

Electronic Conveyancing Bill 2013

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Western Australia

LEGISLATIVE COUNCIL

Electronic Conveyancing Bill 2013

A Bill for

An Act to —

- **provide for electronic conveyancing in Western Australia by enacting provisions that correspond to the Electronic Conveyancing National Law; and**
- **make consequential and other amendments to the *Duties Act 2008*, *Settlement Agents Act 1981*, *Taxation Administration Act 2003* and *Transfer of Land Act 1893*, and for related purposes.**

The Parliament of Western Australia enacts as follows:

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Part 1 — Preliminary

1. Short title

This is the *Electronic Conveyancing Act 2013*.

2. Commencement

This Act comes into operation as follows —

- (a) Part 1 (other than sections 3 to 7A) — on the day on which this Act receives the Royal Assent;
- (b) the following provisions — on the day after that day —
 - (i) sections 3 to 7A;
 - (ii) Parts 3 to 5;
 - (iii) Schedule 1;
- (c) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

3. Terms used

(1) In this Act —

ARNECC means the Australian Registrars' National Electronic Conveyancing Council established by the Intergovernmental Agreement;

associated financial transaction means a transaction of a financial nature that is associated with a conveyancing transaction;

Examples

- 1. The payment of the purchase price for the sale and purchase of an interest in land.
- 2. The advancing of money in return for the granting of a mortgage or charge over an interest in land.
- 3. The payment of any tax, duty (for example, stamp duty), fee or charge payable in respect of the conveyancing transaction.

- 1 **Authority** means the Western Australian Land Information
2 Authority established by the *Land Information Authority*
3 *Act 2006* section 5;
- 4 **client authorisation** has the meaning given in section 10;
- 5 **Commissioner** means the Commissioner of Titles under the
6 *Transfer of Land Act 1893* section 5;
- 7 **compliance examination** has the meaning given in section 33;
- 8 **conveyancing transaction** means a transaction that involves one
9 or more parties and the purpose of which is —
- 10 (a) to create, transfer, dispose of, mortgage, charge, lease or
11 deal with in any other way an estate or interest in land;
12 or
- 13 (b) to get something registered, noted or recorded in the
14 titles register; or
- 15 (c) to get the registration, note or record of something in the
16 titles register changed, withdrawn or removed;
- 17 **corresponding law** —
- 18 (a) means a law of a jurisdiction that corresponds to the
19 ECNL; and
- 20 (b) includes a law of a jurisdiction that is prescribed by
21 regulations made under this Act as a corresponding law;
- 22 **digitally sign**, in relation to an electronic communication or a
23 document, means create a digital signature for the
24 communication or document;
- 25 **digital signature** means encrypted electronic data intended for
26 the exclusive use of a particular person as a means of
27 identifying that person as the sender of an electronic
28 communication or the signer of a document;
- 29 **Electronic Conveyancing National Law** or **ECNL** means the
30 law set out in the Appendix to the *Electronic Conveyancing*
31 *(Adoption of National Law) Act 2012* (NSW) as that Appendix
32 is in force from time to time;
- 33 **ELN** means Electronic Lodgment Network — see section 13;

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- 1 **ELNO** means Electronic Lodgment Network Operator — see
2 section 15;
- 3 **Intergovernmental Agreement** means the Intergovernmental
4 Agreement for a National Electronic Conveyancing Law
5 between the State of New South Wales, the State of Victoria,
6 the State of Queensland, the State of Western Australia, the
7 State of South Australia, the State of Tasmania and the Northern
8 Territory of Australia, that came into operation on
9 21 November 2011 and as in force from time to time;
- 10 **jurisdiction** means State;
- 11 **land titles legislation** —
- 12 (a) means these Acts —
- 13 (i) the *Licensed Surveyors Act 1909*;
- 14 (ii) the *Strata Titles Act 1985*;
- 15 (iii) the *Transfer of Land Act 1893*;
- 16 (iv) any other Act prescribed by regulations made
17 under this Act for the purposes of this definition;
- 18 and
- 19 (b) includes any subsidiary legislation (as defined in the
20 *Interpretation Act 1984* section 5) made under any of
21 those Acts; and
- 22 (c) also includes any other written law (as defined in the
23 *Interpretation Act 1984* section 5) that authorises,
24 permits or requires something —
- 25 (i) to be lodged for registration, noting or recording
26 in the titles register; or
- 27 (ii) to be registered, noted or recorded in the titles
28 register;
- 29 and

- 1 (d) also includes any Commonwealth Act (as defined in the
2 *Interpretation Act 1984* section 5) that authorises,
3 permits or requires something —
- 4 (i) to be lodged for registration, noting or recording
5 in the titles register; or
- 6 (ii) to be registered, noted or recorded in the titles
7 register;
- 8 and
- 9 (e) also includes any legislative instrument (within the
10 meaning of the *Legislative Instruments Act 2003*
11 (Commonwealth)) made under any Commonwealth Act
12 to which paragraph (d) applies;
- 13 **law**, in relation to a Territory, means a law of, or in force in, that
14 Territory;
- 15 **law of this jurisdiction** includes the principles and rules of
16 common law and equity to the extent that they have effect in
17 this jurisdiction from time to time;
- 18 **lodge** includes deposit, present and file;
- 19 **operating requirements** means the requirements determined
20 under section 22;
- 21 **participating jurisdiction** means a jurisdiction that is a party to
22 the Intergovernmental Agreement and in which —
- 23 (a) the ECNL applies as a law of the jurisdiction, either
24 with or without modifications; or
- 25 (b) there is a corresponding law;
- 26 **participation agreement**, in relation to an ELN, means —
- 27 (a) if an ELNO provides and operates the ELN, an
28 agreement between the ELNO and another person under
29 which the other person is authorised to use that ELN; or
- 30 (b) if the Authority provides and operates the ELN, an
31 agreement between the Authority and another person
32 under which the other person is authorised to use that
33 ELN;

