Conveyancing for authorised deposit-taking institutions.

Where an institution once authorised by the Australian Prudential Regulation Authority as a deposit-taking institution is no longer exempt from the need to hold and maintain appropriate fidelity insurance, it shall immediately take out and maintain fidelity insurance otherwise required by the Registrar of Titles.

A failure by a previously authorised deposit-taking institution to take out and maintain fidelity insurance required by the Registrar of Titles will result in that subscriber's access to Electronic Conveyancing being immediately terminated.

*d) Entities operating an Exchange Settlement account with the Reserve Bank of Australia.*

Where a subscriber is an entity operating an Exchange Settlement account with the Reserve Bank of Australia, that subscriber is not required to hold and maintain fidelity insurance required by the Registrar *provided* –

- The subscriber complies with all prudential and liquidity requirements established by the Reserve Bank of Australia for the operation of an Exchange Settlement account; and
- The subscriber does not enter into liquidation, any scheme of arrangement or any other form of voluntary or involuntary liquidation; and
- The subscriber remains the operator of an Exchange Settlement account with the Reserve Bank of Australia; and
- The subscriber otherwise complies with any requirements set out in the System Rules for Electronic Conveyancing for entities operating an Exchange Settlement account with the Reserve Bank of Australia.

Where an entity once operating an Exchange Settlement account with the Reserve Bank of Australia is no longer exempt from the need to hold and maintain appropriate fidelity insurance, it shall immediately take out and maintain fidelity insurance otherwise required by the Registrar of Titles.

A failure by an entity previously operating an Exchange Settlement account with the Reserve Bank of Australia to take out and maintain fidelity insurance required by the Registrar of Titles will result in that subscriber's access to Electronic Conveyancing being immediately terminated.

### **6.2.3 Requirements for Additional Fidelity Insurance**

Before becoming a subscriber to Electronic Conveyancing, all subscribers to Electronic Conveyancing shall obtain additional fidelity insurance (called "additional fidelity insurance") obtained from a mutual fund or other insurer additional to that required above and shall hold and maintain such additional fidelity insurance during the term of their membership on terms not worse than those set out below –

- Insured amount of \$1.5 million per claim held under a policy written by an insurer licensed by the Australian Prudential Regulation Authority.
- The total amount of claims insured in any one year shall be no less than \$1.5 million.
- The excess payable by the insured shall not be greater than \$50,000 in any case.
- Where a subscriber's additional fidelity insurance is held through a mutual fund, such as is currently operated by the Law Institute of Victoria, a subscriber may agree with the mutual fund to pay a levy instead of an annual insurance premium.

- The terms of this policy for fidelity insurance may provide that the insurer need not provide any coverage where a claimant does not make a claim within six months of acquiring knowledge of loss suffered as a result of action or inaction by the insured.

On ceasing to be a subscriber, all subscribers agree to maintain, for three years after ceasing to be a subscriber, this additional fidelity insurance on the above terms for claims that might be made against them as a result of actions or inaction by them at any time whilst they were subscribers.

ALPs with a current Practising Certificate issued by the Victorian Legal Services Board are deemed to meet the above requirements.

#### 6.2.3.1 *Exemption*

Any subscriber who is not a mortgage broker as this term is defined by the Managed Mortgage Section Fidelity Fund operated by the Law Institute of Victoria or other approved mutually managed scheme shall be exempt from this requirement.

### 6.3 **Proof of Insurance**

Each subscriber required to hold professional indemnity, fidelity insurance or additional fidelity insurance must demonstrate that the subscriber has such insurance and that such insurance is current.

The Registrar may call on a subscriber at any time to provide such proof.

Proof of insurance may be provided by –

- Notification; or
- Production of a certificate of currency.

#### 6.3.1 **By Notification**

##### 6.3.1.1 *By Insurer*

Where a subscriber is a member of a mutual fund offering either professional indemnity, fidelity insurance or additional fidelity insurance to its members, proof of a subscriber's current insurance for any of these (as the case may be) may be offered by the fund providing details of the subscriber's membership to the LX sufficient to demonstrate that the subscriber is a member and is currently insured for the required amount.

Such proof is only acceptable to the Registrar of Titles where the fund agrees to –

- provide proof of a subscriber's membership and
- confirm that the member is covered as required above and
- notify LX immediately upon a subscriber no longer being a member of such fund or where a subscriber is no longer covered by the insurance provided by the fund.

##### 6.3.1.2 *By Professional Body*

Where a subscriber is a member of a professional body, membership of which requires professional indemnity, fidelity insurance or additional fidelity insurance, proof of a subscriber's current insurance for any of these (as the case may be) may be offered by the professional body providing details of the subscriber's membership to LX sufficient to demonstrate that the subscriber is a member and is currently insured for the required amount.

Such proof is only acceptable to the Registrar of Titles where the professional body agrees to –

- provide proof of a subscriber's membership and
- confirm that membership of the professional body necessarily means that the member is covered as required above and
- notify LX immediately upon a subscriber no longer being a member of the professional body or where a subscriber is no longer covered by the requisite insurance.

As a consequence, it is expected that the Registrar of Titles would exercise the discretions under the new **Transfer of Land (Electronic Transactions) Act 2004** in the same way as would apply for paper-based instruments, where the implications and situations are identical.

