

# National E-Conveyancing in NSW Consultation Papers

A consultation process addressing transaction specification, business practice and implementation arrangements for the National E-Conveyancing and relevant requirements of conveyancing industry participants and community members in NSW.

## Consultation Feedback — Initial Report

Being a summary of formal feedback received in response to the first four industry consultation papers in the period to August 2010.



# **National E-Conveyancing Consultation Papers**

## **Consultation Feedback — Initial Report**

## About this Consultation Feedback Paper

This paper is published by the Land and Property Information Division (LPI). It reports feedback received from the conveyancing industry in response to a series of four consultation papers published by LPI in 2009-10, and which are available at <http://necsnsw.lands.nsw.gov.au/publications>. Each of the consultation papers identify proposed changes in conveyancing practice, risk management and systems arrangements for the settlement of real property transactions and the lodgment and registration of real property registry instruments (dealings) in NSW. The intention of the consultation arrangements is to make widely known the detail of proposed changes under consideration, and to elicit and also make widely known NSW industry participant views on the proposals. The consultation and feedback papers do not represent NSW Government policy.

This Consultation Feedback Paper and the issues it addresses need to be considered in the context of the intention of all jurisdictions and industry participant groups to achieve a single national system for electronic conveyancing in Australia. The paper supplements a series of public consultation papers designed to ensure NSW based industry requirements are considered in the design, functionality and supporting arrangements of a National Electronic Conveyancing System (NECS).

Throughout the early development stages of National E-Conveyancing, the term used to describe the proposal was National Electronic Conveyancing System or NECS. Following the decision by COAG in January 2010 that NECDL would develop and operate an electronic conveyancing platform, the term 'National E-Conveyancing' has been adopted to describe the overall legislative and business environment for a national system of E-Conveyancing replacing the term 'NECS' so as to avoid confusion with the computer system, or platform, being designed and built by NECDL, and to better align with the description used in the National Partnership Agreement to Deliver a Seamless National Economy. The term NECS is predominantly used in documents published prior to the formation of NECDL and is used interchangeably with National E-Conveyancing throughout this document.

National E-Conveyancing Development Limited (NECDL) are progressing the creation of a system to provide an efficient competitive system to settle property transactions, lodge instruments with land registries, and pay associated duty and tax obligations electronically, without increasing the cost of such services to the community or excluding any current market participant from operating in the new electronic environment.

NECDL's constitution identifies additional objectives including;

- developing the business processes, rules and procedures necessary to support commencement of the System;
- developing the necessary software, and leveraging the maximum benefit possible from prior work including Victorian Electronic Conveyancing System (ECV) and the National Electronic Conveyancing Office (NECO) work programs;
- assisting coordination of required legislative and regulatory changes;
- developing a platform for implementation; and providing reasonable non-discriminatory access to the System for participants in conveyancing in Council of Australian Governments (COAG) jurisdictions.

Further information about NECDL is available at [www.nationaleconveyancing.com.au](http://www.nationaleconveyancing.com.au)

Information developed by the National Electronic Conveyancing Office (NECO) from 2006-2010 on the National Electronic Conveyancing System (NECS) proposals, and supporting information, analysis and specifications relevant to implementation of NECS in NSW is available at [www.necsnsw.lands.nsw.gov.au](http://www.necsnsw.lands.nsw.gov.au/home) and <http://necsnsw.lands.nsw.gov.au/home>.

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Additional copies of this paper can be downloaded free of charge in PDF file format from the LPMA website at [http://necsnsw.lands.nsw.gov.au/industry\\_consultations](http://necsnsw.lands.nsw.gov.au/industry_consultations) .

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### **Publisher's Note**

The implementation of National E-Conveyancing Australia's joint government and industry initiative to create an efficient and convenient way of completing property based transactions and lodging land title dealings for registration.

In 2010 the governments of New South Wales, Queensland, Victoria and Western Australia formed National E-Conveyancing Development Ltd (NECDL), to progress creation of a system to provide an efficient competitive system to settle property transactions, lodge instruments with land registries, and pay associated duty and tax obligations electronically, without increasing the cost of such services to the community or excluding any current market participant from operating in the new electronic environment. During 2011 NECDL is expected to develop a funding arrangement and work program to complete specification and implementation planning for National E-Conveyancing.

Key reference materials about the NECS including documentation specifying the legal framework, systems requirements and business practices for NECS remain available at [www.necs.gov.au](http://www.necs.gov.au). Information about NECDL's program of work to progress development and implementation of a national e-conveyancing platform are available at [www.nationaleconveyancing.com.au](http://www.nationaleconveyancing.com.au).

Land and Property Information also undertakes to contribute outcomes and recommendations arising from NECS in NSW industry consultations to the relevant NECS processes, to assist in development of consistent national system requirements, risk management and business practice arrangements for NECS.

### **Acknowledgment**

Land and Property Information (LPI) acknowledges the ongoing engagement with and contribution by industry stakeholders to the NECS development program, in particular the Law Society of NSW, the Australian Institute of Conveyancers NSW Division, the Information Brokers and Law Stationers Association and Australian Bankers' Association; additionally, the assistance of Clayton Utz in the research and preparation of these NECS in NSW consultation papers is acknowledged.

### **Disclaimer**

Land and Property Information (LPI) has produced these consultation and feedback papers to provide general information relating to business practice, legislative and systems technology arrangements being considered in the development of a National Electronic Conveyancing System for Australia and for its implementation in NSW.

LPI has used its best endeavours to ensure that the information contained in this paper is correct at the time of publication but takes no responsibility for any error, omission or defect herein. The contents do not constitute legal advice and should not be relied upon as such. LPI disclaims any liability to any person in respect of anything done or not done by any such person in whole or partial reliance upon the whole or part of the information in this paper.

# NECS in NSW Consultation Paper Initial Feedback Report

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## 1. Introduction

As part of readiness preparations for the introduction of Electronic Conveyancing in NSW, the Land and Property Information Division (LPI) is publishing a series of consultation papers describing proposed changes to conveyancing practice, risk management and systems arrangements for the settlement of real property transactions and the lodgment and registration of electronic registry instruments (dealings) in NSW. The objective of the series of consultation papers is to make widely known the detail of proposed changes under consideration and to invite feedback on them. The papers are for consultation purposes and do not represent NSW Government policy.

In 2010 the governments of New South Wales, Queensland, Victoria and Western Australia formed National E-Conveyancing Development Ltd (NECDL), to oversee the implementation of National E-Conveyancing. NECDL is completing specification and implementation planning for National E-Conveyancing and developing a business plan to guide the financing, building and operation of the National E-Conveyancing System (NECS).

The establishment of NECDL carries forward commitments made by jurisdictions to update implementation of a National E-Conveyancing System in terms of the Council of Australian Governments (COAG) National Partnership Agreement for a Seamless National Economy.

Electronic conveyancing requires the implementation of a national regulatory framework that will include:

- Intergovernmental Agreement for Electronic Conveyancing National Law, currently in draft, which will provide governance for the development, implementation and management of the regulatory framework.
- The Electronic Conveyancing National Law (ECNL) planned to be enacted in NSW and then applied in other jurisdictions
- An Australian Registrars' National E-Conveyancing Council (ARNECC) which will act as an electronic conveyancing industry regulator to advise the States and Territories on matters relating to National E-Conveyancing to ensure a nationally consistent operating environment for an Electronic Lodgment Network Operator (ELNO) and to develop nationally agreed Operating Requirements and Participation Rules.
- The Operating Requirements will be contained in an Operating Agreement authorising an Electronic Lodgment Network Operator (ELNO) to provide and Electronic Lodgment Network (ELN)
- The Participation Rules regulate access for Subscribers to an ELN.

One of the ongoing roles of ARNECC will be to decide on nationally consistent business practices required for electronic conveyancing. The feedback on practices covered in the NECS in NSW consultation papers will provide input to NSW contribution to ARNECC deciding on nationally uniform practices.

LPI is publishing this report on the NSW consultation process in order to provide general access for stakeholders of the feedback received by NSW as a result of the publication of its series of four Consultation Papers that were researched and published by LPI between August 2009 and March 2010.

The four consultation papers to date and the subject matter covered by each of the papers is described in the table below are:

1. Client Authorisation for use of NECS (12 August 2009)	being the requirements of Subscribers to obtain written authority to represent a party to a transaction in the NECS
2. Instrument Certification (2 November 2009)	being the nature and extent of certifications required of Certifiers signing instruments prepared using the NECS and intended for lodgment with a Land Registry
3. Digital Signing of Electronic Instruments (27 November 2009)	being the signing and authentication of electronic registry instruments for NECS by Certifiers using digital signatures
4. Land Registry Transaction Services for Conveyancing (8 March 2010)	being details of the land involved in a transaction, workspace verification and lodgment acceptability advice services available from the Land Registry for conveyancing

Further NSW consultation papers are planned on the subjects of the electronic Lodgment Case and Supporting Evidence, Subscriber and Certifier Operational Roles and Responsibilities, Certificates of Title and Control of the Right to Deal, and Client Identity Verification Practices.

Copies of the consultation published papers and supporting presentations at public consultation forums can be found at:

[http://necsnsw.lands.nsw.gov.au/industry\\_consultations/consultation\\_papers](http://necsnsw.lands.nsw.gov.au/industry_consultations/consultation_papers).

The NSW consultation papers use terminology and concepts such as Subscriber, Certifier, digital signing, and Client Authorisation; that have been developed through the national collaboration activities in defining the requirements for Electronic Conveyancing. A reader unfamiliar with these concepts is recommended to refer to the NSW consultation papers and the NECS Roadmap documents, originally published by the National Electronic Conveyancing Office, for more information on these and other foundation concepts for Electronic Conveyancing.

Consultation feedback took the form of both written submissions and verbal feedback at the consultation forums. The content of this Feedback Report is based on the written submissions received by LPI.

Stakeholder comments received for each consultation paper were in consistent agreement about most issues. In some cases respondents did not provide comments on all issues for each paper and some comments were provided as a consolidated response to multiple questions.

As a result of the consistency in responses received, the stakeholder feedback is described in a consolidated summary under the named issue for each consultation paper. Where possible, the text used to describe the feedback includes text taken directly from the responses. Where there was a difference in views on an issue, the different views are stated.

A standardised format is used to present the feedback received for each consultation paper as follows:

- Issue number and name for the issue;
- A description of the issue being considered. The reader should refer to the original consultation papers for a more comprehensive description of the issue; and
- Industry feedback on the issue.

## **2. Client Authorisation for Use of NECS (12 August 2009)**

### **2.1 Overview**

Client Authorisation is necessary to authorise and instruct a Subscriber to transact on behalf of a Client using Electronic Conveyancing<sup>1</sup>.

In the paper conveyancing environment, it is usual that the instrument by which a Transacting Party is relinquishing or receiving an interest is signed in person by the named transacting parties.

In Electronic Conveyancing, unless the Transacting Party is a registered Subscriber in NECS, transacting parties (such as vendors or purchasers) will not themselves sign registry instruments, but engage a Subscriber to represent them as a Client. The Subscriber will use a Certifier to digitally sign registry instruments (and information reports and statements) in NECS on behalf of the Client. The digital signatures on electronic registry instruments replace 'wet signatures' on paper instruments. The digital signature on an electronic instrument is given by a Certifier for a Subscriber on the Client's behalf and has equivalent effect to a party, relinquishing or receiving, signing a paper instrument.

Where a Subscriber is engaged to represent a Client, an unequivocal form of Client Authorisation, from all the transacting parties comprising the Client in the transaction for the Subscriber, is necessary to authorise digital signing of instruments on their behalf and to enable legal compliance with requirements for the Land Registry to register instruments on behalf of the Client. In scenarios where the Subscriber is representing themselves as Client a Client Authorisation is not required.

A standard Client Authorisation Agreement for all Subscribers is a necessary risk mitigation measure to maximise participant and Land Registry confidence that instruments signed and lodged through NECS are authorised by the Transacting Party.

The *Client Authorisation for use of NECS* consultation paper contained 32 questions about 11 implementation issues on which the NSW Land Registry is seeking feedback from conveyancing industry participants. The consultation paper is available at

[http://necnsnsw.lands.nsw.gov.au/data/assets/pdf\\_file/0016/110680/Client\\_Authorisation.pdf](http://necnsnsw.lands.nsw.gov.au/data/assets/pdf_file/0016/110680/Client_Authorisation.pdf) .

### **2.2 Stakeholder feedback on Client Authorisation for use of NECS**

#### **Issue 1 – Loss events and claims**

Should the Client Authorisation or NECS Participation Rules make specific provision for cases where loss is suffered in a transaction where the Client Authorisation Agreement cannot be located, was not created, is found to have been defective or invalid, or was cancelled or revoked; or should common law apply? (Refer consultation paper section 6.1 *Risk Assessment of NECS*)

#### **Industry response**

The existing common law regime adequately covers loss events and claims that may be associated with a Client Authorisation Agreement. The implementation of NECS should not alter the legal liability of Transacting Parties.

Provided the industry practitioner follows "accepted" procedures, there is no reason why practitioner liability should be increased. (See 2.3 *Issues Arising*)

There is practitioner concern about liability associated with identity fraud by the represented Client as there will be instances where Client identification process fails through no fault on the part of the person conducting it. It is considered critical that industry practitioners should only be liable in the event of fraud to which they are party or if they are clearly negligent.

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<sup>1</sup> Refer to the preface of this document for information about the National Electronic Conveyancing System, what NECS will do and the roles in electronic conveyancing.

## Issue 2 – Content of a Client Authorisation

Is the wording proposed in the Client Authorisation Agreement sufficient or is there a case for additional or varied wording? Should any additional matters be included in the effect of the Client Authorisation and what level of transaction detail should be specified? Do the terms of the draft Client Authorisation Agreement achieve the risk management objectives and level of confidence desired by participating parties relying on Electronic Conveyancing? (Refer consultation paper section 6.4 *Other content requirements for the Client Authorisation*)

The draft Client Authorisation Agreement is attached for information at Appendix A.

### Industry response

There is general support for draft content of the nationally proposed Client Authorisation Agreement template<sup>2</sup> that was included in the consultation paper.

There may need to be provision for more specific authorisation of the transaction in terms of:

- period of validity for the authorisation;
- manner in which the property is specified; and
- specifically indicating whether the practitioner is, or is not, authorised to act in financial settlement on behalf of the Client as not all transactions will involve a financial settlement.

The wording of Clause 1 is questioned in relation to what is authorised. Clause 1 of the draft Client Authorisation reads, in part:

#### “1. What is Authorised

You authorise Us to act as your agent in NECS to:

- (c) authorise any financial settlement involved in the Transaction to be effected, **unless** you instruct us otherwise;” (**emphasis added by respondent**).