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- 1 **participation rules** means the rules determined under
2 section 23;
- 3 **Registrar** means the Registrar of Titles under the *Transfer of*
4 *Land Act 1893* section 7;
- 5 **registry instrument** means —
- 6 (a) any document that may be lodged under the land titles
7 legislation for the purpose of —
- 8 (i) creating, transferring, disposing of, mortgaging,
9 charging, leasing or dealing with in any other
10 way an estate or interest in land; or
- 11 (ii) getting something registered, noted or recorded
12 in the titles register; or
- 13 (iii) getting the registration, note or record of
14 something in the titles register changed,
15 withdrawn or removed;
- 16 or
- 17 (b) a document that belongs to a class of document that —
- 18 (i) may be lodged under the land titles legislation;
19 and
- 20 (ii) is prescribed by regulations made under this Act
21 for the purposes of this definition;
- 22 **responsible tribunal** means the State Administrative Tribunal
23 established under the *State Administrative Tribunal Act 2004*;
- 24 **State** includes a Territory;
- 25 **subscriber** means a person who is authorised under a
26 participation agreement to use an ELN to complete
27 conveyancing transactions on behalf of another person or on
28 their own behalf;
- 29 **Territory** means the Australian Capital Territory or the Northern
30 Territory of Australia;
- 31 **this jurisdiction** means the State of Western Australia;

- 1 **titles register** means —
- 2 (a) the Register referred to in the *Transfer of Land Act 1893*
- 3 section 48; or
- 4 (b) any register, database or system that —
- 5 (i) under another Act is a titles register for the
- 6 purposes of this definition; or
- 7 (ii) is prescribed by regulations made under this Act
- 8 or another Act for the purposes of this definition.
- 9 (2) A term used in this Act (other than Parts 5 to 9) or a statutory
- 10 instrument and also in the land titles legislation has the same
- 11 meaning in this Act (other than Parts 5 to 9) or the statutory
- 12 instrument as it has in that legislation, unless —
- 13 (a) the term is defined in this Act or the statutory
- 14 instrument; or
- 15 (b) the context requires otherwise.

16 **4. Interpretation generally**

17 Schedule 1 applies in relation to this Act (other than Parts 5

18 to 9).

19 **5. Exclusion of interpretation legislation of this jurisdiction**

20 The *Interpretation Act 1984* does not apply to —

- 21 (a) this Act (other than Parts 5 to 9); or
- 22 (b) the instruments made under this Act (other than
- 23 regulations made under section 46).

24 **6A. Numbering**

- 25 (1) This Act is numbered in order to maintain consistent numbering
- 26 between the provisions of Parts 2 to 4 of the ECNL and the
- 27 corresponding provisions of Parts 2 to 4.
- 28 (2) A section in Parts 2 to 4 that corresponds to a section of the
- 29 ECNL includes in its heading a reference to “ECNL” together
- 30 with a reference to the corresponding ECNL provision.

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1 (3) If the ECNL includes a section that is not required in Parts 2
2 to 4, the section number and heading appearing in the ECNL are
3 included in Parts 2 to 4 even though the body of the section is
4 omitted.

5 (4) Schedule 1 corresponds to Schedule 1 to the ECNL.

6 **6. Purpose**

7 (1) The purpose of this Act is to provide for electronic
8 conveyancing in Western Australia by enacting provisions that
9 correspond to the *Electronic Conveyancing National Law* and in
10 that way achieve the object of that Law.

11 (2) The object of the *Electronic Conveyancing National Law* is to
12 promote efficiency throughout Australia in property
13 conveyancing by providing a common legal framework that —

14 (a) enables documents in electronic form to be lodged and
15 processed under the land titles legislation of each
16 participating jurisdiction; but

17 (b) does not derogate from the fundamental principles of the
18 Torrens system of land title as incorporated in the land
19 titles legislation of each participating jurisdiction, such
20 as indefeasibility of title.

21 **7A. Act binds the State**

22 (1) This Act binds the State.

23 (2) In this section —

24 **State** means the Crown in right of this jurisdiction, and
25 includes —

26 (a) the Government of this jurisdiction; and

27 (b) a Minister of the Crown in right of this jurisdiction; and

28 (c) a statutory corporation, or other entity, representing the
29 Crown in right of this jurisdiction.

- 1 (b) the subscriber in any other case.
- 2 (3) If a registry instrument is digitally signed in accordance with the
3 participation rules applicable to that instrument —
- 4 (a) the instrument is to be taken to be in writing for the
5 purposes of every other law of this jurisdiction; and
- 6 (b) the requirements of any other law of this jurisdiction
7 relating to the execution, signing, witnessing, attestation
8 or sealing of documents must be regarded as having
9 been fully satisfied.

10 **Division 2 — Client authorisations and digital signatures**

11 **Subdivision 1 — Client authorisations**

12 **10. Client authorisations (cf. ECNL s. 10)**

- 13 (1) A client authorisation is a document —
- 14 (a) that is in the form required by the participation rules;
15 and
- 16 (b) by which a party to a conveyancing transaction
17 authorises a subscriber to do one or more things on that
18 party's behalf in connection with the transaction so that
19 the transaction, or part of the transaction, can be
20 completed electronically.
- 21 (2) The following are examples of the things that a client
22 authorisation may authorise a subscriber to do —
- 23 (a) to digitally sign registry instruments or other documents;
24 (b) to present registry instruments or other documents for
25 lodgment electronically;
- 26 (c) to authorise or complete any associated financial
27 transaction.

1 **11. Effect of client authorisation (cf. ECNL s. 11)**

- 2 (1) A properly completed client authorisation —
- 3 (a) has effect according to its terms; and
- 4 (b) is not a power of attorney for the purposes of any other
- 5 law of this jurisdiction relating to powers of attorney.
- 6 (2) If a client authorisation is properly completed, the requirements
- 7 of any other law of this jurisdiction relating to the execution,
- 8 signing, witnessing, attestation or sealing of documents must be
- 9 regarded as having been fully satisfied.
- 10 (3) Subsections (1) and (2) do not limit or affect the application of
- 11 any law of this jurisdiction relating to powers of attorney in
- 12 relation to —
- 13 (a) the execution of a client authorisation under a power of
- 14 attorney; or
- 15 (b) a client authorisation executed under a power of
- 16 attorney.