The only limitation on this equivalence between the two systems would occur where the registration or recording of paper-based instruments raises fundamentally different issues from that of registering or recording electronic instruments. In such cases, where the guidance in the existing case law gives no direction, the Registrar has no choice but to act in undertaking the registration or recording of electronic instruments in a way that might be different from that expected under paper-based conveyancing. It is anticipated that such instances would be very infrequent.

It is intended in Electronic Conveyancing that prior to settlement an electronic instrument will be checked to ensure that it can be accepted for lodgement by the Registrar. Thus, most of the reasons for which instruments are currently refused will no longer arise in Electronic Conveyancing. However, there remains a very small group of reasons for which an electronic instrument could be refused registration or recording, for example, as a result of a Court Order or that the instrument is misconceived at law. Further there is an extremely remote possibility that, for technical reasons, registration or recording does not take place.

If registration or recording does not take place, the parties would ordinarily be able to re-lodge electronically. However, if this were not possible in circumstances not yet envisaged, the Registrar would need to convert the electronic instrument into a paper form and return it to the responsible party, as the digital signatures of the parties cannot be reproduced on the paper instruments. The parties would need to ratify the paper copy of the electronic instrument and then relodge in paper form. If a party were unwilling to provide a ratification, it would be Land Registry's responsibility to facilitate obtaining the ratification; as currently would happen, if a paper instrument were lost by Land Registry after lodgement and prior to registration.

It must always be borne in mind that these discretions cannot be exercised arbitrarily and can always be reviewed by the Courts.

## **9. Digital Signatures**

### **9.1 Explanatory Information**

Execution of all electronic instruments to be lodged with the Registrar of Titles through Electronic Conveyancing will need to be digital.

### **9.2 Requirements**

All executions of electronic instruments must be undertaken using an Australian Business Number – Digital Signing Certificate (ABN–DSC), currently issued by a number of commercial providers to the standards established by the Commonwealth Gatekeeper Project.

Any person who can demonstrate that they are the holder of an Australian Business Number or the authorised representative of an entity that holds an Australian Business Number may apply to a commercial provider for the issue of an ABN–DSC. The ABN–DSC relies on asymmetric encryption to ensure traceability and non-repudiability of an electronic signature.

Each person or business entity to whom an ABN–DSC is issued will be responsible for the security of the ABN–DSC and its passphrase. The holder of an ABN–DSC may choose to issue additional ABN–DSCs to employees who have a right to sign documents on behalf of the person or business entity. Where additional ABN–DSCs are issued to employees, the person or business entity is responsible for the actions of their employees.

Where the holder of an ABN–DSC learns that the ABN–DSC or its passphrase has been lost, stolen, compromised or otherwise threatened, the holder of that ABN–DSC will be responsible for ensuring that the provider of the ABN–DSC is notified so that the ABN–DSC is added to the Certificate Revocation List operated by the provider.

### 6.3.2 By Production of a Certificate of Currency.

Where a person required to have insurance to become a subscriber is not provided with professional indemnity or fidelity insurance or additional fidelity insurance through a mutual fund or where a mutual fund chooses not to notify the LX as to the status of a member and a member's insurance coverage, proof of insurance as required by the Registrar of Titles shall be provided by –

- a certificate of currency for each such insurance required, and
- an agreement with the LX signed by a person wishing to become a subscriber whereby that person agrees to maintain insurance of the type required by the Registrar for a period of three years after that person ceases to be a subscriber.

Until these are provided in a form acceptable to the Registrar of Titles, no person shall be entitled to be a subscriber for the purposes of Electronic Conveyancing.

Before the period stated in a certificate of currency expires, a subscriber must provide the LX with a further certificate of currency for any further period during which a subscriber wishes to remain a subscriber. In the event that a subscriber no longer wishes to be a subscriber, a certificate of currency for insurance for one year being the first of the three years required under the subscriber's agreement with the Registrar must be provided.

Before the anniversary of each year where a person is no longer a subscriber, the former subscriber must provide the LX with a further certificate of currency for a further year until the expiry of the three years required under the subscriber's agreement with the LX.

In the event that a former subscriber fails to obtain insurance of the type required for part or all of the three years required under the former subscriber's agreement with the LX, the Registrar may obtain such insurance of the type required to cover any action or inaction by the former subscriber, such insurance to be at the cost of the former subscriber. The cost of such insurance can be recovered by the Registrar as a debt against the subscriber or his or her estate.

## 7. Corrections to the Register

### 7.1 Explanatory Information

Section 44H of the **Transfer of Land (Electronic Transactions) Act 2004** envisages that the Registrar will be able to amend the Register in certain circumstances.

Section 103 of the **Transfer of Land Act 1958** will be applied to EC transactions in the same way that it is currently applied to paper transactions. The Registrar will amend the Register:

- a) if directed to do so by the Court (in accordance with Section 103 Sub-Section (1) of the **Transfer of Land Act 1958**) or
- b) to correct a patent error (in accordance with Section 103 Sub-Section (1A) of the **Transfer of Land Act 1958**).

## 8. Registrar's Discretions

### 8.1 Explanatory Information

The registration of paper based instruments in Victoria is managed by the **Transfer of Land Act 1958**. In this legislation, the Registrar of Titles is given substantial discretions as to how to manage the process and procedures of paper-based registration or recording. In turn, the exercise of these discretions by the Registrar is guided and directed by a substantial corpus of case law.

