

Below are some Frequently Asked Questions regarding Electronic Conveyancing (eConveyancing)

General Enquiries

How do requisitions work through eConveyancing?

All requisitions are referred back to the Responsible Subscriber (Lodging Party) in paper, as no correcting agent is recorded in the ELNO.

It is the responsibility of the Lodging Party to forward any dealings that have been referred for requisition to the appropriate party.

While current e-requisition processes remain paper-based, this may change to an electronic process as the functionality of the eConveyancing system expands.

What evidence must I retain to respond to a Compliance Examination Request?

Copies of the documents and information that support and relate to the dealing in the request. This includes the Client Authorisation, Verification of Identity, and Verification of Authority (right to deal). In the case of a mortgage, it will include the counterpart signed by the mortgagor and held on the same terms, which must be retained by the mortgagee until the mortgagee ceases to be the mortgagee, and any other supporting evidence. Refer to ARNECC Model Participation Rules [Guidance notes](#).

Supporting evidence requirements have not changed and are shown in [NTP 170](#)

I did not receive a Confirmation of Registration notice, what should I do?

The Responsible Subscriber is the only party that receives a Confirmation of Registration Certificate.

It is advised that other parties to the transaction should contact the Responsible Subscriber to obtain a copy of the Confirmation of Registration Certificate. Alternatively, you could perform a Check Search or Historical Search to verify registration.

Are there any exemptions for the electronic lodgement of dealings?

Exemptions for electronic lodgement are available on the LSSA website. Please refer to [Electronic Conveyancing](#)

Are more dealings going to be mandated for electronic lodgement?

As more dealings are made available electronically, these will also become mandated for electronic lodgement. Industry will be provided with a minimum three months' advance notice prior to these dealings being mandated to allow for in-flight dealings and ensure practitioners are aware of the new mandated requirements.

Will South Australia use an exemption coversheet?

LSSA will not provide industry with a coversheet that includes options to select the reasons for seeking an exemption at this point in time. The process established following the mandating of Mortgages and Discharges of Mortgage and re-financing transactions, which commenced on 12 February 2018, will continue. Where a practitioner seeks an exemption to electronic lodgement, LSSA will require a written explanation from the certifying party for any dealing scenarios that are not listed as an existing exemption to electronic lodgement.

LSSA's policy is that, if a mandated dealing is received as a paper lodgement, it must be accompanied by an approval from LSSA that the dealing can be accepted in paper. The written request detailing why it cannot be lodged electronically must be submitted to LSSA prior to the lodgement of the dealing.

In instances where a client may not have sufficient documentation to meet a specific identification category for Verification of Identity, can a practitioner still rely on reasonable steps?

The Registrar-General's Verification of Identity requirements for both paper and electronic lodgement have been aligned since 2016. Mandating has not altered the existing requirements that practitioners will be familiar with. The current method of compliance states that representative or mortgagee Subscribers can either apply the Verification of Identity standard, or verify the identity of a person in some other way that constitutes the taking of reasonable steps.

The Verification of Identity Standard is contained at Schedule 8 of the Participation Rules and it lists categories of documents that an identity verifier should use to verify a person's identity. These include documents such as an Australian Passport, driver's licence, birth certificate, etc. However, where the person being identified does not have these documents, the Standard includes provision for an Identifier Declaration, in conjunction with other documents. Paragraph 4 of Schedule 8 provides details about using an Identifier Declaration. If you are able to meet the requirements of an Identifier Declaration, including the other documents required to accompany it, then you will meet the requirements of the Verification of Identity Standard.

Participation Rule 6.5.2 (b) also allows for a Subscriber to take other 'reasonable steps' to verify identity. What constitutes 'reasonable steps' will vary from case to case, and it's up to the Subscriber to determine what are 'reasonable steps' in the case before them and their level of comfort with the identity of the person being verified.

Please see [ARNECC Guidance Note #2 Verification of Identity](#) for more on this, which also contains information about conducting Verification of Identity when the client is overseas.

If a dealing requires a Caveator's consent, how can we provide that consent?

There are currently limitations to the electronic lodgement system when it comes to attaching Caveator consent to a dealing lodgement. This is the case for the majority of dealings, such as a Transfer, noting that Lease and Sub-Lease are exceptions as they are capable of attaching a consent.

Caveator consent may therefore be emailed to our customer support email customersupport@landservices.com.au or, alternatively, delivered in hardcopy to our office. Once received, we will attach the consent to the dealing, which will form part of the image stored on SAILIS.

It is not a requirement under the Powers of Attorney and Agency Act 1984 or Real Property Act 1886 for Industry to verify the Identity of the donor of a Power of Attorney. However, is Verification of Identity & Verification of Authority still required?

Although you are required to confirm the details of the donor and the attorney from the registered Power of Attorney (POA), along with checks such as verifying that the transaction is permitted under the POA, it is not part of the Verification of Identity or Verification of Authority requirements that a verification **must** be conducted on the donor. This is because the validity of POA's are governed by requirements under *Powers of Attorney and Agency Act 1984* and POA's can often be made at a different time to the land transaction being undertaken.