17 **Subdivision 2 — Digital signatures**

18 **12. Reliance on, and repudiation of, digital signatures**

19 **(cf. ECNL s. 12)**

- 20 (1) If a subscriber's digital signature is created for a registry
- 21 instrument or other document in connection with a
- 22 conveyancing transaction, then —
- 23 (a) unless that subscriber repudiates that digital signature,
- 24 that registry instrument or other document is to be taken
- 25 to be signed by that subscriber; and
- 26 (b) unless that subscriber repudiates that digital signature,
- 27 that digital signature is binding, in relation to that
- 28 registry instrument or other document, on —
- 29 (i) that subscriber; and

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Part 2 Electronic conveyancing

Division 2 Client authorisations and digital signatures

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- 1 (ii) all other persons (if any) for whom that
2 subscriber acts under a client authorisation with
3 respect to that conveyancing transaction;
4 and
5 (c) unless that subscriber repudiates that digital signature,
6 that digital signature is binding, in relation to that
7 registry instrument or other document, for the benefit
8 of —
9 (i) each of the parties to that conveyancing
10 transaction; and
11 (ii) each subscriber who acts under a client
12 authorisation with respect to that conveyancing
13 transaction; and
14 (iii) any person claiming through or under any person
15 to whom subparagraph (i) applies; and
16 (iv) the Authority, the Registrar and the
17 Commissioner, once that registry instrument or
18 other document is lodged electronically in
19 accordance with section 7;
20 and
21 (d) that subscriber cannot repudiate that digital signature
22 except in the circumstances set out in subsection (4).
23 (2) Subsection (1) applies regardless of —
24 (a) who created the subscriber's digital signature; and
25 (b) the circumstances (including fraud) in which the
26 subscriber's digital signature was created.
27 (3) Subsection (1) does not prevent the unsigned of a registry
28 instrument or other document.
29 (4) Despite subsections (1) and (2), a subscriber can repudiate the
30 subscriber's digital signature with respect to a registry
31 instrument or other document if the subscriber establishes —
32 (a) that the digital signature was not created by the
33 subscriber; and

- 1 (b) that the digital signature was not created by a person
2 who, at the time the subscriber's digital signature was
3 created for the registry instrument or other document —
- 4 (i) was an employee, agent, contractor or officer
5 (however described) of the subscriber; and
- 6 (ii) had the subscriber's express or implied authority
7 to create the subscriber's digital signature for any
8 document or documents;
- 9 and
- 10 (c) that neither of the following enabled the subscriber's
11 digital signature to be created for the registry instrument
12 or other document —
- 13 (i) a failure by the subscriber, or any of the
14 subscriber's employees, agents, contractors or
15 officers, to fully comply with the requirements of
16 the participation rules;
- 17 (ii) a failure by the subscriber, or any of the
18 subscriber's employees, agents, contractors or
19 officers, to take reasonable care.
- 20 (5) For the purposes of subsection (4)(b)(ii), it does not matter
21 whether the authority was —
- 22 (a) general; or
- 23 (b) limited or restricted to documents of a particular class or
24 to a particular document or in any other way.

1 **Part 3 — Electronic Lodgment Networks**

2 **Division 1 — Preliminary**

3 **13. Electronic Lodgment Network (cf. ECNL s. 13)**

4 (1) An Electronic Lodgment Network (*ELN*) is an electronic
5 system that enables the lodging of registry instruments and other
6 documents in electronic form for the purposes of the land titles
7 legislation.

8 (2) An ELN may also enable the preparation of registry instruments
9 and other documents in electronic form for lodging under the
10 land titles legislation.

11 **Division 2 — Operation of Electronic Lodgment Networks**

12 **14. Authority may provide and operate ELN (cf. ECNL s. 14)**

13 The Authority may provide and operate an ELN.

14 **15. Authority may approve ELNO to provide and operate ELN**
15 **(cf. ECNL s. 15)**

16 (1) The Authority may approve a person as an Electronic Lodgment
17 Network Operator (*ELNO*) to provide and operate an ELN.

18 (2) The Authority must not approve a person under this section
19 unless the person meets the qualifications for approval set out in
20 the operating requirements.

21 (3) An approval under this section must be in writing and must state
22 the period for which it is to have effect.

23 (4) The Authority may grant more than one approval under this
24 section.

1 **16. Conditions of approval as ELNO (cf. ECNL s. 16)**

- 2 (1) The Authority may attach conditions to an approval under
3 section 15, and those conditions must be specified in the
4 approval.
- 5 (2) The Authority may at any time, by notice in writing to the
6 ELNO, vary or revoke the conditions attached to the approval of
7 that ELNO or attach new or additional conditions.

8 **17. Effect of approval as ELNO (cf. ECNL s. 17)**

- 9 (1) A person who is approved as an ELNO under section 15 may
10 provide and operate an ELN —
- 11 (a) for the period stated in the approval; and
12 (b) subject to the conditions (if any) attached to the
13 approval; and
14 (c) in accordance with the operating requirements.
- 15 (2) Subsection (1) is subject to sections 19 and 20.
- 16 (3) In performing functions as an ELNO, a person approved under
17 section 15 is not and does not represent the State, and is not an
18 agent of the State.
- 19 (4) The approval of a person as an ELNO does not restrict or
20 prevent the provision, by that person, of services additional to
21 those provided by the ELN.
- 22 (5) Subsection (4) is subject to the operating requirements.

23 **18. ELNO required to comply with operating requirements**
24 **(cf. ECNL s. 18)**

25 A person approved as an ELNO under section 15 must comply
26 with the operating requirements.

27 **19. Renewal of approval as ELNO (cf. ECNL s. 19)**

- 28 (1) The Authority may renew an approval of a person as an ELNO
29 under section 15 if the Authority is satisfied that the person

1 continues to meet the qualifications for approval set out in the
2 operating requirements.

3 (2) The renewal of an approval under this section must be in writing
4 and must state the period for which the renewal is to have effect.

5 (3) In renewing an approval, the Authority may exercise the powers
6 in section 16 to attach conditions to the approval or vary or
7 revoke conditions attached to the approval.