It is a fundamental design principle of Electronic Conveyancing that, insofar as it is possible, the registration or recording of electronic instruments shall be undertaken in the exact same way as the Registrar now undertakes the registration or recording of paper instruments.

An ABN–DSC will have a life of two years whereupon the holder of an ABN–DSC will be required to apply for a new ABN–DSC if the holder wishes to continue using Electronic Conveyancing for the lodgement of electronic instruments. The person or entity to whom the ABN–DSC issued is responsible for the control and management of the ABN–DSCs issued to employees.

Commercial providers of ABN–DSCs offer ABN–DSCs in a number of forms. They may be as a “soft” certificate downloaded onto a specific computer or as a “hard” certificate kept within a smart card or USB dongle. There are differences in pricing, level of security and portability offered for each type of ABN–DSC and subscribers should choose the type best suited to their needs. Land Registry will accept any form of ABN–DSC provided it meets the requirements of Electronic Conveyancing and those of the Commonwealth Gatekeeper Project.

## **10. Rule Set for Electronic Certificates of Title**

### **10.1 Explanatory Information**

#### **10.1.1 Introduction**

Under paper-based conveyancing, the person entitled to possession of a paper certificate of title (pCT) as a result of registration will ordinarily be the registered proprietor or, if there is a mortgage, then the holder of a registered first mortgage. To support the next transaction, the pCT is produced at settlement and passed to the party entitled to take possession as a result of the registration of the transaction.

Under Electronic Conveyancing (EC), this process must be altered to accommodate two factors –

- A paper certificate of title must be converted to an eCT before EC can be used to lodge electronic instruments.
- Only subscribers can participate in EC. They can hold control of an eCT, be a Controller of CT, lodge electronically or nominate an eCT to an ELF or paper dealing. This means that any use of an eCT must be confined to those who are subscribers to EC.

An eCT is achieved by means of a flag or notification on the relevant volume/folio in the titles Register which identifies the name of the subscriber who has control of the eCT.

The rules set out at the end of this paper support these two factors and describe the changes on the conveyancing process when it is conducted using EC.

#### **10.1.2 Choice of pCT or eCT**

Even though subscribers will be encouraged to maintain certificates of title in an electronic format at the end of an electronic transaction, this is a matter for the subscriber and their client to determine on a case by case basis.

At the request of a subscriber who has eCT control, the Registrar of Titles will convert an eCT to a pCT at any time and issue the resulting pCT to the person with eCT control, based on the name and address details held in Land Registry’s computer system. This application for conversion would be undertaken electronically using an Administrative Notice.

There will be no charge for the lodgement of an Administrative Notice.

Within the EC system itself, a subscriber who will have eCT control or be the pCT issue party after registration of the instruments in an ELF must choose which form of certificate of title is desired after registration, either eCT or pCT. If the subscriber wishes, they may choose to have the certificate of title held by the Registrar for them in electronic format (i.e. an eCT) or the subscriber may choose to have a pCT issued to them after registration of the instruments in an ELF. The issuing of a pCT would be conducted in the same ways as it is in paper-based conveyancing.

Where a subscriber chooses an eCT, when the next transaction is conducted Land Registry systems will make a specific connection between the subscriber who has eCT control and the subscriber making the eCT nomination via the VOTS customer code. If there is not a match the ELF will fail validation and all instruments within the ELF will fail to lodge.

Where an EC subscriber is terminated and de-activated the following actions will take place in Land Registry:

- No transaction(s) will be accepted for electronic processing.
- Any existing folios for which the subscriber has eCT control will be changed to pCTs and produced for delivery to the party recorded as the holder of eCT control based on the record of name and address held in the Land Registry computer system.
- Where there are extenuating circumstances for a subscriber being terminated, Land Registry would need to be advised if pCTs produced are not to be forwarded directly to the address in the Land Registry computer system.
- Any transaction held in Land Registry electronically and currently unregistered will be processed as normal for registration purposes with the resultant issue of a pCT to the appropriate person.

For example, where an ALP advises LX that they will be closing their business and no longer wish to be an EC subscriber, LX will terminate them as an EC subscriber. LX will then advise Land Registry of the termination. Any folios for which the subscriber holds eCT control will be converted to pCTs. Land Registry will then forward the pCTs to the subscriber for the subscriber to provide to their clients.

If there is a dispute between the client and the subscriber and the subscriber refuses to release the eCT, the same process as the industry currently uses in paper-based conveyancing will apply.

#### **10.1.3 Encumbered Certificates of Titles**

Where a financial institution holds a mortgage over the land in a certificate of title, it is expected that it would choose, as a matter of efficiency and convenience, to have the certificate of title held by the Registrar for it in electronic format as an eCT.

This would avoid any issues with lost or misplaced certificates of title as well as avoiding secure storage costs. As with any other subscriber, a financial institution would be free, in any case, to seek the issue of a certificate of title in paper form if this was necessary or convenient.

#### **10.1.4 Unencumbered Certificates of Titles**

Subscribers, particularly those acting for parties in transactions that will result in unencumbered certificates of title, may be instructed by their client to hold control of an eCT for their client, pending the next transaction. Alternatively, subscribers may be instructed by their client to have a pCT issued to them to either hold on behalf of the client or deliver to their client upon registration of the instruments in the ELF.