It is considered that the form should nominate whether a practitioner is authorised to act in relation to financial settlement. It is suggested that a box or section of the form could nominate whether financial settlement was included in the authorisation with, for example, the default position being “yes”.

NECS should provide for online completion of the Client Authorisation Agreement template.

[Land Registry note: LPMA agree that this is a sensible requirement that relates to a financial requirement that is not a Land Registry responsibility. It will be necessary for industry to formally communicate this requirement to ARNECC for inclusion in their practice requirements.]

## Issue 3 – Identity verification and Client Authorisation

Must the identity verification and Client Authorisation be undertaken at the same time and what are the consequences if they are not done concurrently? (Refer consultation paper section 6.4 *Other content requirements for the Client Authorisation*)

### Industry response

Client Identity Verification (CIV) is an essential requirement for a transaction and should be undertaken prior to Client Authorisation.

The timing of CIV in relation to completion and execution of Client Authorisation is a risk management issue for the Subscriber.

The class of person who could act as an agent in Australia in relation to the Client Authorisation process (or Client identification in the event that it is completed without face-to-face contact between the Subscriber and the Client) should be a Certifier or a class of persons capable of being a Certifier. (See 2.3 *Issues Arising*)

<sup>2</sup> The national Client Authorisation Agreement template can be found at <http://www.necs.gov.au/CLIENT-AUTHORISATION/default.aspx>

In the event that the Client Authorisation process is completed overseas, it could be conducted by a Notary Public or Consular official, or, for example, a person authorised to take an oath.

#### **Issue 4 – Exceptional circumstances**

Should the Client Authorisation and CIV procedure requirements be the same when undertaken by a Subscriber's agent? Should a Subscriber be permitted to act for a Transacting Party where nobody has met the Transacting Party or Transacting Party Representative face-to-face? What liabilities should accrue to a Subscriber who has not arranged a face-to-face CIV where the identity and associated transaction is subsequently revealed to be fraudulent? On what basis should affected parties be able to rely on establishment of identity and authorisation of the Transacting Party? (Refer consultation paper section 6.4 *Other content requirements for the Client Authorisation*)

#### **Industry response**

The CIV procedure should be the same whether carried out by the principal or their agent.

Face-to face CIV is required, although the face-to-face CIV can be undertaken by an agent on behalf the Subscriber.

If, as principal, an industry practitioner having not met a new Client then allowed his or her agent to undertake the CIV process without face-to-face meeting with the Client, then there should be consequences.

Other parties should be able to rely on the establishment of identity and authorisation of a Transacting Party.

Liability of the practitioner in relation to identity fraud should be determined by whether they followed the prescribed CIV process.

NECS should not impose additional liability on industry practitioners – a solicitor should only be liable in the event of fraud to which they are a party or negligent.

#### **Issue 5 – Uniform wording of Client Authorisation Agreements**

How should uniform wording for Client Authorisation Agreements be achieved and maintained? Which of the regulatory options of legislation or NECS Participation Rules is preferred as the legal basis for the Client Authorisation? (Refer consultation paper section 7.2 *Options for prescribing a uniform Client authorisation agreement*)

#### **Industry response**

There was only one response on this issue: The response proposed preference for prescription of uniform wording for a Client Authorisation Agreement using a combination of Statute and electronic conveyancing Participation Rules.

[Land Registry note: The requirement for a Client Authorisation Agreement will be prescribed in the ECNL. The ECL is currently being drafted, and there will be a consultation phase for the ECNL Bill. When the ECNL is enacted, ARNECC will have the ongoing role of maintaining the requirements for the Client Authorisation Agreement.

#### **Issue 6 - Common law contract or statutory effect**

Should the Client Authorisation take effect as a common law contract, and does the Client Authorisation require any statutory support? (Refer consultation paper section 7.3 *Should the Client Authorisation take effect as common law contract or have some statutory effects?*)

#### **Industry response**

There is concern that it may be too confusing to deem the authorisation to take effect as a Power of Attorney. As long as dealings are regarded as deeds, the effect of the Client Authorisation will need to be dealt with by way of amendment to the current legislation.

It is considered that Client Authorisation should take effect as common law contract with existing legislation amended to give effect to this.

## Issue 7 – Separation of the Client Authorisation from written Retainer Agreements

Should the Client Authorisation Agreement be separate from a written Retainer Agreement, or should the Client Authorisation be allowed to be incorporated, and if so what are the requirements that need to apply for this to be permitted? (Refer consultation paper section 8 *Should the Client Authorisation be separate from the Retainer Agreement?*)

### Industry response

The Client Authorisation and any Retainer Agreement should be separate documents.

Requirements of Retainer Agreements may be set out in legislation for solicitors and conveyancers in various States and that legislation may conflict with the requirement of the Client Authorisation.

Unless there is a specific matter identified that requires these documents to be joined, it is suggested that they be treated separately and the Retainer Agreement probably has no place in the Electronic Lodgement Network Operator (ELNO)<sup>3</sup> requirements.

## Issue 8 – Protecting the Client Authorisation from qualification

Should there be rules governing any conflict between the Client authorisation and the Retainer Agreement? Should Subscribers be prevented from seeking to qualify the Client Authorisation, including any implicit liability allocation by using the Retainer Agreement or other side agreements? (Refer consultation paper section 9 *Can the Client Authorisation be qualified by any provisions in the Retainer Agreement?*)

### Industry response

Users of Electronic Conveyancing must be able to do so knowing that other users have the same authorisation from their Client. In order to do this, the Client Authorisation form must be consistent and not able to be amended by side agreements.

## Issue 9 – Types of Client Authorisations

Do the three types of Client Authorisations (specific<sup>4</sup>, standing<sup>5</sup> and batch<sup>6</sup>) adequately cover the types of instructions given by clients to Subscribers? If not then what other scenarios need to be provided for? Does the risk of a Subscriber holding a Standing Authority and acting without the Client's actual instructions need to be addressed in Electronic Conveyancing? (Refer consultation paper section 10 *Scope of transactions covered by the Client Authority*)

### Industry response

The three types of Client Authorisation (specific, standing and batch) adequately cover the types of instructions given by Clients to Subscribers.

On the basis that all representative Subscribers are regulated legal or conveyancing firms, common law and professional regulation of Subscribers adequately deals with the risks associated with a representative Subscriber holding a Standing Authority.

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<sup>3</sup> An Electronic Lodgment Network Operator is a provider of an Electronic Lodgment Network. NECDL will be an ELNO.

<sup>4</sup> Specific Authority means an authority for the subscriber to act for the Client in completing the transactions described in the Agreement.

<sup>5</sup> Standing Authority means an authority for the Subscriber to act for the Client for a period of time set out in the Special Instructions of the Agreement.

<sup>6</sup> Batch Authority means an authority for the Subscriber to act for the Client in a batch of transactions described in a schedule attached to the Agreement.

## **Issue 10 – Expiration, revocation and other termination of the Client Authorisation**

What rules on expiration, revocation and other termination of a Client Authorisation are required, and should there be a mandatory outer limit expiration period? Should the Client Authorisation agreement terminate on “completion” or “termination” of the “transactions” it authorises? Is the Client Authorisation Agreement form a suitable template, or should it describe the “transaction” in more detail than simply sale, purchase, mortgage or discharge in relation to identified land? Is the proposed arrangement adequate regarding substitution of a Subscriber in an Electronic Conveyancing transaction when a Client Authorisation is revoked by the Client? (Refer consultation paper section 11 *Termination of Client Authorisation*).

### **Industry response**

Rules are required for expiration, revocation and other termination of the Client Authorisation.

The Client authorisation should not have a termination date. Once the transaction that the Authority refers to is completed, then the Authority is automatically cancelled. There is no need for any other cancellation period or term.

Under the current system, a practitioner’s transaction authorisation would normally expire when the Land Title issues (transaction is registered). However further consideration may be required because there may be issues that need to be ‘tidied up’ after settlement.

The Client Authorisation should not be subject to a mandatory outer limit expiration period. Once the transaction referred to in the Authority is completed, the Authority is automatically cancelled.

On the assumption that the Client Authorisation and Client Identity Verification are completed at the commencement of the transaction, it is possible for a Client Authorisation to be signed some considerable time before completion of that transaction. With a residential property sale, it is possible for the Client Authorisation Agreement to be signed one and sometimes even two years before settlement occurs.

The existing Client Authorisation Agreement is an appropriate template subject to comments under issue 2. For example the Client Authorisation should “highlight” whether or not the transaction involves a financial settlement.

The issue of substitution of Subscribers will need further consideration once more is defined about Electronic Conveyancing.

## **Issue 11 – Execution**

What actions should be mandatory for the subscriber in terms of validating the legal authority of the party executing a Client Authorisation? Are the certifications from the Transacting Party and Subscriber in the proposed form of Client Authorisation appropriate and adequate to protect the interests of all parties? (Refer consultation paper section 12 *Execution of Client Authorisation agreements*). The draft Client Authorisation Agreement is attached for reference at Appendix A.

### **Industry response**

The NSW Law Society commented that execution is a critical risk issue for industry practitioners.

The fourth box on the Client Authorisation form currently states:

*“I CERTIFY that:*

- (a) the identity and authority of the person(s) whose signature(s) appear(s) below have been verified in accordance with the Prescribed Requirements;”*

Unless the legislation contains a complete code in relation to the prescribed requirements for verifying the authority of parties purporting to act, for example for organisations or companies, then the certification in relation to authority needs to be deleted from the form. (See 2.3 *Issues Arising*)

In terms of the record keeping requirements in relation to the Client Authorisation, it may be necessary to utilise permanent deposit provisions<sup>7</sup> of the legislation to prevent record keeping requirements becoming too onerous for practitioners.

## **Issue 12 – Reliance on Client Authorisation Agreement certifications**

Who should be able to rely on the certifications in the Client Authorisation Agreement? (Refer consultation paper section 15 *Who can rely on certifications in the Client Authorisation*)

### **Industry response**

The Electronic Conveyancing model to be endorsed is effectively an electronic version of the current conveyancing environment. There is a body of law in relation to the sharing of risks for property transactions that should not be varied in implementation of the NECS.

## **2.3 Issues arising**

LPMA has identified the following issues to be resolved from the consultation feedback from the consultation paper, *Client Authorisation for use of NECS*. The issues arising are shown in *italics* below.

### **Issue 1: Loss events and claims**

*What is the definition of “accepted” procedures for preparing and completing Client Authorisation?*

This is an important requirement to ensure that the Client Authorisation is executed properly by the Transacting Party. This is an issue that needs to be further considered by LPMA and will be addressed in part in the next NSW consultation paper on the electronic Lodgment Case and Supporting Evidence. This consultation paper will look at the content of the electronic Lodgment Case for a NSW transaction and the supporting evidence required to be retained by the Subscriber.

### **Issue 3: Identity verification and Client Authorisation**

*What are the regulatory requirements for a delegated agent used by a Subscriber where the location of a Client is remote from the Subscriber representing them and who needs to obtain instructions and authorisation by completion and execution of a Client Authorisation Agreement?*

This is an issue for further national consultation.

### **Issue 11: Execution**

*How can execution requirements for the Client Authorisation be prescribed to ensure industry practitioners have the requisite information to compliance assure execution of a Client Authorisation Agreement?*

This is an issue that will be given further consideration by LPMA, and may result in nationally agreed requirements being prescribed by ARNECC.

ARNECC is also likely to prescribe the rules and provisions for retention of documents in the event of a Subscriber ceasing to trade.

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<sup>7</sup> LPMA understands this comment as referring to the Solicitors Rules – 8- Ownership of Client's documents – Termination of retainer. See <http://www.lawsociety.com.au/ForSolicitors/professionalstandards/Ruleslegislation/SolicitorsRules/027096> . The Rule describes the requirements for retention of client's documents.

### 3. Instrument Certifications (2 November 2009)

#### 3.1 Overview

In Electronic Conveyancing, an electronic registry instrument is prepared and digitally signed on behalf of the Client before lodgment with the Land Registry. The registry instrument will contain the Certification Statements required by the Land Registry and which must be affirmed by the Certifier for the Subscriber at the time of signing.

The purpose of a certification in relation to a registry instrument is to provide confidence to relying parties involved in a transaction, the community, to the ELNO, to the Land Registry and to other government agencies that relevant laws practices and procedures have been complied with in relation to the transaction represented by the signed instrument(s). The certification relates to what the subscriber has done in conducting the transaction in compliance with prescribed requirements.

The certifications are made and become binding at the time of digital signing by the Certifier on behalf of the Subscriber. The digital signature identifies both the Certifier who signed and the Subscriber on whose behalf the instrument was signed.

Certifiers signing electronic registry instruments for a NECS Subscriber will provide certifications that each instrument complies with requirements for:

1. **Correctness:** meaning the instrument is, within the Certifier's knowledge and diligent enquiry, correct in the context of the transaction;
2. **Compliance:** meaning the instrument is in compliance with all relevant legislation and the Land Registry's prescribed requirements;
3. **Identity:** meaning the Subscriber has properly conducted a Client Identity Verification of each Transacting Party who is making up the Subscriber's Client;
4. **Authority:** meaning the Subscriber has obtained a properly completed and signed Client Authorisation from each Transacting Party who is the Subscriber's Client; and
5. **Support:** meaning the Subscriber has obtained, scrutinised and retained copies of all supporting evidence for the instrument (including, where relevant, the Client Identity Verification documentation and the Client Authorisation Agreement.

Registration of a real property transaction requires documentation for specifying, substantiating, authorising, instructing and administering a change to a Land Title. The documentation for Electronic Conveyancing is in two categories:

- Lodgment Case: A set of information presented to the Land Registry to effect a change on a Land Title in the Torrens Register;
- Supporting Evidence: Documentation identifying participant legal entities, authenticating their right to transact and substantiate the event or arrangement to be registered at the Land Registry.

For Electronic Conveyancing to achieve significant efficiencies, the approach proposed for adoption in Australia is to utilise the 'tell-me-don't-show-me' principle. Where under current arrangements the evidence documentation to support registration of a transaction is presented for review by the Land Registry as part of examination, for Electronic Conveyancing the evidence documents are to be reviewed, validated and retained by the Subscriber.

The Subscriber will be bound by legislation and NECS Participation Rule provisions to review and retain supporting evidence for a transaction, and provide to the other participants in a case – and to the Land Registry for registration - signed digital instrument(s) containing certifications as to the correctness and compliance of instrument(s) and supporting evidence. The certifications are made and the instruments digitally signed by a Certifier acting on behalf of the Subscriber.

Instrument Certification is an important component of the risk management framework providing confidence to relying parties of the compliance assurance and veracity of registry instruments in a transaction.