Despite lack of a legal requirement, practitioners may elect to undertake such checks, depending on the circumstances and level of comfort with the attorney that the Subscriber is dealing with. Practitioners may wish to perform some form of Verification of Identity on the donor as part of confirming the attorney's right to deal, along with any other evidence obtained connecting the client to the land.

As legal risk rests with a Subscriber, we would encourage practitioners to undertake any steps felt necessary to satisfy legal risk associated with their obligations.

What Verification of Identity documents are required as a minimum for overseas companies/banks not registered in Australia? Can we rely on a letter from the overseas company/bank on its letterhead that confirms that the persons who are signing the Client Authorisation are authorised persons?

In these scenarios, there isn't a definitive list of 'minimum documents.' This comes down to the taking of 'reasonable steps' in each case, whereby the Subscriber needs to be comfortable they have done whatever is reasonably necessary to satisfy their obligations. If there is a question or dispute about whether '[reasonable steps](#)' were taken, this would ultimately be determined by a court of law.

Relying on confirmation on the company letterhead may be one form of evidence that could be deemed reasonable in conjunction with other factors such as your interaction, file notes, length of relationship with the client etc.

Whether reasonable steps were taken will be a question of fact depending on the circumstances of the individual case.

The Verification of Authority Guidelines provide that at least two documents must be retained for Verification of Authority purposes (when acting for a registered proprietor). Can the two documents include a title search?

The expectation is that a Register Search of the title is undertaken in addition to the two forms of evidence obtained to satisfy Verification of Authority. Of course, there may be occasions where, as part of your due diligence confirming the client's right to deal, you consider fewer documents are sufficient. Ultimately, this would come down to the taking of reasonable steps for the circumstances of the individual case.

What are the subsidiary interests which are unable to be caveated electronically?

One of the most common examples of a subsidiary interest is where a mortgagee of a leasehold interest wants to caveat that interest, or where a party wishes to lodge a caveat over a registered mortgage or registered encumbrance interest, these Caveats will need to be lodged in paper.

When acting for an incoming party what documents are required to satisfy Verification of Authority requirements?

Meeting the Verification of Authority requirements comes down to a Subscriber's level of comfort and surety from their dealings with the incoming party. One form of Verification of Authority may be sufficient e.g. copy of contract, insurance, agreement, loan documentation etc.

Some practitioners have queried what must be obtained in circumstances where usual documentation is not available (for example where an incoming lessee cannot produce a signed lease agreement, or a purchaser has paid cash for a property). In these situations, the practitioner must decide what is reasonable under the circumstances. File notes should be kept and may be sufficient, however, it will always come down to the taking of reasonable steps for the circumstances of the individual case.

If a practitioner has a standing Client Authorisation signed by an attorney for a company and has been advised by the company that the Power of Attorney (POA) is about to be revoked and replaced by another POA to the same attorney, does the practitioner need a new Client Authorisation and to undertake Verification of Identity on the attorney again? Would the answer be different if the same attorney was not named in the new POA?

It would be prudent practice to obtain a new Client Authorisation signed by the new attorney, or resigned by the existing attorney under the new POA and reconfirm the ongoing authorisation.

If it is the same attorney, it is not considered necessary to re-verify the identity of that person if the practitioner took reasonable steps to verify their identity within the previous two years and takes reasonable steps to ensure it is dealing with the person identified. However, if it is a different attorney then you would need to verify the identity of the new attorney.

Are Transfers of Lease able to be lodged electronically?

Currently Transfer of Lease dealings must be lodged in paper.

What is the procedure when a Lease is lodged for registration electronically, but the lessee is self-represented?

In this case, the lease could not be lodged electronically as only Subscribers can lodge dealings electronically. We do recommend any un-represented party considers engaging the services of a legal practitioner or registered conveyancer, however, a paper lodgement channel remains available for self-represented parties.

Self-represented lessees are no longer exempt from the need to provide certifications. This came into effect on 4 November 2019, with a transition period that ended 3 February 2020. This means, a natural person lessee may be self-represented, but must certify and comply with the production of Verification of Identity or Verification of Authority requirements.

It is important to note that, whilst a natural person (individual) can make the required certifications, a company cannot. A body corporate cannot possess the personal knowledge required under s273(1a) of the *Real Property Act 1886*, and is therefore excluded from making certifications through one of its directors or other authorised signatories and, therefore, the entity must be represented by a legal practitioner or conveyancer.

How is a mortgagee/encumbrancee consent dealt with when a Lease is lodged for registration electronically?

Consent may be uploaded as a separate attachment (to the covenants) via the hub facility. The consent may be on a B1 annexure or clearly set out on an A4 sheet.

Can a Lease be lodged electronically when it also includes a Lease of easement/right of way?

Yes, you will still be able to define land being leased and incorporate the required easements panel. When land is to be leased together with an easement, the description of the easement can follow that used in the various forms of grants.

This is not to be confused with scenarios involving the lease of a portion of land incorporating easements that refer to other land e.g. an adjoining property. These scenarios will need to be prepared as Grant of Easement (TG2), which can only be lodged in paper. Please also note that leases for easement purposes of limited duration are no longer accepted.