Subscribers will be required to discuss the processes and implications associated with choosing an eCT or pCT, including their costs, if any, of holding control of an eCT, nominating an eCT to an ELF, participating in an ELF as Controller of CT and converting an eCT to a pCT at a later stage after the transaction is complete. The representation agreement completed by the client will also be required to contain an explicit instruction to the ALP or conveyancer on whether an eCT or pCT is to issue from the transaction and if a pCT, who is to hold it.

Retention of certificates of title in electronic format will minimise later re-conversion costs, as pCTs must be converted to eCTs before the next electronic transaction.

The Registrar also suggests that professional rules include the requirements for a practitioner to nominate an eCT to a later transaction upon request and without charge to the practitioner's client, provided that there is no existing ALP's lien in favour of the practitioner.

Where a subscriber is holding an unencumbered eCT on behalf of a client and the client wishes to change subscribers or choose another representative who is not a subscriber, the following process will apply:

1. Following Pilot Stage 1, the new subscriber, having established an ELF for the purposes of transacting on behalf of the person they represent (or themselves if they have subsequently become a subscriber), would notify the previous subscriber of the ELF number and password details to allow entry to the ELF to provide eCT release to the new subscriber. They would select the role of Controller of CT in the ELF. (NB: this only applies where the new representative is a subscriber in EC).
2. The subscriber holding the eCT control will request the conversion of the eCT to a pCT using an Administrative Notice. Upon receipt of the Administrative Notice, Land Registry will convert the eCT to a pCT and issue the pCT to the subscriber. On receipt of the pCT the subscriber would then deliver the pCT to the client. The client would then make arrangements with the new subscriber. (NB: this can apply whether or not the new representative is a subscriber in EC).

In situations where an eCT is required for a transaction, the client can request the subscriber to nominate the eCT to the transaction by participating as Controller of CT. This can be a nomination in an Administrative Notice to either an ELF or a paper dealing.

Where a nomination to a dealing is made and the dealing does not proceed, eCT control will remain with the subscriber who held the eCT control prior to the nomination.

## 10.2 eCT Requirements

1. Only a subscriber is eligible to apply for conversion of a paper Certificate of Title (pCT) into an Electronic Certificate of Title (eCT).  
Only a subscriber is eligible to apply to Land Registry for conversion of a pCT into an eCT. The subscriber must be in possession of the pCT at the time of making the application using EC. The pCT must be physically surrendered to Land Registry to enable its secure destruction and creation of an eCT in its stead. In this way the paper and electronic certificates of title will not co-exist.
2. The pCT to be converted to an eCT prior to commencing an electronic dealing.  
Prior to entering into an electronic dealing a subscriber must ensure that an eCT has been created. This will be done by an application by the subscriber using EC.
3. Only a subscriber can choose whether a pCT or an eCT issues from a dealing.  
An eCT will issue from every paper or electronic dealing where the issuing party or eCT control (as the case may be) is a subscriber, unless the subscriber or the person it represents being the party entitled to possession of the certificate of title requests a pCT in its stead.  
In the Electronic Conveyancing system, a subscriber is required to choose, before settlement, whether he or she wishes a pCT or an eCT to result from the transaction. This is a deliberative choice that must be made by a subscriber who will be the eCT Control when the instruments in the ELF are registered.
4. Only a subscriber can request that an eCT be converted into a pCT  
Only a subscriber can make an application to Land Registry for an eCT to be issued in a paper format. The resulting pCT will at all times be issued to the subscriber, using the name and address details as shown on the Land Registry computer system. It is then up to the subscriber to determine who is entitled to the pCT and to forward that pCT to them in the ordinary course of events.
5. Only a subscriber to EC can nominate an eCT to an ELF or a paper transaction.



6. All relevant eCTs must be nominated to an ELF.
7. A change in the control of an eCT cannot occur without the registration of an instrument disposing of an interest in land.
8. Where none of the parties signing an instrument in an ELF will receive control of an eCT or be the pCT Issue Party, once all the instrument in the ELF are registered, a Controller of CT must participate in the ELF.
9. Only a subscriber can be a Controller of CT.
10. A Controller of CT can only be the subscriber who either will be or represents the person who will be:
  - a) the first mortgagee once all dealings in an ELF are registered or recorded or
  - b) the registered proprietor once all dealings in an ELF are registered or recorded, provided the certificate of title is not encumbered by a mortgage.
11. There must only be one Controller of CT per ELF.
12. Only one subscriber can have eCT Control or pCT Issue.

## **11. Information to Support Registration**

### **11.1 Explanatory Information**

Land Registry has identified a number of valid circumstances where the name of the party transacting is not the same as the Registered Proprietor. To accommodate these circumstances within EC, Land Registry has developed the concept of Justifications whereby the parties select an appropriate justification to support the name difference. For some justifications subscribers may also be required to supply additional information to the Land Registry after the transaction to support the registration of the instruments in question.

Where not required by the Land Registry, documentation to support justifications must be retained by the subscriber in accordance with the retention of supporting documents requirements.

This paper outlines not only the justifications, shown in Table One, but also situations where, additional dealing information in the form of supporting documentation is required to support a registration. This is shown in Table Two and has been labelled Dealing Requirements.