8 **20. Revocation or suspension of approval as ELNO (cf. ECNL**
9 **s. 20)**

10 The Authority may revoke or suspend the approval of a person
11 as an ELNO in the circumstances set out in the operating
12 requirements.

13 **21. Monitoring of activities in ELN (cf. ECNL s. 21)**

14 (1) The Authority, the Registrar and the Commissioner or any of
15 them may monitor activities in an ELN for any purpose,
16 including (without limitation) for the purpose of maintaining the
17 integrity of the titles register.

18 (2) This section does not limit Division 5.

19 **Division 3 — Operating requirements and participation rules**

20 **22. Operating requirements for ELNOs (cf. ECNL s. 22)**

21 (1) The Registrar may determine, in writing, requirements
22 (*operating requirements*) relating to —

23 (a) the operation of an ELNO; and

24 (b) the provision and operation, by an ELNO, of an ELN.

25 (2) The operating requirements may (without limitation) include
26 provisions relating to the following matters —

27 (a) the financial standing of an ELNO;

- 1 (b) compliance with the participation rules, including
2 (without limitation) —
- 3 (i) requiring an ELNO to use a participation
4 agreement when authorising persons to use an
5 ELN; and
- 6 (ii) requiring participation agreements to incorporate
7 the participation rules;
- 8 (c) the technical and operational requirements for an ELN;
- 9 (d) the insurance cover to be held by an ELNO;
- 10 (e) the circumstances in which the Authority may suspend
11 or revoke the approval of a person as an ELNO;
- 12 (f) the giving of directions to an ELNO by the Authority or
13 the Registrar, for example a direction to restrict, suspend
14 or terminate a subscriber's or other person's use of an
15 ELN.

16 **23. Participation rules (cf. ECNL s. 23)**

- 17 (1) The Registrar may determine, in writing, rules relating to the
18 use of an ELN (*participation rules*).
- 19 (2) The participation rules may (without limitation) include
20 provisions relating to the following matters —
- 21 (a) the eligibility criteria for subscribers;
- 22 (b) the obligations of subscribers, including (without
23 limitation) any representations or warranties they are
24 required to give;
- 25 (c) the circumstances in which a subscriber's authority to
26 use the ELN may be restricted, suspended or terminated;
- 27 (d) client authorisations;
- 28 (e) the obligations of subscribers to verify the identity of
29 their clients;
- 30 (f) the certification of registry instruments and other
31 documents for use in connection with the ELN;

- 1 (g) digital signing;
- 2 (h) the retention of documents created or obtained in
- 3 connection with a subscriber's use of an ELN;
- 4 (i) compliance by subscribers with the participation rules,
- 5 including (without limitation) how subscribers
- 6 demonstrate compliance with the rules, the procedures
- 7 for notifying non-compliance and how non-compliance
- 8 may be remedied.

9 **24. Registrar to have regard to nationally agreed model**

10 **operating requirements and participation rules (cf. ECNL**

11 **s. 24)**

- 12 (1) In this section —
- 13 *model provisions* means any model operating requirements or
- 14 model participation rules from time to time developed and
- 15 published by ARNECC.
- 16 (2) In determining operating requirements and participation rules
- 17 under this Act, and in determining changes to those
- 18 requirements or rules, the Registrar must have regard to the
- 19 desirability of maintaining consistency with any model
- 20 provisions.

21 **25. Publication of operating requirements and participation**

22 **rules (cf. ECNL s. 25)**

- 23 (1) The Registrar must ensure that the following are publicly
- 24 available —
- 25 (a) the current operating requirements and participation
- 26 rules;
- 27 (b) all superseded versions of the operating requirements
- 28 and participation rules.
- 29 (2) The operating requirements and participation rules, and any
- 30 changes to either of them, must be made publicly available at
- 31 least 20 business days before the operating requirements or

- 1 participation rules or, as the case requires, the changes to them
2 take effect.
- 3 (3) However, changes to the operating requirements or participation
4 rules may take effect within a shorter period (including
5 immediately on being made publicly available), if the Registrar
6 is satisfied that the changes need to take effect urgently because
7 an emergency situation exists.
- 8 (4) For the purposes of subsection (3), an emergency situation
9 exists if the Authority, the Registrar or the Commissioner
10 considers that, because of the occurrence of an event or the
11 existence of particular circumstances, the operation, security,
12 integrity or stability of an ELN or the titles register or the land
13 titles system is being, or is likely to be, jeopardised.
- 14 (5) Documents may be made publicly available in accordance with
15 this section in any manner the Registrar considers appropriate,
16 including (without limitation) by means of a website.
- 17 (6) It is sufficient compliance with subsection (1)(b) if a superseded
18 version of the operating requirements or participation rules
19 (other than the most recently superseded version) is publicly
20 available only on request made to the Registrar.
- 21 **26. Subscribers required to comply with participation rules**
22 **(cf. ECNL s. 26)**
- 23 (1) A subscriber who is authorised under a participation agreement
24 to use an ELN must comply with the participation rules relating
25 to that ELN.
- 26 (2) If a subscriber contravenes those participation rules —
- 27 (a) if the Authority operates the ELN, the Authority may
28 restrict, suspend or terminate the subscriber's use of the
29 ELN;
- 30 (b) if an ELNO operates the ELN, the Authority or the
31 Registrar may direct the ELNO to restrict, suspend or
32 terminate the subscriber's use of the ELN.

1 (3) Subsection (2) does not limit or affect any right, power,
2 authority or remedy that the Authority, the Registrar or an
3 ELNO has under the operating requirements, the participation
4 rules, a participation agreement or any other law of this
5 jurisdiction in relation to contravention of the participation
6 rules.

7 **27. Waiving compliance with operating requirements or**
8 **participation rules (cf. ECNL s. 27)**

9 (1) The Authority or the Registrar may waive compliance with all
10 or any provisions of the operating requirements if the Authority
11 or, as the case requires, the Registrar is satisfied that granting
12 the waiver is reasonable in all the circumstances.

13 (2) The Registrar may waive compliance with all or any provisions
14 of the participation rules if the Registrar is satisfied that
15 granting the waiver is reasonable in all the circumstances.

