



Review of the *Real Property Act 1886 (SA)*

Fact Sheet 7 – Electronic Conveyancing

What is Electronic Conveyancing?

Electronic conveyancing (also known as '**e-conveyancing**') refers to the electronic completion of real property transactions. E-conveyancing is facilitated through an Electronic Lodgement Network ('**ELN**'), which is operated by an Electronic Lodgement Network Operator ('**ELNO**'). An ELN is an electronic workspace accessible through an internet browser which facilitates real property transactions by exchanging data with another ELN to complete a transaction. A practitioner (either a lawyer or conveyancer), or other stakeholder in the transaction (such as a financial institution), must register as a subscriber of an ELN for their client to make use of the e-conveyancing process. ELNs can be subscribed to and accessed through electronic platforms commonly used by practitioners, such as InfoTrack.

Aside from eliminating the need for paper lodgements, resulting in immediate registrations in the Title Registry upon settlement, e-conveyancing allows parties to facilitate a number of other actions, including:

1. the collection and verification of transaction information;
2. the settlement of financial transactions (including payment of disbursements and taxes); and
3. the lodgement of instruments with Land Services SA.¹

E-conveyancing only covers the preparation for, and execution of, settlement and registration, rather than the entirety of a transaction.² ENLs cannot be used, for example, for the preparation sale contracts, requisitions or the transfer of a lease.

Prior to carrying out an e-conveyancing transaction, practitioners must verify the identity and authority of the transacting parties, and have their client complete a client authorisation allowing the practitioner to sign on their client's behalf. These processes are intended to safeguard the e-conveyancing process by ensuring all those involved in the transaction are entitled to do so.

Electronic Conveyancing in South Australia

Amendments to the *Real Property Act 1886 (SA)* ('*RPA*') in 2016 introduced e-conveyancing in South Australia.³ The *Electronic Conveyancing National Law (South Australia) Act 2013 (SA)* ('*ECNL*'), which adopts the Electronic Conveyancing National Law, governs e-conveyancing in South Australia.⁴ The objectives of this law, as listed in Schedule 1, clause 5 of the *ECNL*, include the promotion of efficiency in property conveyancing throughout Australia, consistent with the fundamental principles of the Torrens system of land title.⁵

¹ Land Services SA, 'Electronic Conveyancing', *Land Services SA (Web Page, 23 June 2020)* <<https://www.landservices.com.au/businesses-and-property-industry-professionals/registrar-general/electronic-conveyancing>>; Department of Planning, Transport and Infrastructure, 'National Electronic Conveyancing (NEC)', *SAGov (Web Page, 1 July 2016)* <<https://web.archive.org/web/20170208104632/http://www.sa.gov.au/topics/planning-and-property/land-and-property-development/conveyancing-and-surveying-professionals/national-electronic-conveyancing>>; Department for Trade and Investment, 'Statutory Instruments', *Department for Trade and Investment (Web Page, 2024)* <<https://dti.sa.gov.au/statutory-instruments>>.

² Land Services SA, 'Electronic Conveyancing', *Land Services SA (Web Page, 23 June 2020)* <<https://www.landservices.com.au/businesses-and-property-industry-professionals/registrar-general/electronic-conveyancing>>.

³ *Real Property (Electronic Conveyancing) Amendment Act 2016 (SA)*.

⁴ *Electronic Conveyancing National Law (South Australia) Act 2013 (SA)*; The Law Society of South Australia, *Guidelines for Legal Practitioners - Electronic Conveyancing & What It Means for Your Trust Account and Law Practice (Guidelines) 2*.

⁵ Brendan Edgeworth, *Butt's Land Law* (Thomson Reuters, 7th edition, 2017) [12.380].



Pursuant to Schedule 1, clause 22 of the *ECNL*, the Registrar-General issues South Australia's e-conveyancing Operating Requirements. As of August 2020, the Registrar-General has mandated the electronic lodgement of most dealings with Land Services SA.⁶

ELNOs in South Australia are approved by the Registrar-General under Schedule 1 of the *ECNL*.⁷ Currently, only Property Exchange Australia Ltd ('PEXA') operates in South Australia.

However, if another ELNO, such as Sympli Australia Pty Ltd ('Sympli'), were to begin operating in South Australia, parties to a transaction can either make use of the same or different ELNs without compromising or affecting the conduct of the transaction,⁸ due to the interoperability of ELNs.⁹

Issues with Electronic Conveyancing

It has been noted that PEXA, the only operational ELNO in South Australia, appears to cater to eastern State jurisdictions, adopting the language used in Victorian and New South Wales real property laws. This can make use of the system difficult in South Australia, as the available actions on the platform do not directly correlate with the actions available under the *RPA*.

Further, due to both restrictions in the *RPA* and limitations of ELNOs, some lodgements cannot be carried out on an ELN, meaning paper lodgements are still necessary for some transactions, including multi-stage land developments and subdivision applications. For certain transactions, PEXA will also issue paper requisitions, despite the initial lodgement being completely online, further complicating the process.

Consultation Questions

1. What transactions, in addition to those currently available, should occur by electronic conveyancing?
2. Should the *Real Property Act 1886* (SA) explicitly mandate the operation of electronic conveyancing? Why or why not?
3. How should the practices of Electronic Lodgement Network Operators be regulated?
4. Should interoperability be expanded to permit the entry of new Electronic Lodgement Network Operators? Why or why not?
5. What, if any, further amendments should be made to the *Real Property Act 1886* (SA) to help facilitate electronic conveyancing?
6. What, if any, changes need to be made in practice to better facilitate and promote electronic conveyancing?

SALRI's consultation process will open on 8 July 2024 and close on 4 October 2024.

Please note: SALRI does not, and cannot, provide legal advice to individuals. If you are in need of legal advice, we encourage you to speak to a lawyer and/or contact a community legal service.

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⁶ Land Services SA, 'Electronic Conveyancing', *Land Services SA* (Web Page, 23 June 2020) <<https://www.landservices.com.au/businesses-and-property-industry-professionals/registar-general/electronic-conveyancing>>.

⁷ *Electronic Conveyancing National Law (South Australia) Act 2013* (SA) sch 1 cl 15.

⁸ Department for Trade and Investment, 'Statutory Instruments', *Department for Trade and Investment* (Web Page, 2024) <<https://dti.sa.gov.au/statutory-instruments>>.

⁹ *Ibid.*