At the time of preparing electronic instruments these justifications (and the supporting documentation requirements) will be available to users along with a detailed explanation of when each should be used. The Registrar's expectation is that the parties will choose the appropriate justification and/or supply the relevant dealing requirement to allow the necessary decision regarding registration to be made.

For both justifications and dealing requirements, the ELF enables all parties to see where these have been selected to clarify the intent of the transaction and where supporting documentation is required. As is the case with paper-based conveyancing, a subscriber would need to satisfy itself, himself or herself about the supporting documentation prior to settlement. The responsible party would need to make arrangements to receive any supporting documentation from the other parties and then supply it to Land Registry.

The justifications comprise part of the digital instrument and are forwarded to Land Registry. Dealing Requirements form part of the Registrar's Instructions which are also forwarded to Land Registry. Below are the tables and explanatory definitions to be included in the EC ELF set up.

**11.2 Requirements****11.2.1 Justifications (Name differences)**

If the name of the Party Dealing is not the same as the registered proprietor, the subscriber must choose the appropriate justification (from the following list). (Note: The ELF creation process makes it mandatory to select a justification where the subscriber enters a change of name in the Party Dealing Field).

The responsible party must ensure that any supporting documents required to be supplied to Land Registry are provided to Land Registry.

Table One – Justifications (Name Differences)

	<b>Name difference description</b>	<b>Supporting Documents to be supplied to Land Registry</b>
1	Change of incorporated name – Company	No
2	Change of incorporated name – Co-Operative Housing Society	No
3	Change of incorporated name – Body registered under Associations Incorporation Act	No
4	Change of incorporated name – Credit Union	No
5	Merger/Takeover – Registered Proprietor(s) still exist	Yes
6	Sale or transfer of business undertaking – Registered Proprietor(s) still exist	Yes
7	Legislative Change – Company – Registered Proprietor(s) still exist	Yes
8	Legislative Change – Non Company – Registered Proprietor(s) still exist	Yes
9	Amalgamation – Hospitals – Registered Proprietor(s) still exist	Yes
10	Marriage	No
11	Deed Poll	No
12	Adoption of new name	No
13	Resumption of maiden name	No
14	Error in Register	No

**11.2.2 Explanatory Definitions: Table One – Justifications (Name Differences):**1. *Change of incorporated name – Company:*

Where a Company has changed its name and an ASIC Certificate of Registration reflecting such change exists, production of a copy of the Certificate of Registration showing change of the name will not be required. Entry of the current name of a Transferor, Mortgagor, Mortgagee or Caveator as the Dealing Party Name in the ELF with the *Justifications* selection being Certificate of Incorporation will be sufficient.

2. *Change of incorporated name – Co-Operative Housing Society Limited.*  
Similarly to item 1, if a Co-op Housing Society changes a name, an entry of the current name of a Transferor, Mortgagor, Mortgagee or Caveator as the Dealing Party Name with the *Justifications* selection being Certificate of Incorporation will be sufficient, as there is provision in the relevant legislation for Land Registry to be able to read the new name as being the same entity as the old name (i.e., deeming provisions). The Certificate of Incorporation showing change of name will not need to be supplied.
3. *Change of incorporated name – Body registered under Associations Incorporation Act:*  
A recital of the new name as the Dealing Party Name with the *Justifications* selection being Certificate of Incorporation will be sufficient. The Certificate of Incorporation showing change of name will not need to be supplied.
4. *Change of incorporated name – Credit Union:*  
As all Credit Unions are required to have converted to a Company incorporated under the Corporations Act, a recital of the new name in the Dealing Party Name field of the ELF will be all that is required. The Certificate of Registration showing change of name and conversion will not need to be supplied.
5. *Merger/Takeover – Registered Proprietor(s) still exist:*  
Where there is a difference in name between a Transferor, Mortgagee, or Caveator compared to the name on the Register, supporting evidence will be required. This may vary depending on the particular body and the legislation under which it is incorporated. Evidence may include a statutory declaration(s), copies of relevant legislation (only the relevant sections need to be produced), deeds, agreements, and/or a covering letter of explanation by an ALP.
6. *Sale or transfer of business undertaking – Registered Proprietor(s) still exist:*  
Where a corporate entity undertakes a total sale of its business AND the registered proprietor still exists, supporting evidence will be required for a Transfer of Land, Discharge of Mortgage and a Withdrawal of Caveat. This may take the form of copies of legislation, statutory declaration(s) etc.
7. *Legislative Change – Company – Registered Proprietor(s) still exist:*  
Same requirements as 5 above.
8. *Legislative Change – Non-Company – Registered Proprietor(s) still exist:*  
Same requirements as 5 above.
9. *Amalgamation – Hospitals – Registered Proprietor(s) still exist:*  
Examples of supporting documentation could include copies of legislation or government gazettes. If the former body was not registered on the title (perhaps the hospital had an earlier name) then an application under section 59 Transfer of Land Act will also be required.
10. *Marriage*  
Where the Transferor, Mortgagor, Mortgagee or Caveator has changed their name due to marriage, evidence need not be supplied.
11. *Deed Poll*  
Where the Transferor, Mortgagor, Mortgagee or Caveator has changed their name through deed poll, evidence need not be supplied.
12. *Adoption of new name*  
Where the Transferor, Mortgagor, Mortgagee or Caveator has changed their name due to adoption of a new name, evidence need not be supplied.