16 (3) A waiver under this section may —

- 17 (a) be total or partial; and
18 (b) apply generally to all persons, or be limited in its
19 application to particular persons or particular classes of
20 persons; and
21 (c) apply generally or be limited in its application by
22 reference to specified exceptions or factors; and
23 (d) apply indefinitely or for a specified period; and
24 (e) be unconditional or subject to conditions or restrictions.

25 **Division 4 — Appeals**

26 **28. Appeal against decisions of Authority or Registrar**
27 **(cf. ECNL s. 28)**

28 (1) A person who is the subject of any of the following decisions
29 (an *appellable decision*) may require the Authority or the

- 1 Registrar (whichever is the decision-maker) to provide, in
2 writing, the grounds for the decision —
- 3 (a) a decision by the Authority to refuse to approve the
4 person as an ELNO;
 - 5 (b) a decision by the Authority to refuse to renew the
6 person's approval as an ELNO;
 - 7 (c) a decision by the Authority to suspend the person's
8 approval as an ELNO;
 - 9 (d) a decision by the Authority to revoke the person's
10 approval as an ELNO;
 - 11 (e) a decision by the Authority to attach a condition to the
12 person's approval as an ELNO, or to vary or revoke a
13 condition of the person's approval as an ELNO, if the
14 attachment, variation or revocation of the condition is
15 done without the person's agreement;
 - 16 (f) a decision by the Authority to restrict, suspend or
17 terminate the person's use, as a subscriber, of an ELN
18 operated by the Authority;
 - 19 (g) a decision by the Authority or the Registrar to direct an
20 ELNO to restrict, suspend or terminate the person's use,
21 as a subscriber, of the ELN operated by the ELNO.
- 22 (2) A person who is the subject of an appellable decision and who
23 has received written grounds for the decision from the Authority
24 or the Registrar under subsection (1) or otherwise may appeal
25 against the decision to the responsible tribunal.
- 26 **29. Determination of appeal (cf. ECNL s. 29)**
- 27 (1) After hearing the appeal, the responsible tribunal may —
 - 28 (a) confirm the appellable decision; or
 - 29 (b) amend the appellable decision; or
 - 30 (c) substitute another decision for the appellable decision.

1 (2) In amending the appellable decision or substituting another
2 decision for the appellable decision, the responsible tribunal has
3 the same powers as the Authority or, as the case requires, the
4 Registrar under this Act.

5 **30A. Responsible tribunal to consider Government policy relating**
6 **to ELNOs**

7 (1) This section applies to an appeal to the responsible tribunal
8 against a decision referred to in section 28(1)(b).

9 (2) The *State Administrative Tribunal Act 2004* section 28
10 (**section 28**) applies to and in relation to an appeal to which this
11 section applies as if a direction given to the Authority under the
12 *Land Information Authority Act 2006* section 65 were a
13 statement of policy of the kind referred to in section 28.

14 (3) However, subsection (2) does not apply unless, at the time of
15 the decision to which the appeal relates, the direction had
16 been —

17 (a) either —

18 (i) laid before each House of Parliament in
19 accordance with the *Land Information Authority*
20 *Act 2006* section 65(2); or

21 (ii) dealt with under section 91 of that Act;

22 and

23 (b) published in the *Gazette*, even though this is not
24 required by that Act.

25 Note: There is no equivalent to this section in the ECNL.

26 **30. Costs (cf. ECNL s. 30) (not used)**

27 **31. Relationship with Act establishing responsible tribunal (cf.**
28 **ECNL s. 31)**

29 This Division —

30 (a) applies despite any provision to the contrary of the Act
31 that establishes or continues the responsible tribunal; but

- 1 (b) does not otherwise limit —
2 (i) that Act; or
3 (ii) any rules, regulations or other instrument
4 regulating the practice or procedure of the
5 responsible tribunal.

6 **Division 5 — Compliance examinations**

7 **32. Definitions (cf. ECNL s. 32)**

8 In this Division —
9 *ELNO* includes a former ELNO;
10 *subscriber* includes a former subscriber.

11 **33. Compliance examinations (cf. ECNL s. 33)**

- 12 (1) The Registrar may, on receiving a request or complaint from
13 any person or on the Registrar's own initiative, conduct an
14 investigation (*compliance examination*) under this Part —
15 (a) in relation to an ELNO for either or both of the
16 following purposes —
17 (i) ascertaining whether or not the operating
18 requirements are being, or have been, complied
19 with;
20 (ii) investigating any suspected or alleged case of
21 misconduct with respect to the operation of an
22 ELN;
23 (b) in relation to a subscriber for either or both of the
24 following purposes —
25 (i) ascertaining whether or not the participation
26 rules are being, or have been, complied with;
27 (ii) investigating any suspected or alleged case of
28 misconduct with respect to the use of an ELN.

1 (2) If the Authority or the Commissioner requests the Registrar to
2 conduct a compliance examination, the Registrar must conduct a
3 compliance examination in accordance with that request.

4 **34. Obligation to cooperate with examination (cf. ECNL s. 34)**

5 (1) An ELNO or a subscriber in relation to whom a compliance
6 examination is being conducted must cooperate fully with the
7 person conducting the compliance examination for the purpose
8 of ensuring that the person is able to conduct a proper
9 compliance examination.

10 (2) In particular, an ELNO or a subscriber must comply with any
11 reasonable requirement by the person conducting the
12 compliance examination —

13 (a) to furnish specified information or to produce specified
14 documents for the purposes of the compliance
15 examination; or

16 (b) to take specified action for the purposes of the
17 compliance examination.

18 (3) If an ELNO fails, without reasonable excuse, to cooperate as
19 required by this section, the Registrar or the Authority, or both,
20 may take any action that the Registrar or, as the case requires,
21 the Authority is authorised to take under the operating
22 requirements and that the Registrar or, as the case requires, the
23 Authority considers appropriate, which may include (without
24 limitation) the suspension or revocation of the ELNO's approval
25 under section 20.

26 (4) If a subscriber fails, without reasonable excuse, to cooperate as
27 required by this section, the Registrar may take any action that
28 the Registrar is authorised to take under the operating
29 requirements, the participation rules or the land titles legislation
30 and that the Registrar considers appropriate.