The *Instrument Certification* consultation paper contains 19 questions about 9 implementation issues on which LPMA is seeking feedback from conveyancing industry participants. The consultation paper is available at [http://necsnsw.lands.nsw.gov.au/\\_data/assets/pdf\\_file/0005/115817/Instrument\\_Certification.pdf](http://necsnsw.lands.nsw.gov.au/_data/assets/pdf_file/0005/115817/Instrument_Certification.pdf).

### **3.2 Stakeholder Feedback on Instrument Certifications**

#### **Issue 1 – Instrument Certification policy principles**

Are the proposed Instrument Certification policy principles appropriate to achieve transaction assurance, community confidence, and to maintain the integrity of the Torrens Title Register? (Refer consultation paper section 4.4 *Policy principles for registry instrument certifications*)

##### **Industry response**

The ten policy principles<sup>8</sup> developed and agreed by the Land Registries for Instrument Certifications are supported in order to achieve transaction assurance, community confidence and maintain the integrity of the Torrens Register.

#### **Issue 2 – Certification content**

Are the 5 proposed subject categories for certifications sufficient to provide assurance in relation to signed registry instruments or should there be an additional certification which affirms that the instrument reflects the intentions of each of the Transacting Parties making up the Subscriber's Client? Is the proposed wording appropriate? (Refer consultation paper section 4.5 *Nationally consistent certifications*)

##### **Industry response**

In addition to the five categories of certification, there should be an additional certification that "the Certifier has authority to certify on behalf of the Subscriber".

The existing proposed wordings of the certifications are acceptable.

There is no need for an additional certification that the transaction reflects the intentions of each of the Transacting Parties making up the Subscriber's Client.

#### **Issue 3 – Certifications embedded in Participation Rules**

Is it appropriate that certifications about correctness and compliance are implied in instruments by the Electronic Conveyancing Participation Rules, or should all relevant certifications be expressly provided in each instrument? (Refer consultation paper section 6.1.1 *Certification in the Participation Rules*)

##### **Industry response**

Legal practitioners were of the view that all relevant certifications should be expressly provided in each instrument. The express certifications emphasise for the Certifier carrying out this important function that a certification as to correctness and compliance comprises legal work and the ramifications that flow from the nature of the act.

The Australian Institute of Conveyancers NSW (AICNSW) considered it appropriate that correctness and compliance certification be implied in instruments through Participation Rules as these two certifications will apply to all Electronic Conveyancing instruments. The AICNSW pointed out that all certifications do not apply to all transactions, and so only the certifications relevant to each transaction should be provided.

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<sup>8</sup> See section 4.4 of the Instrument Certifications consultation paper.

#### **Issue 4 – Certifications in instruments**

Should the certifications expressly provided in each instrument be individually acknowledged on the instrument, acknowledged as a group, or implied by signing the instrument without a specific affirmation? (Refer consultation paper section 6.1.3 *Instrument Certification relationship to digital signing*)

##### **Industry response**

Certifications should be explicitly acknowledged and the affirmation must take place before the instrument can be signed. Affirmation in each instrument is a constant reminder of what is being certified.

There were different views on whether Instrument Certifications should be acknowledged as a group or whether each certification should be individually acknowledged. The NSW Law Society was of the view that the certifications expressly provided in each instrument should be individually acknowledged on the instrument.

The NSW Law Society considers that, where the Subscriber is signing on behalf of a Client they represent, the certification “the Certifier certifies on behalf of the Subscriber, that an instrument submitted for lodgment is, to the Certifier’s knowledge and diligent inquiry correct in the context of the transaction and compliant with all relevant legislation and Land Registry requirements...” relates to legal work. The Certifier should be an industry regulated practitioner in order to carry out this work.

#### **Issue 5 – Effective time of an Instrument Certification**

Are there any reasons why certifications should not be considered to be effective from the time the registry instrument is signed and remain so until the instrument is lodged with the Land Registry? Should there be a specific obligation in the Participation Rules for the Subscriber to ensure that matters covered by certifications remain true at the time of settlement and/or lodgment? (Refer consultation paper section 6.3 *Effective time of a registry instrument certification*)

##### **Industry response**

Participation Rules should provide that any certification at the time a registry instrument is signed is an assertion that the instrument is compliance and correct at that time and that the certification is still valid at settlement unless it is “unsigned” beforehand.

A certification is a representation made that the statement is correct at the time that the registry instrument is signed and remains correct until “unsigned”.

The NSW Law Society notes that two later certifications are required to be made by the Subscriber once registry instruments are signed, namely:

- the parties wish to proceed to settlement; and
- a direction as to how the proceeds are to be disbursed.

[Land Registry note: Industry will need to negotiate this requirement with the ELNO.]

#### **Issue 6 – Loss events and claims**

Should there be specific provision for loss suffered in a transaction where Instrument Certifications are incorrectly provided or not supported by required evidence? (Refer consultation paper section 7.1 *Risk assessment of NECS*)

##### **Industry response**

Existing remedies for loss events in connection with Instrument certifications should apply. The existing mandatory professional indemnity insurance carried by Industry Certifiers<sup>9</sup> is adequate to cover these risks.

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<sup>9</sup> Industry Certifiers are legal practitioners or licensed conveyancers who are employees of or contracted to Subscribers who represent Clients in a transaction and are authorised by the Subscriber to certify and sign registry instruments.

The NSW Law Society emphasises that the work of certification on behalf of another (i.e. a Client in a representative Subscriber transaction<sup>10</sup>) in the electronic environment as contemplated in the paper is “legal work”. In this circumstance, the giving of the certificate of correctness required under section 117 (1) (a) of the *Real Property Act 1900* on behalf of another is legal work and as such is subject to regulation under the *Legal Profession Act 2004*. Such work is only permitted to be carried out in NSW by an Australian legal practitioner or by a licensed conveyancer.

The NSW Law Society notes that the National Project Team (NPT) resolved on 25 August 2009 that regulated legal and conveyancing practices using NECS are to be able to use unregulated employees as Certifiers.

The NSW Law Society strongly endorses the proposition that only industry-regulated practitioners (i.e. Industry Certifiers<sup>11</sup>) should be permitted to act as Certifiers in where the Subscriber is representing and signing on behalf of a Client. This reflects the way the current paper environment operates.

In this regard, the NSW Law Society supports the performance objectives for the NECS Legal Framework: “Ensure that those who are entitled to conduct NECS transactions and sign instruments on behalf of others are subject to no less rigorous requirements than apply in paper conveyancing”<sup>12</sup>.

The NSW Law Society strongly supports this objective and notes that “expertise in conducting transactions” cannot be ensured if legal and conveyancing practices use unregulated staff such as “paralegals”, an undefined term encompassing employees of varying experience and expertise to carry out the important function of certifying and signing instruments on behalf of Clients.

The NSW Law Society notes that the risk assessment in relation to the NECS Legal Framework appears to have been carried out on the basis that all Certifiers will be regulated industry practitioners. Industry practitioners are subject to strict controls which include compulsory fee disclosure, mandatory levels of continuing professional education, trust account regulation, strict professional conduct and ethical standards and, most importantly, mandatory professional indemnity insurance. The stated purpose of the prohibition of unqualified persons from engaging in legal practice is the protection of the public interest and to protect clients of law practices and licensed conveyancers. The same consumer protection measures are equally applicable to the ability to participate as a Certifier in Electronic Conveyancing, particularly in representative scenarios.

### **Issue 7- Statutory penalty for a false or negligent certification**

Should a penalty regime (e.g. section 117 (2) and (3) of NSW Real Property Act, 1900) apply to Instrument Certifications for electronic transactions lodged in NSW? Is the quantum of penalty in section 117 a sufficient and effective deterrent? (Refer consultation paper section 7.2 *Current statutory positions in relation to an incorrect certification*)

#### **Industry response**

A statutory penalty regime should apply to Instrument Certification for Electronic Conveyancing transactions. One penalty unit is clearly an inadequate penalty and not an effective deterrent<sup>13</sup>. The appropriate penalty is a matter for government policy.

Industry Certifiers should be subject to disciplinary action by their respective disciplinary bodies.

Industry Certifiers are able to certify and sign registry instruments on behalf of Subscribers and their Clients as Transacting Parties.

<sup>10</sup> Where a Subscriber is representing an independent Client in a transaction.

<sup>11</sup> A Certifier who is a legal practitioner or licensed conveyancer. The latest NECS Glossary uses the term ‘Practitioner Certifier’

<sup>12</sup> NECS Legal Framework Development Report Volume 1 dated 4 February 2010, Section 2.1 page 14

<sup>13</sup> The penalty regime for the NSW Real Property Act was increased to 10 Penalty Points effective 2 July 2010, subsequent to the feedback to the Instrument Certification consultation paper being received. See Schedule 10 of State Revenue Legislation Amendment Act 2010 No 46 at:

<http://www.legislation.nsw.gov.au/maintop/view/repealed/act+46+2010+cd+0+Y>

## **Issue 8 - Other consequences for a false or negligent certification**

What should the potential civil liability of a Subscriber (or Certifier) be in respect of a false or negligent Instrument Certification? Does this need to be clarified in legislation and/or the Electronic Conveyancing Participation Rules? Should false or negligent certifications constitute professional misconduct and be grounds for suspension or termination of a registered legal practitioner or conveyancer's practicing certificate? (Refer consultation paper section 7.3 *Other consequences of an incorrect certification in NSW*)

### **Industry response**

The current law provides a sufficient regime to determine civil liability of the parties.

The consequences of false or negligent Instrument Certification should be a matter for the Regulator of the regulated Subscriber or Certifier. There should be an obligation for the Registrar to inform the Regulator of an incorrect certification. The consequence of an incorrect certification should be that the NECS issues a "show cause" notice rather than the automatic suspension of the Subscriber (or Certifier) from NECS, with a copy also served on the Regulator.

If the Regulator suspends or cancels a practising certificate, this information must be shared with the NECS for utilisation in the proposed mechanism by which NECS will make real-time checks of the continued licence status of Industry Certifiers.

## **Issue 9 - Reliance on Registry Instrument Certifications**

Who, if anyone, should be able to rely on the certifications in a signed Registry Instrument:

- (a) prior to lodgment; and
- (b) on and from lodgment, and for what purposes?

Prior to lodgment should a Registry Instrument certification be treated as an affirmation to the world, or as a limited affirmation only to other Subscribers in the same transaction workspace, to the Electronic Network Operator and to the Land Registry? Should legislation and/or the Electronic Conveyancing Participation Rules clarify any of these issues? (Refer consultation paper section 8 *Reliance on Registry Instrument Certifications*)

### **Industry response**

Prior to lodgment, the representations made by a certification in a signed Registry Instrument are representations to the parties involved in the transaction, NECS operator and the jurisdiction Land Registry only (not to the world) until they are either unsigned<sup>14</sup>, lodged<sup>15</sup> with or registered by the Land Registry.

The Office of State Revenue (OSR) states that it would need to rely on instrument (and transaction) certification prior to lodgment. Validation of duty would occur prior to lodgment and thus the certification would need to be accepted by the OSR at this point.

## **3.3 Issues arising**

LPMA has identified the following issues to be resolved from the consultation feedback on the *Instrument Certification* consultation paper. The issues arising are shown in *italics* below.

### **Issue 1: Instrument Certification policy principles**

*Additional certifications will be required for Settlement details and Information Reports.*

Certification for Settlement details will need to be developed by the ELNO in consultation with industry as settlement certifications do not involve the Land Registry. Certification requirements for Information Reports may be jurisdiction specific. The NSW Land Registry will need to develop

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<sup>14</sup> Signed Registry Instruments in a NECS Workspace are relied on by other Subscribers in the Transaction.

<sup>15</sup> Copies of Registry Instruments are, in principle, available on special request from the Land Registry immediately they have been lodged.

certifications for the Notice of Sale (NOS) Information Report and the Lodgment Information Report.

*The significant changes in conveyancing practices that are necessary for Electronic Conveyancing will require substantial training throughout industry.*

LPMA recognises that there will be a significant need to coordinate its change management activities with the change management activities conducted by ELNO and other jurisdiction Land Registries.

#### **Issue 4: Certifications in instruments**

*The certification that “the Certifier certifies on behalf of the Subscriber, that an instrument submitted for lodgment is, to the Certifier’s knowledge and diligent inquiry correct in the context of the transaction and compliance with all relevant legislation and Land Registry requirements” relates to legal work. NSW Law Society’s considered position is that **the Certifier should be an industry regulated practitioner in order to carry out this work.***

The NSW Land Registry supports this industry view as it is consistent with risk management arrangements currently in place for paper-based conveyancing and therefore either that further negotiations to achieve a standard national practice on the certification requirement, or acceptance of jurisdiction differences will be required. It can be expected that both Land Registries and ELNOs may maintain and enforce conditions in relation to instrument certification.

#### **Issue 6: Loss events and claims**

*The issue of sanctions that can be applied to a Subscriber and/or their Certifier for breach of Participation Rules remains to be addressed.*

The subject of the sanctions to be applied to Subscribers and Certifiers for breach of Participation Rules will be a subject for development, consultation and finalisation before Electronic Conveyancing is implemented in NSW.

#### **Issue 8: Other consequences for a false or negligent certification**

*The NSW Law Society is concerned that there is a need for treatment of risk associated with certification of identity based on forged documents is a practitioner concern.*

For example, although the person defrauded may establish that they did not authorise the transaction, the party certifying, an electronic instrument and relying on forged documents may have complied with any prescribed requirements for CIV and Client Authorisation. Solicitors and licensed conveyancers who act as Subscribers and Certifiers are not, and cannot be expected to be, expert in the detection of forged identity documents. No identity verification system will detect or eliminate all fraud and the design principles governing the implementation of NECS must recognise and provide equitable treatment of this risk rather than transferring it solely on to Subscribers or Certifiers.

The issue of Client Identity Verification standard and application procedures is currently the subject of investigation and consultation among stakeholders involved in Electronic Conveyancing. LPMA is contributing to this investigation which is an important component of the risk management framework for Electronic Conveyancing.

## 4. Digital Signing of Electronic Instruments (27 November 2009)

### 4.1 Overview

In the Electronic Conveyancing environment, digital signatures on electronic registry instruments replace 'wet signatures' on paper registry instruments. The digital signature on an electronic instrument is made by a Certifier and given on the Subscriber's behalf.

The wet execution for a real property transaction by a Transacting Party, such as a vendor, purchaser or mortgagor of a property, will effectively occur on the Client Authorisation Agreement that gives the Subscriber their instructions and authority to transact in the electronic environment on behalf of the Transacting Party.

This paper discusses:

- how digital signatures will be created in NECS using private keys;
- how a Subscriber relying on a digitally signed document can validate the digital signature using a Digital Signature Certificate (DSC);
- the types of DSC that will be used in NECS;
- how digital signature technology helps to strongly attribute a digital signature to a Certifier and Subscriber; and
- management of the risk of a Certifier or Subscriber attempting to repudiate responsibility for a digital signature.