13. *Resumption of maiden name*  
Where the Transferor, Mortgagor, Mortgagee or Caveator has changed their name due to resumption of their maiden name, evidence need not be supplied.
14. *Error in Register*  
Where the name of the Transferor, Mortgagor, Mortgagee, Caveator shown in the Register is different from the name of that party as identified by a subscriber and the difference has resulted from an error in the Register or the miskeying of the details contained in an earlier instrument.

### 11.2.3 Dealing Requirements

When additional information is required to support the registration of a transaction, the parties must select the relevant “Dealing Requirements” in the ELF and supply the relevant information in paper form to Land Registry to allow the necessary decision regarding registration. The ‘Dealing Requirement’ details will be forwarded to Land Registry in the Registrar’s Instructions. The responsible party must provide the supporting documents to Land Registry.

Table Two – Dealing Requirements

	<b>Dealing requirements description</b>	<b>Supporting Documents to be supplied to Land Registry</b>
1	Consent of Caveator	Yes
2	Consideration or Secured Amount > \$1m – Company Search	Yes
3	Consideration or Secured Amount > \$1m – Incorporated Association	Yes
4	Copy court order	Yes
5	VCAT Order with supporting Statutory Declaration	Yes
6	State Trustees Section 19 Certificate	Yes
7	Statutory Declaration confirming Company in Liquidation – Distribution of Specie (non monetary)	Yes
8	Statutory Declaration confirming Company in Liquidation – Monetary Consideration	Yes
9	Statutory Declaration confirming Company has a Receiver and Manager or a Receiver appointed	Yes
10	Statutory Declaration confirming Company has an Administrator appointed	Yes
11	Statutory Declaration confirming Company has a Controller appointed	Yes
12	Trustee – Power of Attorney & Statutory Declaration	Yes
13	Non-Monetary Considerations – Spousal Transfer only	No
14	Change in the manner of holding where moiety share does not alter	No
15	Transfer to exempt Government Bodies	No
16	Other	Yes

**11.2.4 Explanatory Definitions: Table Two – Dealing Requirements:**

The business rules currently in place will apply in relation to dealings and cases, that is all dealings in a case must be registrable/recordable or none will be registered/recorded.

1. *Consent of Caveator.*

When a transfer or mortgage is being lodged in phase 1 of EC and a caveat affects the land, sometimes the Caveator may provide a written consent to registration. This will apply to dealings where the dealing is not one that satisfies the claim of the Caveator. In all such instances Land Registry will require the written consent (identifying the relevant dealing by dealing type, date and parties) to be supplied before registration of the dealing(s) can be completed. The consent will be imaged and filed with the registered instrument.

2. *Consideration or Secured Amount > \$1m – Company Search.*

Where a transfer or mortgage by a company is being lodged and the Transaction Value is over \$1m, the usual certified copy of a Company Search, having been obtained no earlier than 14 days prior to the date of the instrument, will be required as per current practice.

3. *Consideration or Secured Amount > \$1m – Incorporated Association.*

A certified copy of the Rules of the Association plus a statutory declaration by the Public Officer or ALP for the Association that the persons dealing on behalf of the Association were Office Bearers at the date of the transfer or mortgage will be required.

4. *Copy Court Order.*

Any transfer which refers to a Court Order in the Consideration or if the Dealing Party name is other than the registered proprietor and the relevant *Dealing Requirements* of Court Order has been selected, then Land Registry must have the Court Order supplied before registration of any affected case will be completed.

5. *V.C.A.T. Order with supporting statutory declaration.*

Any dealing in a case which relies on a V.C.A.T. Order by an Administrator of a person under the **Guardianship and Administration Act 1986**, will require a copy of the Order plus a statutory declaration stating that the Order has not been lapsed or revoked and that the represented person is identical with the registered proprietor of the subject title to be supplied. (When the represented person is coming onto the Register the statutory declaration needs only to state that the Order has not lapsed or been revoked). Means of knowledge must be included in the statutory declaration in either case.

6. *State Trustees Section 19 Certificate.*

Any dealing which relies on a certificate issued under the **State Trustees (State Owned Corporation) Act 1994**, whether in its capacity as Executor or Administrator of a deceased estate or as Administrator under the **Guardianship and Administration Act 1986** will need to have the Certificate supplied.

7. *Statutory declaration confirming Company in Liquidation – distribution in specie (non-monetary).*

If a transfer of land is to be lodged and it gives effect to the distribution of the surplus assets of a company to the shareholders, the usual statutory declaration by the appointed Liquidator(s) will be required:

- a) As to the appointment and the date of appointment
- b) As to who was/were appointed and if more than one, whether or not they were appointed jointly or severally.