Given there are not many competitors to PEXA, are there any controls over the costs that PEXA may charge participants after 3 August 2020?

All ELNOs must adhere to the pricing controls set out within the current Model Operating Requirements (Version 5) at 5.3 (e) and 5.4. ARNECC regulates these fees to ensure control and oversight.

What is required to satisfy the right to deal in respect of a trustee of a trust? Do we need to request a copy of the trust deed? Do we need to review the powers of the trustee under the trust deed? Do we need to request documentary evidence from the trustee with whom we are dealing is duly appointed and hasn't been removed?

In the case of a transacting party subject to a trust, the Subscriber must take whatever steps are reasonably necessary to satisfy themselves that the party has the right to deal. For a trust, that would likely involve inspection of the trust documents to determine if the Conveyancing Transaction is permitted under the trust. It could also require that the practitioner identifies the current trustees and seeks legal advice to ensure the transacting party has the right to deal under the terms of that Trust. If the Subscriber is a lawyer with expertise in this area, they may be able to answer these queries themselves. If not, then the taking of 'reasonable steps' might require that the Subscriber seeks independent legal advice on the matter.

The taking of 'reasonable steps' will always be determined on a case-by-case basis and a court generally looks at what an ordinarily prudent Subscriber would have done in the circumstances. The Subscriber must decide for themselves what they consider 'reasonable steps' and have evidence supporting what they did to take reasonable steps. Any contention on the matter can only be resolved by a court.

Is Interoperability going to be introduced in order to enable transactions to occur between practitioners using different ELNOs?

On 7 September 2020, all jurisdictions attended a Ministerial forum to discuss the interoperability of ELNOs and Ministers have now committed to implementing legislation that will require ELNOs to interoperate. For more information about this, please see information on ELNO Interoperability on the [eConveyancing section](#) of the Office of the Registrar-General's website.

We have been instructed as settlement agents by interstate law firms who are not registered on an ELNO to transact in SA. The interstate law firm has undertaken Verification of Identity on the client to enable them to certify documents they are lodging in their own State and then we have undertaken Verification of Identity and Verification of Authority on the same client in order to certify and lodge the SA documents. Clients have objected to undergoing and paying for this process twice. Is it intended to amend the Verification of Identity and Verification of Authority requirements so that we can rely on a reputable interstate law firm's Verification of Identity and Verification of Authority of the same client?

The eSettlement Subscriber may specifically appoint the Instructing Practitioner to undertake the verification of identity by a written agency agreement, either as an agent or as an Identity Agent. If the Instructing Practitioner is appointed as an Identity Agent, the e-settlement Subscriber must ensure that the Instructing Practitioner complies with the requirements for Identity Agents under the SA Participation Rules. These are set out in the definitions section of the Rules. These include meeting the requirements to be an Identity Agent, applying the Verification of Identity Standard and providing an Identity Agent Certification as set out in Schedule 9 of the Rules.

If the e-Settlement Subscriber is not appointing the Instructing Practitioner as an Identity Agent (as defined in the SA Participation Rules) but merely as an 'agent' because the e-Settlement Subscriber has decided to use 'reasonable steps' rather than apply the Verification of Identity Standard, there is not the same need to meet the requirements of appointing an Identity Agent.

For further information see [ARNECC Model Participation Rules Guidance Note #2 – Verification of Identity](#).

In relation to Verification of Authority, it is the e-settlement Subscriber who must take reasonable steps to verify that the Client is a legal Person and has the right to enter into the Conveyancing Transaction. It is therefore up to the e-Settlement Subscriber to decide what they believe is necessary to satisfy themselves of this. There is more information available under [ARNECC Model Participation Rules Guidance Note 4 – Right to Deal](#).

Please see the [ARNECC Model Participation Rules – Guidance for E-settlement Subscribers and Their Instructing Practitioners](#) for further guidance.

When is it anticipated that the South Australian Participation Rule Waiver PR1/2020 and the amendment to paragraph 6.1 of the Registrar General's Verification of Identity Requirements Version 6 will be revoked or cease to operate?

The legislation enabling this waiver expires on 6 February 2021, or 28 days after the day on which all the relevant declarations relating to the outbreak of the human disease named COVID-19 have ceased, whichever is earlier (unless a date is otherwise fixed by the Minister by notice in the Gazette in accordance with section 6 of the COVID-19 Act). The waiver and updates to the Registrar-General's Verification of Identity Requirements will remain in place until the enabling legislation expires or until revoked by the Registrar-General.

For further information please refer to [NTLP 237](#)

Is it possible for searches to have the BPAY code on them for payment via ELNOs for Land Tax and ESL?

Revenue SA is looking into this matter and we will provide an update when available.

Revenue SA allows me to pay the amounts outstanding under certificates I have ordered and purchased, by debiting my office or trust account. In a situation where I represent a transferor and rates searches are ordered and supplied by a Real Estate Agent or their nominated Form1 supplier, I cannot pay those amounts on Revenue SA Online. How can I pay those amounts?

Revenue SA is looking into this matter and we will provide an update when available.



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