The *Digital Signing of Electronic Instruments* consultation paper contains 18 questions about 7 implementation issues on which the NSW Land Registry is seeking feedback from conveyancing industry participants. The consultation paper is available at [http://necsnsw.lands.nsw.gov.au/\\_data/assets/pdf\\_file/0009/116838/Digital\\_Signing\\_of\\_Electronic\\_Instruments.pdf](http://necsnsw.lands.nsw.gov.au/_data/assets/pdf_file/0009/116838/Digital_Signing_of_Electronic_Instruments.pdf)

For an introduction to how digital signatures work refer to Appendix C: The process of "digitally signing" and "authenticating" an electronic document.

LPMA is developing for publication a further consultation paper which addresses issues relevant to the hardcopy supporting evidence and electronic components of an electronic conveyancing Lodgment Case.

### 4.2 Stakeholder feedback on digital signing of electronic instruments

#### Issue 1 - Types of Digital Signature Certificate for use in NECS

Are there any scenarios where the proposed requirement to use Gatekeeper organisation DSCs is not appropriate for the practices of industry entities that will be participating as Subscribers in Electronic Conveyancing? What other business activities are being considered where industry would like to use the same Gatekeeper DSCs as used for Electronic Conveyancing, and is there any reason why the Certificate Policy for DSCs should be Electronic Conveyancing specific? (Refer consultation paper section 6.3 *What kind of DSC is required?*)

#### Industry response

If all Certifiers are required to be employees of the Subscriber, an Organisation DSC is sufficient.

However, the requirements for Electronic Conveyancing operational roles have not yet been agreed nationally. The AICNSW and NSW Law Society are of the view that a Certifier for an Electronic Conveyancing transaction must be an industry practitioner where the Subscriber is

representing a Client. This is considered to be a legal requirement consistent with paper-based transactions in NSW and several other jurisdictions.

The NSW Law Society considers the Organisational DSC may not adequately provide for industry practices. They described four industry practice scenarios where a DSC will be used for Electronic Conveyancing and indicated that an organisational DSC may not be suitable for two of these scenarios. Their feedback contained the following comments.

It is important to note that the National Project Team (NPT) decision to use Organisation DSCs was taken before the NPT clarified its position that Certifiers have to be industry regulated practitioners.

The issues raised in the consultation paper need to be examined in the context that the [operational roles] position has changed.

On 10 February 2009, the NPT considered 4 options for the DSC type for use in NECS.

The 4 options in the NPT issue paper were:

- Parent Organisation DSCs (this term used in the issues paper presented to the NPT refers to what is now known as an "Authorised Officer DSC");
- Organisation DSCs with Subscribers required to conduct CIV checks on Child certificate holders (this term used in the issue paper presented to the NPT refers to what is now known as a "Standard DSC");
- Individual DSCs with NECS required to independently verify authority to represent Subscribers; and
- Organisation and individual DSCs with CIV and authorisation check. The use of Organisation DSCs with specific responsibility on Subscribers to undertake CIV checks on Child certificate holders was identified as the preferred option.

There are 4 possible scenarios:

1. Subscribers acting for themselves e.g. the bank will hold an Authorised Officer DSC and Standard DSCs.  
The Authorised Officer would, after completing the CIV process, authorise other persons in the organisation to use [Standard DSC] digital signatures for the particular transaction;
2. A Subscriber acting for themselves e.g. a bank who uses Certifiers who are contractors to the Subscribers. It is the NPT position that these contractors must themselves be industry regulated practitioners;
3. A Subscriber, who is a sole practitioner, acting for a client. In this case the sole practitioner is both the Subscriber and Certifier. This scenario does not cause any great difficulties; and
4. A Subscriber that is a legal practice, but not a sole practitioner i.e. either a partnership or an Incorporated Legal Practise. The Certifier will either be a solicitor or licensed conveyancer employed by the firm.

The NSW Law Society identified the problem [scenario] categories as number 2 and 4. They pointed out that if an Organisation DSC is used a Certifier may have several digital signatures if employed or contracted to act for different Subscribers. It is imperative that a Certifier be linked to the appropriate organisation Subscriber, but it is also important to identify, for risk management purposes, an individual Certifier who is authorised to act for multiple Subscribers.

In answer to the question about other uses for a Gatekeeper DSC, the NSW Law Society indicated no specific applications at this time. However, it is likely that there will be other such activities developed in the near future including filing of documents in the court system.

## Issue 2 – Signing requirements

Are there any scenarios that will require digital signing by two Certifiers on behalf of a Subscriber in one role in a transaction? Is it necessary for double signing requirements to be enforced in the ELNO system, or is it satisfactory for this to be left with Subscribers? Are there any scenarios where Subscribers (e.g. financial institution acting as mortgagee) will need to determine or configure specific signing scope permissions or signing levels for their Certifiers in the ELNO system? (Refer consultation paper section 6.4 *How will signing rights be managed in NECS?*)

### Industry response

The integrity of the Electronic Conveyancing system is likely to be enhanced if the DSC is specific to NECS. In the absence of a compelling reason to allow a second or subsequent use it is not clear what is to be gained by having a DSC that can be used for another purpose.

As a risk management measure, signing compliance requirements need to be enforced in NECS.

There should not be a problem with NECS accommodating a Subscriber acting for a party on more than one role on NECS (e.g. an individual who is both the purchaser and mortgagee).

Subscriber organisations will need to determine or configure specific signing scope permission or signing levels in relation to financial settlements. NECS should also accommodate Subscribers such as financial institutions setting out limitations to the level of authority of a particular employee Certifier.

The NSW Law Society noted that in the case of a Certifier who is a licensed conveyancer, that Certifier is limited by legislation in relation to the transactions in which the conveyancer can act<sup>16</sup>.

## Issue 3 – Validation of signed documents

Does validation and authentication by the ELNO of a digital signature associated with a signed document at time of signing provide sufficient compliance assurance confidence to Subscribers participating in an Electronic Conveyancing transaction? Should the result of the compliance check by the ELNO at digital signing be included as part of the rendered instrument counterpart? Does industry require copies of signed registry instruments that contain the digital signature for authentication purposes? Will industry want the signed XML document, a rendered copy of the signed instrument, or both? Are there scenarios where additional digital signature compliance checks will be required after signing and before lodgment? (Refer consultation paper section 6.6 *Validation of signed documents*)

### Industry response

Validation and verification of a digital signature by NECS at time of signing is necessary to provide confidence to Subscribers participating in the transaction. The compliance check result at digital signing should be included as part of the rendered Registry Instrument counterpart and this compliance result will be recorded as part of the Registry Instrument on the Torrens Register.

The NSW Law Society proposed that validation is necessary at settlement. They stated that validation and verification of digital signing only at time of signing does not provide sufficient compliance assurance confidence to Subscribers participating in an Electronic Conveyancing transaction. Validation at the time of settlement is essential.

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<sup>16</sup> A licensed conveyancer with an unrestricted license can carry out a range of work including residential and commercial property conveyancing, preparing and advising on mortgages, the sale of businesses and the sale of rural property. Holders of restricted licenses are limited to doing work relating to specific kinds of transaction e.g. residential conveyancing. However a conveyancer is not authorised to carry out work such as: a non-residential mortgage exceeding \$7 million, commencing or maintaining legal proceedings, establishing a corporation or varying the memorandum or articles of association of a corporation, creating, varying or extinguishing a trust, preparing a testamentary instrument, giving investment or financial advice. For further information see [http://www.fairtrading.nsw.gov.au/Businesses/Specific\\_industries\\_and\\_businesses/Conveyancing/Work\\_a\\_conveyancer\\_can\\_do.html](http://www.fairtrading.nsw.gov.au/Businesses/Specific_industries_and_businesses/Conveyancing/Work_a_conveyancer_can_do.html)

If the parties to a transaction, the Land Registry and community are all relying on the skill and integrity of regulated industry practitioners when representing a Client, a validation of that ability to certify and sign dealings should also be undertaken at the time of settlement. The suspension of a Practising Certificate casts a sufficiently serious question over the practitioner's right to continue to represent clients, that such a check is essential. (See issues arising from Issue 3 at the end of this section with feedback on the consultation paper on Digital Signing of Electronic Instruments.)

Where such a suspension occurs, the professional regulators will need to be able to step in (e.g. through an appointed Manager of a law practice) and take over responsibility for the NECS transactions being run by a practitioner who is suspended.

The final risk assessment validation and verification check could be part of the last workspace verification check taken as part of the "settlement" process once the NECS transaction is ready for settlement or lodgment.

This final risk assessment check should identify if there has been a change to the regulatory status of the Subscriber/Certifier, or if the security of the DSC used to sign the Registry Instruments has been reported as compromised. Any such risk issue should be flagged to the Subscribers participating in the transaction in the Workspace.

Any time a copy of an instrument is required, a PDF copy should be sufficient.

A rendered copy comprised of a PDF reproduction, of electronic documents digitally signed, which at least identifies the Certifier and Subscriber by their names should satisfy industry practitioners.

#### **Issue 4 – Registry Instrument copy requirements**

What instrument copy search products need to be provided by the Land Registry for a registered electronic registry instrument (a) XML data containing the counterparts as signed, the associated digital signatures and lodgment information (b) a rendered summary of the instrument compiled from the counterparts associated signing and lodgment information, (c) other suggested format? What is industry's preferred format for receiving copies of registered instruments? (Refer consultation paper section 6.7 *Providing copies of electronic registry instruments*)

##### **Industry response**

There will always be a need at various times to obtain a copy of a Registry Instrument. Most conveyancing practitioners would have the facility to receive, read and print documents in PDF format. If they don't, it is usually a free program that can be downloaded to provide this facility. For this reason PDF would be the preferable format.

The rendered copy of a registry instrument or other electronic document comprised of a PDF reproduction should, at the least, identify the Certifier and Subscriber by their names.

The preferred format for receiving copies of registered instruments will be whatever security communication method is used in NECS e.g. a secure box – being a dedicated message box noting that messages have been posted and accessible by password.

#### **Issue 5 – Attribution and reliance**

Are there any reasons why strong attribution of a digital signature to the holder of the Private Key names in the relevant DSC (for both individual Certifier and Subscriber organisation) should not provide the basis for stakeholder risk management and confidence in Electronic Conveyancing? Is there any reason why any stakeholder in a real property transaction should not be able to rely on a digital signature associated with a signed document? (Refer consultation paper section 7.3 *Signer identity authentication, attribution and non-repudiation*)

##### **Industry response**

A strong attribution rule for a digital signing by the holder of the private signing key is favoured.

The AICNSW stated that it is imperative that the signer of any document in an Electronic Conveyancing transaction cannot infer at a later date that they did not sign the document or that the document has been tampered with since it was signed.

The Gatekeeper (Public Key Infrastructure) has proven to be an adequate system of attributing the use of digital signatures to the key holder.

The Institute sees no reason why tight attribution of a digital signature to the holder of the Private Key would not provide stakeholder confidence or the basis for risk management.

The NSW Law Society stated that the rule should be implemented with regard to the risk that although the Subscriber conducts the prescribed Client Identity Verification, the Subscriber has been “duped” by a Client who commits identity fraud. There needs to be clear provision for a NECS compensation regime or an ability to rely on the Torrens Assurance Fund in these circumstances.

If the stakeholder were party to or had knowledge of, say, an identity fraud or fraud in connection with the right to deal, they should not be able to rely on the signature any more than they could not rely on section <sup>17</sup> of the Real Property Act 1900. Perhaps the fraud exception in section 42 provides sufficient protection for parties and the Register and no additional provision in the NEC arrangements is required.

The NSW Law Society repeated that they endorsed an approach which emphasises that risk allocation in NECS should mirror the current paper environment.

### **Issue 6 – Repudiation**

Is there any reason why Electronic Conveyancing should not provide a strong framework for non-repudiation of digitally signed registry instruments (whether through jurisdiction enabling legislation or Participation Rules)? (Refer section 8 *Reliance on Registry Instrument Certifications*)

#### **Industry response**

No reasons were provided for implementation of anything other than a strong framework for non-repudiation of digitally signed Registry Instruments other than the issue of identity fraud by a Transacting Party which is a separate issue to attribution of the digital signature on a signed document.

The NSW Law Society repeated that there should be a strong, but not absolute, attribution rule.

### **Issue 7 – Security for digital signing**

Do the controls described provide adequate risk management for the electronic signing key holder? Should there be an agreed industry practice standard set for risk management of security of digital signing keys? If so, how should that standard be developed and what should the governance arrangements be for the standard? What options would be acceptable to industry from a risk management perspective for reducing the time required for signing document for Electronic Conveyancing i.e. without negative effect to attribution and non-repudiation outcomes? (Refer consultation paper section 7.5 *Security of private key and signing process*)

#### **Industry response**

The risk management controls for security of the private signing key described in the consultation paper were supported.

The general view was that there will probably never be a completely fool proof system of anything and digital signing is no different. Fraudulent use of a digital signature, theft and carelessness are all possibilities. Subscribers and Certifiers will need to be conscious of risk management procedures.

There should be a single agreed industry standard for signing key security practice. This would clarify the position of a party who had followed the standard but was still subject of a sophisticated

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<sup>17</sup> Section 42 (Estate of registered proprietor paramount) of the Real Property Act 1900 (NSW) establishes the features of indefeasibility of title.

fraud (e.g. hacker who gains access to a Subscriber's NECS login details and a Certifier's key and undertakes unauthorised transactions) should not be liable in these circumstances.

Guidance in relation to industry practice should come from the regulators (e.g. to be part of the Professional Conduct and Practice Rules governing the legal profession) and if possible, it should be an Australia-wide standard.

A requirement to enter a password every time a practitioner uses his or her key to sign a document could become very frustrating and time-consuming. Signing of documents in a Workspace should not require the entry of the signing password more than once in a single session or period. The system could be designed to have compulsory "time-outs", so that one could "log into" one's key and sign a series of documents that after either:

- a specified period;
- a specified period of inactivity;
- or both

the signing software would require the password to be re-entered.

### 4.3 *Issues arising*

LPMA has identified the following issues to be resolved from the consultation feedback on the *Digital signing of Electronic Instruments* paper. The issues arising are shown in *italics* below.