- c) That the appointed person(s) was/were still acting in such capacity when the instrument was executed, stating date of execution.
  - d) That the Court Order or instrument pursuant to which the appointment was made (stating which and the date thereof) does not limit the powers of the appointed person(s) to enter into the transaction to which the dealing gives effect.
  - e) The names of all shareholders of the transferor company should be supplied by Statutory Declaration.
  - f) Proof must be furnished that no debts are owing by the transferor company.
  - g) It must be shown by the documents lodged, or by evidence by Statutory Declaration that all shareholders have received the assets agreed upon.
  - h) Proof should be furnished that the distribution is being effected in accordance with the provisions of the Constitution or that the Rules make no provision regulating or restricting the distribution of the company's assets on winding up.
8. *Statutory declaration confirming Company in Liquidation – Monetary Consideration.*  
Proof by statutory declaration will be required:
- a) As to the appointment and the date of appointment.
  - b) As to who was/were appointed and if more than one, whether or not they were appointed jointly or severally.
  - c) That the appointed person(s) was/were still acting in such capacity when the instrument was executed, stating date of execution.
  - d) That the Court Order or instrument pursuant to which the appointment was made (stating which and the date thereof) does not limit the powers of the appointed person(s) to enter into the transaction to which the dealing gives effect.
9. *Statutory declaration confirming company has a Receiver and Manager or a Receiver appointed.*  
Where a company is in receivership the usual statutory declaration by the Receiver and Manager will be required:
- a) As to the appointment and the date of the appointment.
  - b) As to who was/were the persons so appointed and if more than one, whether or not they were appointed jointly or severally.
  - c) That the appointed person(s) was/were still acting in such capacity when this instrument was executed, stating date of execution.
  - d) That the Court Order or instrument pursuant to which the appointment was made (stating which and the date thereof) does not limit the powers of the appointed person(s) to enter into the transaction to which the dealing gives effect.
  - e) That the transaction giving rise to the dealing was made in connection with the carrying on of the business of the company.
10. *Statutory declaration confirming company has an Administrator appointed.*  
Similar evidence as in 9 above will be required if the Company has an Administrator appointed.
11. *Statutory declaration confirming company has a Controller appointed.*  
Similar evidence as in 9 above will be required if the Company has a Controller appointed.

12. *Trustee – Power of Attorney & statutory declaration.*

Where a transfer or dealing by a legal personal representative of a deceased estate is to be lodged and the party dealing is an Attorney appointed under a Trustee Act Power of Attorney, a certified copy of the power must be supplied plus a statutory declaration stating that the donor was absent from Victoria at the date of signing of the transfer (or other dealing type) by his or her Attorney.

(NOTE: A copy of a General or Enduring Power of Attorney cannot be used in such circumstances (see section 107 **Instruments (Powers of Attorney) Act 1980**).

13. *Non-Monetary Considerations – Spousal Transfer only*

Subject to the State Revenue Office being provided with sufficient information to determine that this is an instrument exempt from duty, Land Registry will not require additional supporting information.

14. *Change in the manner of holding where moiety share does not alter*

Subject to the State Revenue Office being provided with sufficient information to determine that this is an instrument exempt from duty, Land Registry will not require additional supporting information.

15. *Transfer to Exempt Government Body*

Subject to the State Revenue Office being provided with sufficient information to determine that this is an instrument exempt from duty, Land Registry will not require additional supporting information.

16. *Other:*

Selection of the Dealing Requirements ‘Other’ is selected when additional information is required to support the registration of the transaction and the information is not one of the other categories.

**12 Case Rule Set for an ELF**

**12.1 Explanatory Information**

Currently Land Registry has certain rules as to what can comprise a case of dealings in paper conveyancing. A typical case would be a discharge of mortgage, followed by a transfer, followed by a mortgage. All dealings in a case must relate to the same land and the same interests in that land. If one of the instruments is defective and is consequently rejected by Land Registry, all the dealings in the case will be rejected.

Land Registry intends to replicate these rules in Electronic Conveyancing.

**12.2 Requirements**

An ELF may comprise transactions resulting in a discharge of mortgage, a T1 transfer of land, a mortgage, a withdrawal of caveat, a survivorship application or any variation thereof subject to the next rules –

1. Certain sub-sets of the above transaction types are not in scope.
2. The recording of all instruments in the Register must result in only one subscriber having control of the eCT(s) or being issued with pCTs.
3. Where more than one folio is being dealt with, the registered proprietor dealing with the interest must be the same for all folios.
4. Where there is a change in interests and more than one folio of the Register is being dealt with, then the proprietors of all folios must be the same on registration of the dealings in the case.
5. Where more than one folio is being dealt with, at the commencement of the transaction, each folio may have a different VOTS customer holding control of an eCT. However, once the instruments are registered/recorded only one subscriber may have control of all the eCTs or be issued with all the pCTs.

6. The instruments must deal with the same estate or interest, ie freehold, leasehold, etc.
7. The same party must be appointed the Responsible Party for all instruments in the ELF.

If an instrument intended to be part of an ELF fails to meet any of the above, the instrument that fails must be removed from the ELF. It must then form part of a new ELF or be undertaken in paper format, whichever is appropriate.

### **13. Lodgment Assurance**

#### **13.1 Explanatory Information**

The purpose of the lodgment assurance is to provide participating subscribers to a transaction with confirmation that Land Registry will accept for lodgment Electronic Instruments and Registrar's Instructions that are in an identical form to the Electronic Instruments and Registrar's Instructions for a transaction that have passed the Pre-Lodgment check.