31 (5) For the purposes of subsections (3) and (4), it is not a reasonable
32 excuse for a person to fail to give stated information, answer a
33 question or to produce a document that giving the information,

- 1 answering the question or producing the document might tend to
2 incriminate the person or make the person liable to a penalty.
- 3 (6) However, the following is not admissible in evidence against an
4 individual in a criminal proceeding —
- 5 (a) information provided by an individual in compliance
6 with a requirement made under this section;
- 7 (b) an answer given by an individual in response to a
8 question asked under this section;
- 9 (c) a document produced by an individual in compliance
10 with a requirement made under this section (other than a
11 document to which subsection (7) applies);
- 12 (d) information directly or indirectly derived from —
- 13 (i) information mentioned in paragraph (a); or
14 (ii) an answer mentioned in paragraph (b); or
15 (iii) a document mentioned in paragraph (c) (other
16 than a document to which subsection (7)
17 applies).
- 18 (7) A document produced by an individual in compliance with a
19 requirement made under this section is not inadmissible in
20 evidence against the individual in a criminal proceeding on the
21 ground that the document might incriminate the individual if the
22 document is required to be kept under this Act, the land titles
23 legislation, the operating requirements or the participation rules.
- 24 (8) Subsection (6) does not apply to —
- 25 (a) a proceeding about the false or misleading nature of
26 anything in the information, answer or document; or
- 27 (b) a proceeding in which the false or misleading nature of
28 the information, answer or document is relevant
29 evidence.

1 **35. Registrar may refer matter to appropriate authority**
2 **(cf. ECNL s. 35)**

3 (1) In this section —

4 ***appropriate authority*** —

5 (a) means a person, body or organisation who or which is
6 empowered by a law of this jurisdiction or of another
7 State or the Commonwealth to take investigatory,
8 disciplinary or other action; and

9 (b) includes (without limiting paragraph (a)) —

10 (i) a law enforcement agency; and

11 (ii) a regulatory or disciplinary body for persons
12 engaged in any profession, occupation, calling or
13 business.

14 (2) Instead of conducting a compliance examination in relation to a
15 matter, or at any time during a compliance examination or after
16 the completion of a compliance examination in relation to a
17 matter, the Registrar may refer the matter to an appropriate
18 authority.

19 (3) If the Registrar refers a matter to an appropriate authority, the
20 Registrar is not obliged to take any other action in relation to the
21 matter.

22 **36. Land titles legislation not limited (cf. ECNL s. 36)**

23 Nothing in this Division limits or affects any provision of the
24 land titles legislation that authorises or permits any
25 investigation, inquiry or examination of any kind.

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Part 4 — Miscellaneous

Division 1 — Delegation

37. Delegation (cf. ECNL s. 37)

- (1) The Authority, the Registrar or the Commissioner may delegate to any other person the power conferred by section 21 to monitor activities in an ELN.
- (2) The Registrar may delegate to any other person any function under Part 3 Division 5.

Division 2 — Liability of Authority, Registrar and Commissioner

38. No obligation to monitor ELN or conduct compliance examination (cf. ECNL s. 38)

- (1) Neither the Authority nor the Registrar nor the Commissioner is obliged to monitor activities in an ELN under section 21.
- (2) The Registrar is not obliged to conduct or complete a compliance examination under Part 3 Division 5.
- (3) Subsection (2) is subject to section 33(2).

39. No compensation (cf. ECNL s. 39)

No person is entitled to receive compensation for any loss or damage arising out of anything done or omitted in good faith in, or in connection with, the monitoring of activities in an ELN under section 21 or the conduct of a compliance examination under Part 3 Division 5, including (without limitation) —

- (a) any decision made, in good faith, not to monitor activities in an ELN or not to conduct a compliance examination; and

- 1 (b) any decision made, in good faith, as to how activities in
2 an ELN are to be monitored or how a compliance
3 examination is to be conducted.

4 **40. Authority and Registrar not responsible for additional**
5 **services provided by ELNO (cf. ECNL s. 40)**

6 The mere fact that an ELNO provides services that are
7 additional to those provided by the ELN operated by that ELNO
8 does not make the Authority or the Registrar responsible for the
9 regulation or operation of those additional services.

10 **Division 3 — Relationship with other laws**

11 **41. Other laws relating to electronic transactions not affected**
12 **(cf. ECNL s. 41)**

13 This Act is in addition to, and not in substitution for —

- 14 (a) the laws of this jurisdiction in relation to electronic
15 transactions; and
16 (b) any other law of this jurisdiction that authorises or
17 permits the use of electronic documents for the purposes
18 of the land titles legislation.

19 **42. Powers may be exercised for purposes of this Act (cf. ECNL**
20 **s. 42)**

21 If any provision of the land titles legislation empowers the
22 making of an instrument of a legislative or administrative
23 character, or the doing of any other act or thing, that power is to
24 be construed (with all necessary changes) as including a general
25 power to make instruments of that character, or to do that act or
26 thing, for the purposes of this Act.

Part 5 — General

Note: There is no equivalent to this Part in the ECNL.

43. Notification, tabling and disallowance of operating requirements and participation rules

(1) In this section —

business day means a day that is not —

- (a) a Saturday or Sunday; or
- (b) a public holiday in the metropolitan region (as defined in the *Planning and Development Act 2005* section 4(1)).

(2) This section applies to the following documents —

- (a) operating requirements;
- (b) participation rules;
- (c) changes to operating requirements or participation rules.

(3) Where any document to which this section applies is made publicly available in accordance with section 25, the Registrar must, within 10 business days after the day on which the document is first made publicly available, cause to be published in the *Gazette* notice of —

- (a) the making of the document; and
- (b) where the document is publicly available.

(4) If notification of the making of a document to which this section applies is not published in the *Gazette* in accordance with subsection (3), the document ceases to have effect on the expiry of the 10th business day after the day on which the document was first made publicly available, but without affecting the validity or curing the invalidity of anything done or of the omission of anything in the meantime.