#### **Issue 1: Types of Digital Signature Certificate for use in NECS**

*There needs to be a mechanism in NECS that identifies that a Certifier who acts for multiple Subscribers and has an Organisation DSC for each Subscriber is one and the same person for regulatory compliance purposes.*

#### **Issue 3: Validation of signed documents**

*The requirements for a Signing Compliance Report needs to be defined and agreed for application in NSW, and hopefully nationally.*

The Signing Compliance Report may currently be only proposed as a YES/NO data item, but the NSW Land Registry considers the attributes required to be validated and enforced by the ELNO for a 'YES' in this single data item are:

1. The Certifier DSC is valid (i.e. not revoked or expired) at time of signing;
2. The name in the DSC matches the ELNO registered person signing;
3. The Certifier is entitled to sign in terms of:
  - registered with the ELNO as a valid Certifier for the Subscriber at time of signing i.e. not subject to operational sanction;
  - the type of Certifier required for the transaction role e.g. Practitioner Certifier;
4. The regulatory status of the Subscriber is valid at the time of signing e.g. status of industry regulated licence, required insurances, operational status i.e. not subject to operational sanction;
5. The Subscriber category satisfies jurisdiction signing requirements for the role in the transaction e.g. Representative Subscriber; and
6. The digital signature provided authenticates the integrity of the document signed by the named Certifier for the Subscriber.

The electronic document must not be considered signed unless the digital signing passes these requirements at time of signing. If any one of these fails, the Subscriber must be informed that the document is not effectively signed (i.e. completed and valid) until the signing complies with these checks.

A reporting mechanism will be required to support these checks for practitioners suspended e.g. for checking by real-time access to practitioner status. This infrastructure currently does not exist and will be required to be developed by ELNOs and peak industry bodies to support compliance assurance of Subscriber and Industry Certifier status compliance assurance.

**Issue 4: Registry Instrument copy requirements**

*Notification of registration of an electronic Lodgment Case will involve an electronic status notification from the Land Registry to the NECS Workspace, and, where relevant, issue of a Certificate of Title. Copies of registered instruments will be available via the normal document copy search services.*

**Issue 7: Security for digital signing**

*There is a need to develop and implement a stakeholder agreed signing key security protocol.*

## 5. Land Registry Transaction Services (8 March 2010)

### 5.1 Overview

The transition to Electronic Conveyancing and use of an electronic business environment for preparation, settlement and lodgment of transactions requires enhancement of the information and associated services provided by the Land Registry.

This consultation paper discusses:

- proposals for Land Registry Transaction Services necessary to support Electronic Conveyancing;
- how Land Registry information and compliance assurance services can be provided to industry;
- a transition strategy for the implementation of Land Registry Transaction Services; and
- the specification of Land Registry Transaction Services required:
  - eRegistry Instrument templates;
  - Registry Information;
  - Title Activity Check;
  - Compliance assurance; and
  - Delivery of documents.

An electronic Registry Instrument template is a re-usable structured collection of fixed text and placeholders for data items from which one or more documents of the same type and format can be generated in the “approved form” for electronic lodgment and registration. Templates for electronic Registry Instruments will provide an equivalent function for Electronic Conveyancing as the electronic forms currently provided by the NSW Land Registry for preparing and printing instruments for paper-based conveyancing.

Registry Information is a set of information about a Land Title that is supplied by a Land Registry in an electronic format for use in conveyancing. Registry Information will provide Land Title information equivalent to that currently provided in Title Searches, but the information will be in an XML discrete data format.

A Title Activity Check is an electronic query against a Land Title with a Land Registry to determine whether a lodgment or registration has occurred as regards the Land Title in a defined period. There is currently no equivalent of Title Activity Check for NSW paper-based conveyancing; the requesting party has to purchase a Title Search each time they want to check for activity on the Title.

Compliance assurance is the determining of the validity of one or more data items by the application of appropriate business rules. Compliance assurance currently relies on the expertise of practitioners interpreting Registrar’s Directions and instructions for preparing registry instruments, and manual examination of documents presented for lodgment and registration. Compliance assurance of Lodgment Cases for Electronic Conveyancing environment is intended to be supported by an automated electronic Lodgment Verification service provided by the Land Registry (LR).

Delivery of documents is the return of original documents after registration such as registered original hardcopy mortgages returned to the mortgagee.

The *Land Registry Transaction Services* consultation paper contains 33 questions about 8 implementation issues on which the NSW Land Registry is seeking feedback from conveyancing industry participants.

The consultation paper is available at

[http://necsnsw.lands.nsw.gov.au/data/assets/pdf\\_file/0015/123108/Land\\_Registry\\_Transaction\\_Services\\_for\\_Conveyancing.pdf](http://necsnsw.lands.nsw.gov.au/data/assets/pdf_file/0015/123108/Land_Registry_Transaction_Services_for_Conveyancing.pdf)

## **5.2 Stakeholder Feedback on Land Registry Transaction Services**

### **Issue 1 – Requirements for Land Registry Transaction Services**

Do conveyancing industry participants prefer consistency and compatibility between paper-based and electronic instrument templates, searches and compliance assurance to facilitate industry systems having the option of automated production of registry instruments in either medium, or development of Electronic Conveyancing specific LR transaction services? Do the five services 1. registry instrument templates, 2 Registry Information, 3. Title Activity Check, 4. Publication of compliance assurance rules, 5. Lodgment Verification service, satisfy industry practitioner and financial institutions' need for LR Transaction Services for Electronic Conveyancing? Are the development objectives for LR Transaction Services appropriate 1. Automated preparation and compliance assurance processing, 2. Transitional development of systems, 3. Paper-based registry instruments compatible with Electronic Conveyancing? (Refer consultation paper section 4 *Background to Land Registry Transaction Services*)

#### **Industry response**

Consistency and compatibility of Land Registry transaction services between paper-based and electronic instruments would be a preferred outcome in order to allow industry participants to make systems investments and develop business practices suited to moving between the two worlds more confidently. This will increase take-up in the electronic space.

Electronic templates should mimic paper instruments. When entering information in a NECS workspace, it is not expected that the information on the screen will look the same as for a paper based template, but the instrument should be available in a printable form which does look the same as the form used in the paper-based system. This will assist practitioners operating concurrently in both environments.

At a purely data level, the paper-based templates should be able to be derived from the data used in an electronic instrument, although the electronic world may require additional data e.g. for security and authentication.

The five services (1) XML registry instrument templates; (2) Registry Information; (3) Title Activity Check; (4) publication of compliance assurance rules; (5) Lodgment Verification service services appear to satisfy industry practitioners' and financial institutions' needs, as presently identified, for Land Registry Transaction Services. Additional services may be identified at a future time.

XML Registry Information should be available in a humanly readable version. Where Registry Information is purchased outside a Workspace (i.e. not through NECS) it should be able to be brought into the Workspace, if necessary, and validated as unchanged for use by the practitioners participating in that Workspace.

The development objectives proposed by LPMA for Land Registry Transaction Services, (1) Automated preparation and compliance assurance processing; (2) Transitional development of systems; (3) Paper-based registry instruments compatible with Electronic Conveyancing, are considered appropriate and supported.

### **Issue 2 – Requirements for exchange of information and compliance assurance rules**

The NSW Land Registry proposes to develop new Transaction Services using the National Electronic Data Standard. Do conveyancing industry participants support this and are there any special considerations or requirements that need to be taken into account to meet industry's needs? Does publication of Land Registry compliance assurance business rules in natural English for conveyancing industry participants to apply in their own systems satisfy industry needs for acquiring automatable transaction assurance rules? Do industry practitioners and financial institutions have any specific requirements for communication of Land Registry compliance

assurance rules? (Refer consultation paper section 6.3 *Achieving interoperability for information exchange and compliance assurance*)

### **Industry response**

The LPMA proposal to make new transaction services available as soon as possible using the National Electronic Data Standard, without waiting for full Electronic Conveyancing implementation, is supported. Industry wants to achieve efficiency dividends in electronic conveyancing and use of a national electronic conveyancing data standard should be targeted to these efficiencies. Use of consistent schemas in electronic and paper Registry Instruments and an XML Search product suited to automated population of both forms of instruments is supported.

There is some concern about use of a standard that is still in draft form. There is recognition that the national data standard will evolve and the NSW systems will need to be able to support this evolution.

There was concern that the intellectual property of the Data Standard belongs to a third party that may charge a licence fee for its use.

There shouldn't be a requirement for additional software installation on a practitioner user's computer as a result of requiring access to NECS.

The method of communication and automated application of business rules for compliance assurance is seen ultimately as an IT question which is relevant to the interfaces and services provided for Electronic Conveyancing. However, the ability to automate compliance assurance is a business efficiency issue that is driving the business case for electronic conveyancing. The provision of business rules in a manner that does not leave rules open to interpretation is required and provision of automated compliance assurance to industry practitioners is supported including "error messages" identifying any field that fails compliance assurance rules.

### **Issue 3 – Implementation strategy for Land Registry Transaction Services**

Do conveyancing industry participants support:

1. the channel delivery strategy for LR Transaction Services where the new services are available through the ELNO and through other authorised Information Brokers having the required delivery infrastructure?; and
2. the proposed progressive development of products for Transaction Services concurrently with implementation of Electronic Conveyancing?

(Refer consultation paper section 6.4 Channels for access to transaction services)

### **Industry response**

Availability of LR Transaction Services for delivery of LR Transaction Services through all information brokers with the requisite delivery infrastructure, as well as through NECS, is supported by all stakeholders as it will enable the broadest possible range of conveyancing practitioners to participate in NECS and to make use of the more efficient services. Licensed information brokers are part of the paper-based conveyancing services and there should be no reason why they should not have access to the new services developed by the Land Registry for Electronic Conveyancing environment.

The existing broker network has a proven history of providing high quality, secure, timely access to information and services. By making use of the existing information broker network, end consumers of LR Transaction Services will have the ability to use the new services in a consistent and integrated manner.

A common development path is supported for all transaction services, such as Registry Information and Title Activity Check, for electronic and paper-based conveyancing that are delivered to the licensed information broker network, now and into the future. National consistency of Land Registry transaction services is an issue that will need to be addressed as the new products and services are developed for electronic conveyancing.

Progressive introduction of new Transaction Services as they are developed by LPMA is supported by all stakeholders. There is interest from all stakeholders in consuming these services independent of a full Electronic Conveyancing system. Progressive implementation will allow for collaboration on development and implementation with industry rather than a “big-bang” approach.

#### **Issue 4 – Requirements for Registry Instrument templates**

Do conveyancing industry participants support the NSW Land Registry approach of using a common schema to ensure consistency across all instrument types? Can industry practitioners and financial institutions use a common standardised registry instrument template for each registry instrument type? Operative Words on each instrument type will be standardised for all users for paper and electronic environments. Can industry practitioners and financial institutions work with this constraint, or will it be necessary to incorporate a limited size variable data field for terms and conditions to be associated with Operative Words? In what formats should the NSW Land Registry produce its new Registry Instrument templates e.g. XHTML, or XML compliance MS Word or Adobe Acrobat? Will industry practitioners and financial institutions use the NSW LR’s new XML forms in their in-house systems, or will they use the LR schema to build their own templates? (Refer consultation paper section 7.1 Registry instrument templates)

##### **Industry response**

The common schema approach for all instrument types is supported as this will ensure consistency across all instrument types and help control the development impact on all the industry IT and document systems in which instruments are prepared for both paper and Electronic Conveyancing. The common schema should be consistent with the national data standards.

No reason was identified as preventing common standardised Registry Instrument templates being used by all practitioners and financial institutions in NSW.

An issue arising is that the NSW Land Registry has received strong financial industry feedback that nationally consistent or uniform mortgage related Registry Instruments should be developed for implementation in conjunction with electronic conveyancing.

The text field of 500 characters for additional terms and conditions to be associated with standardised Operative Words was considered sufficient. [Land Registry note: The NSW Land Registry rationale for this is set out in ‘*Arising Issue 4*’ at the end of the section for feedback on the Transaction Services consultation paper.

No response was received from financial institutions on the lead-time they require to transition to standardised Registry Instruments, however LPMA understands that 6 to 12 months will be required.

The format for new Registry Instrument templates should use a common open technology standard such as XHTML and be suitable for creating templates in software applications such as MS Word or Adobe Acrobat utilised in industry in-house systems.

#### **Issue 5 – Requirements for Registry Information**

What data content is required in a Registry Information product? Is the information set indicated in Appendix D of the consultation paper sufficient? At which stage in the conveyancing or mortgage financing process do industry participants envisage using electronic Registry Information? Should the Land Registry digitally sign the Registry Information for authentication purposes? Should a purchaser of Registry Information be able to subsequently be able to take it into a NECS Workspace from their own system? Should the Title Activity Check Subscription be bundles with the supply of Registry Information, or should the customer for information products self-determine product bundling at time of ordering? (Refer consultation paper section 7.2 Registry Information)

## Industry response

The Land Title content indicated as “essential” in Appendix D of the Land Registry Transaction Services consultation paper was supported by all stakeholders as required with the addition of:

- land description; and
- information required for the eNOS.

The Land description will provide further assurance to practitioners and their clients that they are dealing with the correct parcel of Land.

Industry stakeholders support Registry Information being:

- digitally signed by the Land Registry; and
- in a format suitable for taking into a NECS Workspace when purchased prior to creating the Workspace.

A purchaser should be able to buy Registry Information at any point in the conveyancing process and use it to populate a Workspace without having to buy the information again within NECS. This would facilitate use of Registry Information prior to creating an electronic Workspace, in addition to use in the Workspace, and also make it suitable for use in both paper and Electronic Conveyancing.

If Registry Information contains all the information in a traditional Title Search, there does not seem to be any reason to have mandatory bundling of Registry Information and the traditional Title Search products.

The bundling of a Title Activity Check Subscription and a traditional Title Search with Registry Information should be an available option to be decided by the practitioner when purchasing the information products.

## Issue 6 – Requirements for Title Activity Check

A *Title Activity Check* is to be a check undertaken by a Land Registry to determine whether a Lodgment or Registration has occurred as regards a Land Title in a defined time period.

The proposed functionality for a *Title Activity Check (TAC)* is that the service can be purchased for a set period for a specified Land Title. The entity purchasing the service would have an identifier that can be used to call the Land Registry to obtain a *Title Activity Report* that will advise if there has been a change on the Land Title since the start of the service subscription period for the specified title.

For what reasons would the NSW Land Registry proposal for a reactive Title Activity Check not be suitable? What information should be contained in the Title Activity Report received in response to a request for a Title Activity Check (TAC)? What is the appropriate subscription period and limit on number of calls to the Land Registry for a TAC response? Should the start time/date for a TAC be (a) auto specified by the date/time of purchase/issue of the TAC Subscription, or (b) specified by the purchaser in the purchase request? Should the TAC Subscription be bundled with the purchase of Registry Information? Is the proposed product content appropriate? (Refer consultation paper section 7.3 *Title Activity Check Subscription*)

## Industry response

No reasons were identified suggesting that the proposed reactive Title Activity Check is not suitable for industry.

The current environment requires that industry practitioners make the necessary check. It should be the practitioner that asks the Register and depending on the response (e.g. new registered or lodged but unregistered instrument), it is a matter for the practitioner to decide whether or not to order a copy of that registry instrument.