As part of the Electronic Conveyancing process, all Electronic Instruments and Registrar's Instructions in an ELF that is complete and awaiting payment will be checked using a Pre-Lodgment Check when it becomes complete and daily thereafter. This Check compares the information against validation requirements of Land Registry to ensure that the information contained in Electronic Instruments and Registrar's Instructions is in a form that is capable of lodgment.

When the Paying Subscriber decides to pay Land Registry's lodging fees, the Electronic Conveyancing system confirms this decision, prepares a tax invoice and then arranges payment using direct debit. When this payment is confirmed by the Subscriber, the ELF is frozen and Subscribers may no longer make any changes to the ELF. At the time the payment is confirmed by the Subscriber, and the ELF is frozen, the lodgment assurance offered by Land Registry applies. The lodgment assurance means that, when the electronic submission of Electronic Instruments and Registrar's Instructions is made from the ELF, they will be accepted for lodgment by Land Registry.

There are a small number of circumstances that will prevent lodgment – two of these relate to Land Registry obligations at law where the Registrar must refuse to accept Electronic Instruments for lodgment. Very occasionally, a Court will order the Registrar to refuse lodgment of all instruments affecting Land. If the Land the subject of such an order is in an ELF, then the Registrar must refuse lodgment of Electronic Instruments from it. The Court will also sometimes order the removal or amendment of the name of a registered proprietor of Land. Where this occurs, the Registrar cannot accept the lodgment of Electronic Instruments from an ELF. To do so would be to accept the lodgment of one or more Electronic Instruments given by a person who is no longer the registered proprietor of the land.

It is also possible that the information contained in the Electronic Instruments and Registrar's Instructions and passed to Land Registry is no longer the information that was signed by the Participating Subscribers. Part of Land Registry's lodgment process includes a second Pre-Lodgment Check so this change in the information will be detected. As a safety measure for all Subscribers, Land Registry will not accept the Electronic Instruments and Registrar's Instructions from the ELF when the two Pre-Lodgment Checks differ in their outcome. If there is a difference, then the Electronic Instruments and Registrar's Instructions no longer represent the Transaction intended by the parties and must be refused.

The Temporary Subscriber Agreement enables Land Exchange to terminate the rights of a Subscriber, primarily where its conduct has endangered the safety and integrity of the Electronic Conveyancing system. It is considered an unacceptable risk to the Electronic Conveyancing system and to other Subscribers if the transactions contained in the ELFs in



which a terminated Subscriber was participating were to be accepted for lodgement. If any Subscriber in the ELF has had its rights terminated, no Electronic Instruments from any ELF in which it is a Participating Subscriber will be accepted for lodgement.

Whether in paper-based conveyancing or Electronic Conveyancing, instruments that require that a Certificate of Title be produced cannot be accepted for lodgement if the Certificate of Title is not provided. In Electronic Conveyancing, the eCT is held by the Registrar on behalf of the person entitled to custody and control of the equivalent pCT. The nomination process in Electronic Conveyancing is designed to ensure that the Registrar receives instructions to provide the eCT for the purposes of a specific lodgement. A withdrawal of nomination means that the party entitled to custody and control of the Certificate of Title no longer wishes the Transaction to proceed. If the nomination of the eCT, that is, those instructions, has been withdrawn at the time of the second lodgement check, the Registrar must refuse the lodgement.

The final exception to the lodgement assurance also reflects the situation in paper-based conveyancing and the Registry's response will be the same as applies in the current paper environment. While the paper and electronic lodgement systems operate in parallel, there is a possibility that on very rare occasions the Registrar will discover that there is an eCT and a pCT in existence for the same Folio of the Register in an ELF. Until the matter is resolved, it will not be clear which of the two Certificates of Title has been fraudulently obtained and used. As such the Registrar will refuse lodgement of any Electronic Instruments from an ELF in order to prevent fraud.

### **13.2 Lodgement Assurance**

Land Registry assures each Participating Subscriber for a Transaction that it will lodge Electronic Instruments and Registrar's Instructions in an ELF unless:

1. The Electronic Instruments and Registrar's Instructions do not contain identical information to those in that ELF that have passed the last Pre-Lodgement Check undertaken before payment of all LR Fees;
2. Any eCT required for that Transaction is not nominated to the ELF at the time that the Paying Subscriber pays all LR Fees for the Transaction in that ELF ;
3. The right of any Participating Subscriber for the Transaction to be a Subscriber is terminated in accordance with the Temporary Subscriber Agreement;
4. A pCT for any Folio of the Register the subject of the Transaction is produced to Land Registry, while Land Registry's records show that there is an eCT in existence for that Folio of the Register; or
5. Land Registry is served with a Court order requiring it either to prevent Lodgement of the Electronic Instruments in that ELF or to remove or amend the name of a registered proprietor of an interest being dealt with in that ELF.

This assurance will commence at the time that the Paying Subscriber pays all LR Fees for the Transaction in that ELF.

This Lodgement Assurance is provided for the purposes of the Stage 1 Pilot only. Capitalised words have the same meaning as in the Temporary Subscriber Agreement (Pilot Stage 1).

### **13.3 Timing**

In any circumstances when the computer systems required to transmit, receive and acknowledge Electronic Instruments and Registrar's Instructions are not operational at the time when the lodgement assurance begins, Land Registry will accept for lodgement the Electronic Instruments and Registrar's Instructions as soon as the required computer systems again become operational.

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