The necessary information that should be contained in a Title Activity Check report is:

- a Boolean qualifier (Yes/No) indicating whether there has been a change on the Land Title [since the start of the period specified;]
- the date/time of each change;
- the dealing / plan number for each document lodged or registered which changes the Land Title; and
- the current status of the lodged document e.g. lodged or registered.

The concept of a TAC Subscription is supported. In terms of a normal conveyancing process, a TAC Subscription of 8 weeks and 50 calls would be sufficient.

There was a difference in views on whether a TAC Subscription should start from:

- when the electronic Workspace is created; or
- when Registry Information is purchased in conjunction with a TAC Subscription so that there is no risk that any changes since the date/time of purchase of the Registry Information will not be identified.

A stakeholder indicated that the incentive to use a TAC is more likely to be with the purchaser. The following scenario was quoted.

A vendor buys a Title Search and warrants that, at the date of contract, the information in that search is current and correct.

The TAC is not something that the vendor requires, but is something that the purchaser may wish to buy, as it mirrors:

- the update search many purchasers' representatives undertake immediately after exchange of contracts; and
- the final search undertaken immediately before completion.

The addition of a TAC in the week before completion would be of assistance both to the vendor and purchaser, to alert them to changes in the Title which need to be addressed before the final search (lodgment TAC) is performed at the time of settlement. In the light of this, the purchaser should determine when the subscription will start.

This may have implications for how the cost of the TAC Subscription is charged for and/or allocated between vendor and purchaser.

The bundling of the TAC with Registry Information should be a purchase option at the discretion of the practitioner when purchasing Land Registry information products.

The product bundling options proposed in the Land Registry consultation paper are supported, except that if Registry Information contains all the information contained in a standard Title Search, there should be no requirement that a practitioner to purchase both the standard Title Search and the Registry Information products together.

[Land Registry note: It is not currently the Land Registry's intent to provide Registry Information as a replacement for the conventional search product that is suitable for use as an attachment to contracts of sale (as offered under section 197 of the Conveyancing Act 1919) because of the lesser security protection that could occur with the XML structured information product.]

## **Issue 7 – Requirements for Compliance Assurance**

Are the proposed Land Registry compliance assurance services sufficient and useful for (a) Electronic Conveyancing, and (b) paper-based conveyancing? Do conveyancing industry participants support a transition approach to development and implementation of Land Registry compliance assurance services? Would industry participants use a Lodgment Verification service for paper – based registry instruments? What content and format of compliance feedback is required by conveyancing industry participants for advice of compliance of a transaction? (Refer consultation paper section 7.4 *Compliance Assurance*)

## Industry response

No additional compliance assurance requirements were identified by stakeholders for either paper or Electronic Conveyancing. Industry responses indicate that the described services would facilitate a great step forward in processing efficiency. It was recommended that after the implementation of the current planned compliance assurance services, there should be ongoing review of compliance assurance needs.

It will be of assistance to industry if all services being introduced in connection with NECS are introduced in a staged manner, particularly in connection with paper transactions, i.e. making new services suitable for paper conveyancing as part of a staged implementation. This avoids the 'big bang' approach and provides efficiency for both the paper and Electronic Conveyancing environments.

A transitional approach will allow industry to move from paper based to Electronic Conveyancing acquiring the necessary understanding and skills experience and training with confidence and assurance in the new electronic environment.

If feasible, a Lodgment Verification service for paper-based Registry Instruments would provide a shorter step when industry moves to a fully integrated electronic system. However, this service should only be made available as an option for practitioners to "vet" the way in which instruments have been completed and not imposed as a precondition to lodging documents in a paper transaction.

A "warning error message" to the party entering the data depicting the field where the error occurs would be useful.

A compliance report should state that all the requirements have been met for registration with respect to all instruments in a lodgment case. In an electronic environment the compliance report would assure that subject to the matters covered by the report that the instruments are in registrable form and provide practitioners with confidence that the matter may proceed to settlement.

## Issue 8 – Requirements for delivery of documents

Does the Land Registry need to return original registered mortgage documentation to the mortgagee? (Refer consultation paper section 7.5 *Delivery of documents*)

### Industry response

The only reason provided for returning original mortgages was for retaining evidence of original duty stamping of the mortgage. As mortgage duty in NSW will not be completely abolished until 1 July 2010, it was identified that there may be some difficulties for mortgagees that need to "up-stamp" mortgages of an original registered mortgage is not returned to the mortgagee while mortgage duty remains current.

## 5.3 *Issues arising*

LPMA has identified the following issues to be resolved from the consultation feedback on the *Land Registry Transaction Services* paper. The issues arising are shown in *italics* below.

### **Issue 3: Implementation strategy for Land Registry Transaction Services**

*Impact of implementation of discrete data services on use permissions in existing LISA Land Registry liabilities associated with use of those services.*

The implementation of structured XML Land Title information products introduces some new liability issues. The NSW Land Registry will be reviewing the Land Information Services Agreement terms and conditions required for supplying these services.

*National consistency of Land Registry transaction services will need to be addressed as the new products and services are developed for electronic conveyancing.*

National consultation will be necessary to achieve a level of national consistency for products and services necessary for electronic conveyancing. It will be important that industry is involved in that consultation to ensure that the requirements are known and agreed for new products and services to deliver the efficiency dividend and support the business case for electronic conveyancing.

#### **Issue 4: Requirements for Registry Instrument templates**

*The requirement for a text field for additional terms and conditions to be associated with standardised Operative Words will be the subject of further consultation because further Land Registry analysis is indicating that it may be possible to eliminate this requirement.*

Further analysis conducted by the NSW Land Registry indicates that the text field for additional terms and conditions should not be provided in Registry Instruments. The rationale for this position is explained below.

Standardisation of Registry Instruments templates is an important goal for the implementation of electronic conveyancing in NSW. The NSW Land Registry recognises that the mortgage financing industry is keen that nationally consistent mortgage and discharge of mortgage instrument templates be developed for electronic conveyancing.

The NSW Land Registry believes that this is an achievable goal for mortgage related documents subject to active and cooperative collaboration between jurisdictions and industry.

To achieve this goal, the inclusion of a field for a “Set of Additional Terms and Conditions” has been proposed. The Land Registry is unwilling to proceed with this proposal as further investigation has identified adverse consequences.

The impacts of allowing a field for a “Set of Additional Terms and Conditions” are that information in this field may:

- a. alter the intention of the transaction, i.e. by unacceptable effect on the operative words
- b. include material that is not acceptable for inclusion in the Torrens Title Register
- c. include material that is incorrect, incomplete or obscure in terms of the legal effect of the Registry Instrument.

The consequence is that the Land Registry will be required to manually examine each instance of content appearing in the “Set of Additional Terms and Conditions” field. This prevents automated compliance assurance for lodgment and registration of electronic Lodgment Cases. If there are additional terms and conditions for an electronic mortgage, these should be contained in one or more pre-registered Memoranda that can be referenced in the Mortgage.

*Industry requirement for nationally consistent mortgage related Registry Instruments.*

National consultation will be required to develop uniform mortgage related Registry Instruments for electronic conveyancing. The NSW Land Registry is of the view that these uniform Registry Instruments should be implemented for paper-based Registry Instruments concurrently with their implementation for electronic conveyancing.

#### **Issue 8: Requirements for delivery of documents**

*As the NSW Land Registry can now image and retain copies of both sides of documents after registration, does this eliminate the need to return original mortgages prior to mortgage duty being abolished in 2012?*

Before the return of copies of registered mortgages is phased out in NSW, a full proposal on how and when this will be implemented will be published for consultation and comment.

## 6. Glossary

TERM	DEFINITION
<b>Authorised Officer</b>	A Natural Person entrusted as an employee of an Organisation with the responsibility of acting for and on behalf of that Organisation.
<b>Business Rule</b>	A statement that defines or constrains an aspect of the business, such as attribute and relational requirements that apply to a Workspace Data Item.
<b>Certificate Policy (CP)</b>	RFC3647 defines a Certificate Policy as “A named set of rules that indicates the applicability of a Certificate to a particular community and/or class of applications with common security requirements”.
<b>Certificate of Title (CT)</b>	See ‘Duplicate Certificate of Title’.
<b>Certification Statement</b>	Text in a Registry Instrument that specifies one or more conditions that must be complied with and that are intended to be certified as true in the circumstances.
<b>Certifier</b>	A natural person authorised by a Subscriber to certify and digitally sign registry instruments, settlement statements and information reports on behalf of the Subscriber for the Client represented by the Subscriber.
<b>Client</b>	A collective term for the Transacting Party or parties specified in a Registry Instrument Counterpart and who are represented by the same Subscriber.
<b>Client Authorisation</b>	The authorisation by a Client of a Subscriber as agent of the Client to arrange the certification and digital signing of registry instruments, information reports and settlement statements by a Certifier, financial settlement and the lodgment of registry instruments and the delivery of information reports on the Client’s behalf.
<b>Client Authorisation Agreement</b>	A written agency agreement in prescribed form by which a Client gives a Client Authorisation to a Subscriber.
<b>Client Identity Verification (CIV)</b>	A prescribed procedure carried out by a Subscriber or their delegate to verify the claimed identity of each Transacting Party represented by the Subscriber and of any representative of a Transacting Party.
<b>Compliance Assurance</b>	The determining of the validity of one or more Workspace Data Items by the application of appropriate business rules.
<b>Digital Signature Certificate (DSC)</b>	An electronic document signed by the Certification Authority which: <ul style="list-style-type: none"> <li>(a) Identifies either a Key Holder and/or the business entity that he/she represents; or a device or application owned, operated or controlled by the business entity;</li> <li>(b) binds the Key Holder to a Key Pair by specifying the Public Key of that Key Pair;</li> <li>(c) contains the information required by the Certificate Profile.</li> </ul>
<b>Due Diligence</b>	A process of collection of material facts relating to a Land Title and

TERM	DEFINITION
	proposed changes to that title.
<b>Duplicate Certificate of Title (CT)</b>	A certified rendering of information contained in a Land Title, issued and delivered by a Land Registry and used to indicate, by possession thereof, the Control of the Right to Deal.
<b>Duty Assessment</b>	A process to determine the prescribed amount of Duty payable on a specific document.
<b>Duty Verification</b>	A process that verifies the compliance of a Duty Assessment.
<b>Electronic Conveyancing</b>	The conducting of conveyancing, mortgage financing and other land-related transactions using electronic services provided by an Electronic Lodgment Network Operator for: <ul style="list-style-type: none"> <li>• settlement of property transactions electronically; and</li> <li>• lodgment of Registry Instruments with Land Registries electronically.</li> </ul>
<b>Electronic Lodgment Network Operator (ELNO)</b>	A body responsible for the operation and function of an Electronic Lodgment Network (such as NECS).
<b>Gatekeeper</b>	The Commonwealth Government strategy to develop Public Key Infrastructure to facilitate Government online service delivery and e-procurement.
<b>Key Holder</b>	An individual who holds and uses Keys and Certificates on behalf of an Organisation, or in his/her own right in the case of Individual Certificates.
<b>Industry Certifier</b>	A Certifier who is a legal practitioner or licensed conveyancer. The latest NECS Glossary uses the term 'Practitioner Certifier'
<b>Industry Practitioner</b>	A Legal Practitioner or Licensed Conveyancer.
<b>Information Broker</b>	An authorised agent for the supply of information from the authoritative sources of that information including from a Land Registry.
<b>Information Report</b>	A document that contains transaction information required by government taxing, valuing and rating authorities about a transaction. The content of a report is determined by the receiving authority.
<b>Instrument Certification (IC)</b>	The process that is the act of a legal entity acknowledging that a certification statement on a registry instrument has been complied with.
<b>Land Registry (LR)</b>	A Government Body that is responsible for administering a Torrens Title Register for a Jurisdiction.
<b>Land Registry (LR) Transaction Services</b>	The products and services required from a Land Registry for due diligence, preparation and compliance assurance for a real property transaction to be registered at that Land Registry.

TERM	DEFINITION
<b>Land Title</b>	An authoritative record held in a Torrens Title Register and records a description of a specific quantum of land, any stratum above or below that land, details of each Estate, each Registered Proprietor of an Estate, and any Interest in Land or other matters affecting that land.
<b>Lending Industry XML Initiative (LIXI)</b>	An Incorporated Organisation formed to negotiate and be custodian for data standards used between systems in the lending industry.
<b>Lodgment</b>	A process undertaken by an Organisation that involves the allocating of an Identifier, and/or application of some other recording action, to information presented for recording in a public register, such as a Land Registry allocating a Dealing Number or applying some other recording action to each Registry Instrument in a Lodgment Case that has undergone Presentation for registration in a Torrens Title Register.
<b>Lodgment Verification</b>	A process that verifies if a Lodgment Case in a Workspace can undergo Lodgment at that point in time.
<b>Lodgment Case</b>	A set of information that is presented to a Land Registry for Lodgment containing at least one Registry Instrument that is intended to be Registered on the Torrens Title Register at the same time, and any Information Report or other information required by that Land Registry.
<b>LPI</b>	A division of LPMA that provides land and property administration services in New South Wales including land title registration, property information, valuation, surveying and mapping. LPI was transferred to the Department of Finance and Services on 3 April 2011 upon the abolition of LPMA as a division of the NSW Government Service.
<b>LPMA</b>	The Land and Property Management Authority NSW - is the Government agency within which Land Registry activities are undertaken for NSW. LPMA was abolished as a division of the Government Service on 3 April 2011 and the Land Registry activities transferred to the Department of Finance and Services.
<b>National Business Model (NBM)</b>	Describes the overall business context for NECS, the roles and responsibilities of the affected industry participants, and the commercial arrangements and risk management regime necessary to make it viable. It is the foundation upon which all of the subsequent NECS Roadmap documents are based. This document is published at <a href="http://www.necs.gov.au">www.necs.gov.au</a>
<b>National E-Conveyancing</b>	A legislative and business environment for a national system of Electronic Conveyancing providing for: <ul style="list-style-type: none"> <li>• settlement of property transactions electronically; and</li> <li>• lodgment of Registry Instruments with Land Registries electronically.</li> </ul>
<b>National Electronic Conveyancing Office</b>	An administrative office charged with co-ordinating collaborative determination of the requirements for NECS among Industry and Government stakeholders prior to this role being assumed by

TERM	DEFINITION
	National E-Conveyancing Development Limited.
<b>National Electronic Conveyancing System (NECS)</b>	The central facility providing Subscribers with the means for creating transaction workspaces, for preparing registry instruments, information reports and settlement statements, for assembling the instructions and other requirements for electronic settlement of the financial aspects of transactions, and for transmitting registry instruments to a Land Registry and information reports to a revenue office and/or valuing and rating authorities.
<b>National Electronic Conveyancing Data Standard</b>	The Data Standard used for communication between NECS and other systems.
<b>National Project Team (NPT)</b>	Directly represents government and industry aiming to ensure that requirements of all stakeholders are integrated successfully within NECS. Makes recommendations to the National Steering Committee on NECS: <ul style="list-style-type: none"> <li>• system requirements;</li> <li>• business practices;</li> <li>• supporting arrangements;</li> <li>• risk management; and</li> <li>• implementation planning.</li> </ul>
<b>National Steering Committee (NSC)</b>	Responsible for developing and implementing a roadmap for NECS with the support of the National Electronic Conveyancing Office, the National Project Team and State Project Teams.
<b>Non-repudiation</b>	Evidence, verifiable by a third party that a Transaction has been sent/authorised by the purported sender.
<b>Notice of Sale (NOS)</b>	An Information Report that specifies information required about a Transaction by a Government Body, such as taxing, valuing and rating authorities.
<b>Operative Words</b>	The text in a formal legal document, such as a Registry Instrument, that has legal operation to affect rights and liabilities of Parties covered by the document.
<b>Office of State Revenue (OSR)</b>	The Revenue Office for the State of New South Wales.
<b>Organisation DSC</b>	A Digital Signature Certificate issued to an Organisation by a Certification authority that identifies the organisation and the individual that is the identified holder of the digital signing key.
<b>Participation Rules</b>	A common set of policies, procedures, requirements and undertakings committed to by each industry participant prior to their first transaction.
<b>Private Signing Key</b>	A Private Key used by a Key Holder to Digitally sign messages on behalf of an Organisation.
<b>Public Key</b>	The combination of hardware, software, people, policies and

TERM	DEFINITION
<b>Infrastructure (PKI)</b>	procedures needed to create, manage, store and distribute Keys and Certificates based on public Key cryptography.
<b>Registrar General's Directions</b>	A LPMA publication containing the NSW Land Registry legal and practice requirements for a transaction to be in order for registration.
<b>Relying Party</b>	A recipient of a document with a signature and DSC who acts in reliance on that DSC and/or Digital Signatures verified using that DSC.
<b>Registry Information</b>	A set of information about a Land Title that is supplied by a Land Registry in an electronic format for use in Conveyancing.
<b>Registry Instrument (RI)</b>	A legal instrument in a form prescribed by the Land Registry as necessary to effect any change to the Land Registry's Torrens Title Register.
<b>Retainer Agreement</b>	An agreement between the Subscriber (being a legal practitioner or licensed conveyancer) and a Client represented by the Subscriber addressing matters such as fee rates, scope of instructions and content mandated by legislation.
<b>Revoke</b>	To terminate a Certificate prior to the end of its operational period.
<b>Signature</b>	A distinctive mark, or characteristic, indicating identity.
<b>Specific Authority</b>	An authority for the Subscriber to act for the Client in completing the transactions described in the Client Authorisation Agreement.
<b>Standing Authority</b>	An authority for the Subscriber to act for the Client for a period of time set out in the special instructions of the Client Authorisation Agreement.
<b>Settlement</b>	A process that enables all contractual obligations to be completed by each Transacting Party, any associated moneys to be paid, and the passing of an equitable entitlement or other right in property to each Party Receiving.
<b>Settlement Certification</b>	A certification that specifies one or more conditions related to a Settlement that must be complied with and is intended to be certified as true in the circumstances, such as by a Financial Institution holding an ESA of cleared funds being available for a Settlement.
<b>Settlement Statement</b>	A statement of the particulars of a financial settlement.
<b>Subscribers</b>	Corporations, partnerships, government agencies and natural persons meeting the minimum requirements for using NECS to prepare, certify and sign registry instruments and to execute financial settlements, and where agreed to by all the Subscribers in a Workspace, act as the Subscriber responsible for electronic lodgment of a Lodgment Case.
<b>Supporting Evidence (SE)</b>	The documentation in any form prescribed as necessary to support the lodgment of a Registry Instrument with the Land Registry.

TERM	DEFINITION
<b>Template</b>	A re-usable structured collection of fixed text and placeholders for data items from which one or more documents of the same type and format can be generated.
<b>Title Activity Check</b>	A Title Activity Check is an electronic query against a Land Title with a Land Registry to determine whether a Lodgment or Registration has occurred as regards the Land Title in a defined time period.
<b>Title Activity Check Subscription</b>	An agreement to take and pay for a specified number of Title Activity Checks, possibly within a specified time period.
<b>Title Activity Report</b>	The information supplied by a Land Registry as the result of a Title Activity Check.
<b>Title Search</b>	Information that is supplied by a Land Registry in a human-readable format for use in Conveyancing, being information extracted from a Land Title.
<b>Torrens Title Register</b>	A public register that is maintained by a Land Registry under the relevant legislation and contains information related to Real Property.
<b>Transaction Assurance</b>	The processes and services provided in NECS to assure the compliance of a Transaction with requirements.
<b>Transacting Party</b>	A party that is directly involved in a Transaction, being a Party Relinquishing or a Party Receiving.
<b>Transaction</b>	The processes required to effect a change in a Land Registry's Torrens Title Register.
<b>Users</b>	A Natural Person authorised by a Subscriber to use NECS on behalf of the Subscriber.
<b>Verify</b>	To determine or test the accuracy of something with reference to a 'source of truth'.
<b>Workspace</b>	A resource that is used to gather information and prepare documents, such as the facility used for gathering conveyancing information and preparation of Registry Instruments, Information Reports and Settlement Certifications for Electronic Conveyancing.
<b>Workspace Verification</b>	A NECS process that verifies the compliance of the Duty Assessment and the Lodgment Case in a Workspace at that point in time.
<b>XML</b>	An acronym for <i>eXtensible Markup Language</i> , being a means of associating content with information that can be used to infer the meaning of that content and its structural relationships to other content.

# Appendix A

<b>CLIENT AUTHORISATION AGREEMENT</b>														
The terms of this Client Authorisation Agreement are attached. When this form is signed, an agency agreement is created which authorises the Subscriber to act for the Client in a real property transaction being completed using the National Electronic Conveyancing System (NECS)														
To be completed and signed in ink preferably using a ball-point pen. For assistance see Completion Guide or call 1800 XXXXXX. Client Ref. _____ Form _____ of _____														
CLIENT DETAILS	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 2px;">                             NAME _____                              ABN/ACN/ARBN _____                              ADDRESS _____                              PHONE _____                              CONTACT PERSON _____                         </td> <td style="width: 5px; text-align: center; vertical-align: middle; font-size: x-small;">REPRESENTED BY</td> <td style="width: 50%; padding: 2px;">                             EMAIL _____                              _____                              _____                              WRITTEN DELEGATION <input type="checkbox"/> POWER OF ATTORNEY <input type="checkbox"/> </td> </tr> <tr> <td style="padding: 2px;">                             NAME _____                              ABN/ACN/ARBN _____                              ADDRESS _____                              PHONE _____                              CONTACT PERSON _____                         </td> <td style="text-align: center; vertical-align: middle; font-size: x-small;">REPRESENTED BY</td> <td style="padding: 2px;">                             EMAIL _____                              _____                              _____                              WRITTEN DELEGATION <input type="checkbox"/> POWER OF ATTORNEY <input type="checkbox"/> </td> </tr> </table>	NAME _____ ABN/ACN/ARBN _____ ADDRESS _____ PHONE _____ CONTACT PERSON _____	REPRESENTED BY	EMAIL _____ _____ _____ WRITTEN DELEGATION <input type="checkbox"/> POWER OF ATTORNEY <input type="checkbox"/>	NAME _____ ABN/ACN/ARBN _____ ADDRESS _____ PHONE _____ CONTACT PERSON _____	REPRESENTED BY	EMAIL _____ _____ _____ WRITTEN DELEGATION <input type="checkbox"/> POWER OF ATTORNEY <input type="checkbox"/>							
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#### Meaning of Words Used in the Agreement & Guide

**Agreement** means the Client Authorisation Agreement for use in the National Electronic Conveyancing System

**NECS** means the National Electronic Conveyancing System

**Client** means all of the parties acting together in completing a transaction using NECS

**Transacting Party** means a legal entity making up all or part of the Client

**Transacting Party Representative** means a natural person authorised to represent a Transacting Party

**Director** means a person appointed as a director of a corporation

**Sole Director and Secretary** means a person who is both the sole Director and the secretary of a corporation

**Written Delegation** means an authorisation in writing to represent a corporation or other organisation

**Transaction** means a dealing in a real property that requires the registration of one or more instruments using NECS

**Authority Type** means a Specific Authority, a Standing Authority or a Batch Authority

**Specific Authority** means an authority for the Subscriber to act for the Client in completing the transactions described in the Agreement

**Standing Authority** means an authority for the Subscriber to act for the Client for a period of time set out in the Special Instructions of the Agreement

**Batch Authority** means an authority for the Subscriber to act for the Client in a batch of transactions described in a schedule attached to the Agreement

**Property** means the land and its improvements described by the Title Reference(s) set out in the Transaction

**Property Address** means the street address of the Property being dealt with in the transaction

**Title Reference** means the relevant Land Registry's unique identifier(s) for the land at the Property Address

**Transaction Type** means the nature of the Transaction being completed

**Sale** means the relinquishing of the property to another

**Purchase** means the acquiring of the property from another

**Mortgage** means the use of the property to secure a loan

**Discharge** means the relinquishing of a mortgage over the property

**Special Instructions** means any instructions by the Client to the Subscriber not specifically provided for in the Agreement

**Subscriber** means a legal entity registered with NECS as an authorised user of the system

**Subscriber Agent** means one of a prescribed class of legal entities authorised by a Subscriber to conduct Prescribed Requirements on behalf of the Subscriber

**Signatory** means the name of a natural person signing the Agreement

**Capacity** means the role being taken by a Signatory in signing the Agreement

**Prescribed Requirement** means a procedure documented in Registrar's Directions or elsewhere that Subscribers are required to comply with

**Land Registry** means the agency of a State or Territory responsible for maintaining the jurisdiction's Torrens Title Register

**Registrar's Directions** means the directions given by a Land Registry under statutory power to persons lodging instruments for registration

**Participation Rules** means the rules applying and committed to by Subscribers in choosing to use NECS to complete Transactions

**Explanatory Material** means general written information about NECS and its use, features functions and obligations brought to the attention of Transacting Parties and their Representatives prior to their completing the Agreement

**You** means each of the Transacting Parties or their individual Representatives making up the Client named in the Agreement

**Us, We and Our** means the Subscriber named in the Agreement.

#### General Terms of the Agreement

##### 1. What is Authorised

You authorise Us to act as your agent in NECS to:

- (a) sign documents on your behalf by affixing a digital signature to each document;
- (b) cause the documents to be lodged electronically for registration with the relevant Land Registry;
- (c) authorise any financial settlement involved in the Transaction to be effected, unless you instruct us otherwise; and
- (d) do anything else necessary in NECS to complete the Transaction.

We must do so only in accordance with the instructions You give us in the Agreement and otherwise for the purposes of the Agreement.

You acknowledge that you are bound by any electronic document required in connection with a Transaction that We sign digitally on your behalf in accordance with this Agreement.

##### 2. Changing instructions

You may change your instructions to Us in connection with a Transaction (including by terminating them) at any time before We are no longer able to change information entered by Us into NECS in connection with a Transaction. However, if We receive inconsistent instructions from any two or more of you before that time, We are not to proceed further with the Transaction until we receive in writing consistent instructions from all of You.

##### 3. Execution Under Power of Attorney or Written Delegation

If the Agreement is executed by an attorney or other person acting under a Power of Attorney or Written Delegation from You, then, by executing the Agreement, the attorney or person states that the attorney or person has received no notice of revocation of the Power of Attorney or Written Delegation.

##### 4. Termination

The Agreement ends on the earlier of:

- (a) You or Us giving notice in writing to the other that they wish to end the Agreement,
- (b) the completion or termination of the Transaction described in a Specific Authority or of the Transactions described in a Batch Authority,
- (c) the expiration of any Standing Authority.

##### 5. Our Obligations

We agree to comply with all Our obligations under the NECS Participation Rules.

##### 6. Privacy and Your Information

You acknowledge that We may disclose your information to the Land Registry and that the Land Registry may disclose your information to other parties as described in the Explanatory Material. The Land Registry may allow information You are required to provide to another party to be provided to them through NECS. However, the Land Registry does not guarantee its accuracy and you remain responsible for ensuring the required information is received by the relevant party.

##### 7. Applicable Law

The Agreement is governed by the law in force in the jurisdiction in which the Property is situated. You and We submit to the non-exclusive jurisdiction of the courts of that place.

## CLIENT AUTHORISATION AGREEMENT COMPLETION GUIDE

- The Terms used in this Completion Guide are defined in the Client Authorisation Agreement (the Agreement) for use in completing Transactions using the National Electronic Conveyancing System (NECS).
- The Subscriber is responsible for ensuring the Agreement is completed in compliance with the Prescribed Requirements, including where necessary conduct of a prescribed Client Identity Verification (CIV) of each Transacting Party and of any Transacting Party Representatives. A copy of the Prescribed Requirements contained in the Registrar's Directions for each jurisdiction can be found at [<link>](#).

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### Client Details Section

- A Client can consist of any number of legal entities as individual Transacting Parties acting together in the Transaction. The Agreement provides for up to two Transacting Parties making up the Client. If there are more than two Transacting Parties, additional Agreements are to be completed and attached to the first. The first Agreement is to be numbered in the top right hand corner as "1 of [total number]" and the following Agreements are to be numbered consecutively "2 of [total number]" etc.
- For each Transacting Party, the full name, postal address and phone number are to be provided, together with an ABN/ACN/ARBN if applicable and a contact person name if the Party is a business entity.
- The Agreement provides for each Transacting Party to be represented in completing the Agreement. A Transacting Party Representative must be a natural person or persons who have been authorised to act for the Transacting Party. Transacting Parties that are business entities such as corporations may have two directors as Transacting Party Representatives. Where more than two Transacting Party Representatives are representing the Transacting Parties making up the Client, additional Agreements are to be completed.
- For each Transacting Party Representative, the full name, postal and email addresses and phone number are to be provided. Each Client Representative is also to provide the manner in which they have been authorised to represent their respective Transacting Party. A Transacting Party Representative must be authorised by:
  - a Power of Attorney;
  - a Written Delegation; or
  - by virtue of holding the position of Director or of Sole Director and Secretary of a corporation.
- The Subscriber is responsible for verifying that each Transacting Party Representative has the authority to represent their respective Transacting Party. Where a Power of Attorney is required to be registered in the jurisdiction where the Property is located, the registration number is to be provided.

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### Transaction Details Section

- The Agreement provides for Specific, Standing and Batch Authorities to suit the varying circumstances of Clients. Each Agreement is to be used for only one type of authority by ticking the appropriate box.
- For a Specific Authority, the details of one or two Transactions are to be provided and if more than two Transactions are to be authorised, additional Agreements are to be completed concurrently and attached to the first. Additional Transactions are not to be added to a completed Specific Authority.
- For each Transaction in a Specific Authority, the Property Address (including State or Territory), the Title Reference of the Property and the Transaction Type (sale, purchase, mortgage or discharge) are to be provided. Any additional Transaction Types involved and any other instructions for the Subscriber are to be provided in Special Instructions.
- For a Standing Authority, the duration of the authority is to be provided in Special Instructions together with any known details

**Additional advice and assistance with completing the Client Authorisation Agreement is available during business hours on weekdays by calling 1800 XXXXXX.**

of the scope of the expected Transactions. The specific details of each Transaction are to be documented on additional Agreements as they become known with the additional Agreements attached to the first.

- For a Batch Authority, the specific details of all of the Transactions (Property Addresses and Title References if known) are to be documented in a schedule attached to the Agreement. Only one schedule is to be attached to each Batch Authority.

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### Subscriber Details, Certification and Signing Section

- The Agreement provides for recording the details of the Subscriber and any Subscriber Agent appointed by the Subscriber for the purposes of obtaining the Agreement. Subscribers representing Clients in remote areas and overseas may choose to use a Subscriber Agent from a class of legal entities authorised in the Prescribed Requirements. The Subscriber details are always to be provided and the Subscriber Agent details are only to be provided when a Subscriber Agent is used. The details to be provided are the name, any ABN/ACN/ARBN where applicable, phone number and email and postal addresses.
- The Agreement provides for the Subscriber and any Subscriber Agent used to certify that:
  - the identity and authority of each of the Transacting Parties and/or Transacting Party Representatives signing the Agreement have been verified in accordance with Prescribed Requirements;
  - the Agreement was signed by the Transacting Parties and/or Transacting Party Representatives in the presence of the Subscriber or Subscriber Agent.
- The name and the capacity of the persons signing for the Subscriber and for any Subscriber Agent are also to be provided. It is the responsibility of the Subscriber to ensure that any Subscriber Agent used is of the class of legal entities permitted in the Prescribed Requirements as Subscriber Agents, to appoint any Subscriber Agent in writing, and to ensure the appointed Subscriber Agent understands the Prescribed Requirements.

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### Client Authorisation and Signing Section

- Each Transacting Party or their Representative(s) provides the certifications set out in the Agreement and authorises the Subscriber as their agent to:
  - sign documents on their behalf by affixing a digital signature to each document;
  - cause the documents to be lodged electronically for registration with the relevant Land Registry;
  - authorise any financial settlement involved in the Transaction to be effected, unless instructed otherwise;
  - do anything else necessary in NECS to complete the Transaction.
- The Subscriber is to provide the Explanatory Material (explaining how NECS works and a Transacting Party's obligations in authorising a Subscriber to act in NECS on their behalf) to each Transacting Party and any Transacting Party Representatives making up the Client before the Agreement is signed.
- Each Transacting Party who is a natural person and not represented by a Transacting Party Representative and each Transacting Party Representative is to sign and date the Agreement, and clearly state the capacity in which they are signing, in the presence of the Subscriber or Subscriber Agent.
- Special requirements for signing on behalf of corporations, government agencies, statutory authorities and various, religious, charity and indigenous organisations are set out in the Prescribed Requirements and should be referred to before signing a certification and giving an authorisation on behalf of these organisations.

## Appendix B:

### Policy Principles for Registry Instrument Certifications in NECS

	Description of Policy Principle for Certifications
1	<p>IC is not to contain any jurisdiction-specific characteristics.</p> <ul style="list-style-type: none"> <li>This is necessary to achieve one set of wordings for use in all jurisdictions.</li> </ul>
2	<p>IC is not to contain any instrument-specific characteristics.</p> <ul style="list-style-type: none"> <li>This is necessary to limit the number of different certification wordings encountered by Certifiers.</li> </ul>
3	<p>The use of IC is to be enforced by reference to a consistent statutory power to set requirements in each jurisdiction.</p> <ul style="list-style-type: none"> <li>This ensures there is an identifiable statutory means of enforcing provision of certifications and an available sanction in the event of non-compliance.</li> </ul>
4	<p>IC is to be provided as part of the instrument to which they refer.</p> <ul style="list-style-type: none"> <li>This is necessary to ensure an unequivocal connection between the certification and the instrument.</li> </ul>
5	<p>IC is to be completed by the Certifier immediately prior to instrument signing.</p> <ul style="list-style-type: none"> <li>This is necessary to securely and unequivocally bind the certification to the Certifier who signs the instrument.</li> </ul>
6	<p>IC is to be provided by a Certifier contracted to the Subscriber being or representing the transacting party.</p> <ul style="list-style-type: none"> <li>This is necessary to bind the certification to the transacting party.</li> </ul>
7	<p>IC is to confirm that the identity of the Client has been verified.</p> <ul style="list-style-type: none"> <li>This is necessary to ensure that a Client Identity Verification has been undertaken in the prescribed manner and all necessary records of the verification have been made and securely retained.</li> </ul>
8	<p>IC is to confirm that a properly completed and signed CA has been obtained.</p> <ul style="list-style-type: none"> <li>This is necessary to ensure that a properly completed, relevant and unrevoked Client Authorisation for the transaction has been obtained from the Client and securely retained.</li> </ul>
9	<p>IC is to certify that all prescribed evidence necessary to support the instrument has been obtained, perused, found to be in proper order and securely retained.</p> <ul style="list-style-type: none"> <li>This is necessary to ensure that all prescribed items of supporting evidence for the instrument have been obtained and securely retained, i.e. "tell me, don't show me".</li> </ul>
10	<p>IC is to certify that, to the best of the Certifier's knowledge at the time, the instrument complies with all prescribed requirements.</p> <ul style="list-style-type: none"> <li>This is necessary to ensure that best use is made of the skill and experience of industry practitioners.</li> </ul>

## Appendix C:

### The process of "digitally signing" and "authenticating" an electronic document

Suppose that a law firm Subscriber acts for a Client wishing to sell land using NECS. A partner in that law firm has carriage of the matter and is also a Certifier in NECS.

As part of the process of being issued with a DSC as a Certifier, a "*private key*" and a "*public key*" will have been generated in respect of that partner.

The partner or another User in the law firm will prepare a digital transfer of land in the NECS Workspace. When the electronic transfer instrument has been created in the workspace and the fields necessary to complete the transfer have been populated by the partner or other User in the firm (for example, name of the transferor and consideration) and the corresponding Subscriber in the transaction, the partner (as Certifier) can request the presentation of the digital document on screen after which he or she can use signing software to initiate the digital signing process as follows.

#### Step 1 - The document signing process

NECS provides the electronic document to be signed to the Certifier for signature.

The Certifier's software will automatically create a summary of the land transfer document (known as the "digest", essentially a unique digital "thumbprint" or "shorthand version" of the document) which would then be encrypted (i.e. encoded) using the *private key* of the Certifier. The resulting encrypted digest is called the Certifier's "digital signature".

The Certifier's software will attach the Certifier's digital signature to the document in NECS and the signed document is then available for viewing and downloads by other NECS participants (Relying Parties) with access to the NECS Workspace.

#### Step 2- The document authentication process

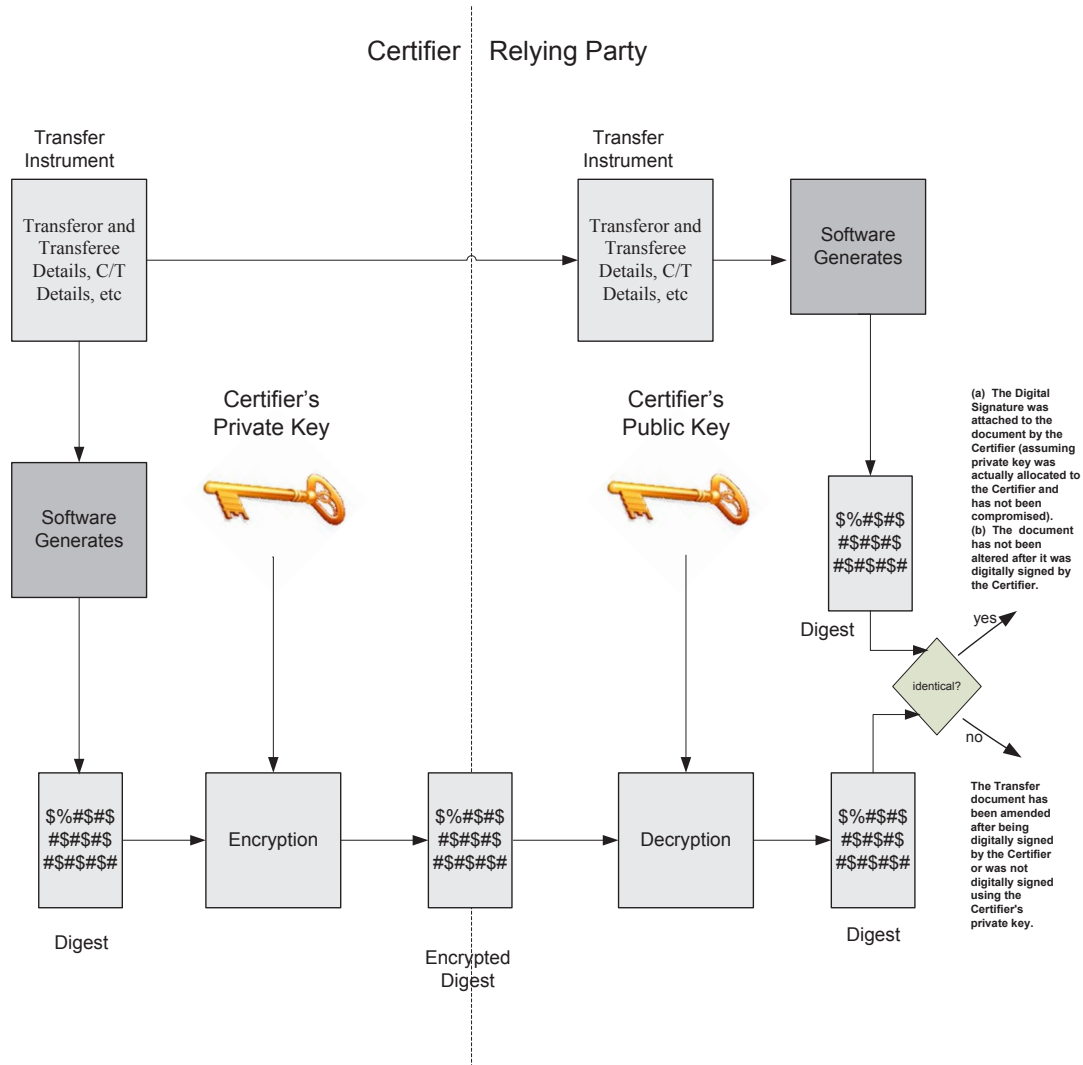
NECS will automatically check the validity of the Certifier's digital signature using the Certifier's public key from the Certifier's current DSC. Any other party, such as a Land Registry, can also check the validity of the digital signature in the same way if they have access to the original signed data and digital signature.

A Relying Party (such as NECS) would take the following steps to mitigate the risk of repudiation of the transfer document by the apparent signer (i.e. the named Certifier) by verifying the digital signature:

- a) The Relying Party's software separately generates a digest of the land transfer document from the unencrypted land transfer document to which the Certifier attached its digital signature ("Relying Party's digest").
- b) The Relying Party's software uses the Certifier's public key to decrypt the Certifier's digital signature to reveal the digest generated by the Certifier when "signing" the land transfer document.
- c) Next, the Relying Party's software will compare the decrypted digest generated by the Certifier when "signing" the message with the Relying Party's digest separately generated by the Relying Party. If both digests are identical, this would mean that:
  - (i) the digital signature of the land transfer document was created using the Certifier's private key and, by inference, by the Certifier (on the assumptions that the private key was actually allocated to the Certifier and not somebody else impersonating the Certifier and that the security of the Certifier's private key has not been compromised) (the fact that both digests are identical confirms that what the Relying Party decrypted using the Certifier's public key was encrypted using the Certifier's private key); and
  - (ii) the land transfer document has not been altered after the Certifier's digital signature was attached to it.

The above process is summarised in the following diagram:

**Figure A Digital signatures**



## Appendix D:

### Scope of Information for Registry Information

<b>Registry Information</b>	
Land Title Information included as: 1 a Land Title Search (report) as discrete XML data, and 2 XML data in categories 2a to 2c as shown below	
<b>1.Land Title Report</b>	<b>Requirement</b>
<b>Reference ID</b> Land Title Reference	<i>Essential</i>
<b>Certificate of Title</b> Edition No. Date of current Certificate of Title	<i>Essential</i> <i>Essential</i>
<b>Land Description</b> Plan Reference ID Land Description, Locality Title Diagram Reference ID	<i>Optional</i> <i>Optional</i> <i>Optional</i>
<b>First Schedule</b> Registered Proprietor of an Estate Tenancy Share Estate Part Ownership Details, Part Description Registry Instrument type Dealing number	<i>Essential</i> <i>Essential</i> <i>Essential</i> <i>Essential</i> <i>Essential</i> <i>Essential</i> <i>Essential</i>
<b>Second Schedule</b> Notification Notification code Dealing number, Plan number Registry Instrument type Additional Details Registered Proprietor of an Interest in Land	<i>Essential</i> <i>Essential</i> <i>Essential</i> <i>Essential</i> <i>Essential</i> <i>Essential</i>
<b>Schedule of Entitlements (Common Property Folios only)</b> Land Title References (lot only) Unit Entitlements	Initially out-of-scope Initially out-of-scope
<b>Schedule of Parcels (Auto-Consol Folios Only)</b> Land Descriptions	<i>Essential</i>
<b>Land Registry Note</b> Miscellaneous Notes	<i>Essential</i>
<b>Unregistered Documents</b> Dealing number Plan number	<i>Essential</i> <i>Essential</i>
<b>2a.Control of the Right-to-Deal (CoRD) Details</b>	
<b>Party holding Control of the Right to Deal</b> Printed CT or No-CT Name	<i>Essential</i> <i>Essential</i>
<b>2b.Property Details</b> Valuation property ID Street address	<i>Essential</i> <i>Essential</i>
<b>2c.Search Delivery Details</b> Date & time of Issue Name and ID of searching party Delivery address Registry signature	<i>Essential</i> <i>Essential</i> <i>Essential</i> <i>Essential</i>

## FOR MORE INFORMATION

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