(5) A copy of a document to which this section applies must be laid before each House of Parliament within 6 sitting days following

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1 notification of the making of the document in the *Gazette* in
2 accordance with subsection (3).

3 (6) If notification of the making of a document to which this section
4 applies is published in the *Gazette*, the *Interpretation Act 1984*
5 section 42 applies as if the document were a regulation
6 published in the *Gazette*.

7 **44. Proof of operating requirements and participation rules**

8 (1) In any proceedings in any court or before any person acting
9 judicially, a copy of all or part of any operating requirements or
10 participation rules appearing to be certified by the Registrar to
11 be a true copy of those requirements or rules as at any date or
12 during any period is sufficient evidence of those requirements
13 or, as the case requires, those rules as at that date or during that
14 period in the absence of proof to the contrary.

15 (2) The Registrar must make certified copies of the operating
16 requirements and participation rules available on request and
17 payment of the prescribed fee (if any).

18 **45. Giving false or misleading information, answer or document**
19 **an offence**

20 (1) In this section —

21 ***authorised person*** means —

22 (a) the Authority; or

23 (b) the Registrar; or

24 (c) the Commissioner; or

25 (d) any person to whom any function of the Authority, the
26 Registrar or the Commissioner is delegated under this
27 Act or any other Act.

28 (2) A person must not do any of the things set out in subsection (4)
29 under —

30 (a) this Act; or

- 1 (b) an instrument (as defined in Schedule 1 clause 12(1))
2 made under this Act.
- 3 Penalty: imprisonment for 10 years and a fine of \$100 000.
4 Summary conviction penalty: imprisonment for 3 years and a
5 fine of \$40 000.
- 6 (3) An offence under subsection (2) is a crime.
- 7 (4) The things to which subsection (2) applies are —
- 8 (a) giving to an authorised person any information or
9 answer that the person giving the information or answer
10 knows —
- 11 (i) is false or misleading in a material particular; or
12 (ii) omits any matter or thing without which the
13 information or answer is misleading;
- 14 (b) producing to an authorised person any document that the
15 person producing the document knows to be false or
16 misleading in a material particular.
- 17 (5) It is a defence to a charge of an offence under subsection (2)
18 that involves doing the thing set out in subsection (4)(b) if the
19 accused proves that, when producing the document to an
20 authorised person, the accused either —
- 21 (a) indicated the respect in which the document was false or
22 misleading and, where practicable, provided correct
23 information; or
- 24 (b) accompanied the document with a written certificate —
- 25 (i) stating that the document was, to the accused's
26 knowledge, false or misleading in a material
27 particular; and
- 28 (ii) setting out, or referring to, the material particular
29 in which the document was, to the accused's
30 knowledge, false or misleading.

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1 **46. Regulations**

2 (1) The Governor may make regulations prescribing all matters that
3 are required or permitted by this Act to be prescribed, or are
4 necessary or convenient to be prescribed for giving effect to the
5 purposes of this Act.

6 (2) If a regulation made under this section is inconsistent with any
7 subsidiary legislation made under the land titles legislation, the
8 regulation made under this section prevails to the extent of the
9 inconsistency.

10 **47. Review of Act**

11 (1) The Minister must carry out a review of the operation and
12 effectiveness of this Act —

13 (a) as soon as is practicable after the period of 7 years
14 beginning on the day on which section 7 comes into
15 operation (the *review period*); or

16 (b) at any earlier time that the Minister considers
17 appropriate.

18 (2) The Minister must —

19 (a) prepare a report based on the review; and

20 (b) cause the report to be laid before each House of
21 Parliament as soon as is practicable after it is prepared,
22 but in any event —

23 (i) if the review is carried out after the review
24 period, not more than 12 months after that
25 period; or

26 (ii) if the review is carried out earlier than that, not
27 more than 6 months after the review is
28 completed.

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Part 6 — *Duties Act 2008* amended

48. Act amended

This Part amends the *Duties Act 2008*.

49. Section 3 amended

In section 3 in the definition of *transfer duty statement* delete “section 22;” and insert:

section 22(1);

50. Section 22A inserted

At the beginning of Chapter 2 Part 4 Division 2 insert:

22A. Terms used

In this Division —

digitally sign has the meaning given in the *Electronic Conveyancing Act 2013* section 3(1);

electronic conveyancing instrument means an instrument in electronic form that, on being digitally signed, has, under the *Electronic Conveyancing Act 2013* section 9(2), the same effect as if a paper document having the equivalent effect had been executed as provided in section 9(2)(a) or (b) of that Act.

51. Section 22 amended

(1) In section 22 delete “The person” and insert:

(1) The person

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1 (2) At the end of section 22 insert:

2

3 (2) For the purposes of subsection (1) and section 23(1)(a),
4 an electronic conveyancing instrument that has been
5 digitally signed is to be taken to be an instrument in
6 hard copy form.
7

8 **52. Section 23 amended**

9 After section 23(2) insert:

10

11 (3) If a transaction is effected by an electronic
12 conveyancing instrument, the person liable to pay duty
13 on the transaction is to be taken to have complied with
14 subsection (1) when the instrument is digitally signed.
15

16 **53. Section 107 amended**

17 After section 107(2) insert:

18

19 (3A) To avoid doubt, for the purposes of subsection (2), a
20 dutiable transaction has not been, and will not be,
21 carried into effect if —

22 (a) the transaction is a transfer of dutiable property;
23 and

24 (b) the transaction is effected or evidenced by an
25 electronic conveyancing instrument (as defined
26 in section 22A); and

27 (c) under section 42, no duty is chargeable on the
28 transfer; and

29 (d) the instrument, having been digitally signed (as
30 defined in the *Electronic Conveyancing*
31 *Act 2013* section 3(1)) is unsigned in

1 **Part 7 — *Settlement Agents Act 1981* amended**

2 **56. Act amended**

3 This Part amends the *Settlement Agents Act 1981*.

4 **57. Section 46 amended**

5 (1) In section 46(4) delete “clause 1(1) of Schedule 2” and insert:

6

7 Schedule 2 clause 1(1) or (2A),

8

9 (2) After section 46(7) insert:

10

11 (8) For the purposes of effecting a settlement referred to in
12 subsection (1) that is being or is to be completed
13 (wholly or in part) electronically under the *Electronic*
14 *Conveyancing Act 2013* —

15 (a) if a licensee who is a natural person holds a real
16 estate settlement agent’s licence and a current
17 triennial certificate and is a subscriber (as
18 defined in section 3(1) of that Act), that
19 licensee may authorise any employee of the
20 licensee to digitally sign documents and
21 provide certifications on that licensee’s behalf;
22 and

23 (b) if a licensee that is a firm holds a real estate
24 settlement agent’s licence and a current
25 triennial certificate and is a subscriber (as so
26 defined), the person in bona fide control of the
27 business operated under the licence may
28 authorise any employee of the licensee to
29 digitally sign documents and provide
30 certifications on that licensee’s behalf; and

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- 1 (c) if a licensee that is a body corporate holds a
2 real estate settlement agent's licence and a
3 current triennial certificate and is a subscriber
4 (as so defined), the person in bona fide control
5 of the business operated under the licence may
6 authorise any employee of the licensee to
7 digitally sign documents and provide
8 certifications on that licensee's behalf; and
- 9 (d) subject to any participation rules determined
10 under section 23 of that Act, a person
11 authorised under paragraph (a) or (b) or (c) may
12 digitally sign documents and provide
13 certifications in accordance with that
14 authorisation.
- 15 (9) An authorisation given under subsection (8)(a) or (b) or
16 (c) to an employee of a licensee —
- 17 (a) unless sooner revoked, continues for as long as
18 the person remains an employee of the licensee;
19 and
- 20 (b) may be revoked by —
- 21 (i) the licensee; or
22 (ii) any person who, under subsection (8), is
23 entitled to give authorisations to
24 employees of the licensee, whether or
25 not the person who originally gave the
26 authorisation.
27

28 **58. Schedule 2 amended**

- 29 (1) Before Schedule 2 clause 1(1) insert:
30
- 31 (1A) A word or expression that is defined in the *Electronic*
32 *Conveyancing Act 2013* section 3 has the same meaning in
33 subclause (2A) as it has in that section.
34

- 1 (2) After Schedule 2 clause 1(1)(f) insert:
2
- 3 (ga) providing certifications required in respect of the
4 lodging of documents to which paragraph (f)
5 applies;
6
- 7 (3) After Schedule 2 clause 1(1) insert:
8
- 9 (2A) A licensee who holds a real estate settlement agent’s licence
10 and a current triennial certificate may perform any function
11 necessary to enable a conveyancing transaction to be
12 completed by means of an ELN, including (without
13 limitation) the following functions —
- 14 (a) entering into a client authorisation to act as a
15 subscriber;
- 16 (b) with respect to registry instruments and other
17 documents that a licensee is authorised by this Act
18 to prepare —
- 19 (i) preparing them in electronic form for
20 lodging by means of an ELN;
- 21 (ii) digitally signing them;
- 22 (iii) lodging them in electronic form with the
23 Authority or other Government offices or
24 the offices of statutory authorities by means
25 of an ELN;
- 26 (iv) providing certifications required in respect
27 of, or in connection with, the lodging of
28 those registry instruments or other
29 documents by means of an ELN;
- 30 (c) doing anything necessary to enable the completion
31 of an associated financial transaction.
32

1 **Part 8 — Taxation Administration Act 2003 amended**

2 **59. Act amended**

3 This Part amends the *Taxation Administration Act 2003*.

4 **60. Section 114 amended**

5 After section 114(3) insert:

6

7 (4A) A word or expression that is defined in the *Electronic*
8 *Conveyancing Act 2013* section 3 has the same
9 meaning in subsection (4B) as it has in that section.

10 (4B) This section does not prevent the disclosure of
11 information or material to the Authority, the
12 Commissioner, the Registrar, an ELNO or subscribers
13 for the purpose of enabling subscribers to complete
14 conveyancing transactions or associated financial
15 transactions, or both, by means of an ELN provided
16 and operated under the *Electronic Conveyancing*
17 *Act 2013*.

18

1 **Part 9 — *Transfer of Land Act 1893* amended**

2 **61. Act amended**

3 This Part amends the *Transfer of Land Act 1893*.

4 **62. Section 3 amended**

5 After section 3(1) insert:

6

7 (2A) If a provision of this Act is inconsistent with a
8 provision of the *Electronic Conveyancing Act 2013*, the
9 provision of that Act prevails to the extent of the
10 inconsistency.

11

12 **63. Section 4 amended**

13 (1) In section 4(1) insert in alphabetical order:

14

15 *conveyancing transaction* has the meaning given in the
16 *Electronic Conveyancing Act 2013* section 3(1);

17 *counterpart* has the meaning given in
18 subsection (1CA);

19 *digital signature* has the meaning given in the
20 *Electronic Conveyancing Act 2013* section 3(1);

21 *digitally sign* has the meaning given in the *Electronic*
22 *Conveyancing Act 2013* section 3(1);

23 *document* means any record of information however
24 recorded, and includes —

25 (a) anything on which there is writing; or

26 (b) anything on which there are marks, figures,
27 symbols or perforations having a meaning for
28 persons qualified to interpret them; or

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- 1 (c) anything from which sounds, images or
2 writings can be reproduced with or without the
3 aid of anything else; or
4 (d) a map, plan, drawing or photograph; or
5 (e) any record of information that exists in a digital
6 form and is capable of being reproduced,
7 transmitted, stored and duplicated by electronic
8 means;

9 **ELN** has the meaning given in the *Electronic*
10 *Conveyancing Act 2013* section 3(1);

11 **ELNO** has the meaning given in the *Electronic*
12 *Conveyancing Act 2013* section 3(1);

13 **participation rules** has the meaning given in the
14 *Electronic Conveyancing Act 2013* section 3(1);

15 **record** includes information stored or recorded by
16 means of a computer;

17 **sign** includes digitally sign;

18 **signature** includes a digital signature;

19 **subscriber** has the meaning given in the *Electronic*
20 *Conveyancing Act 2013* section 3(1);
21

22 (2) In section 4(1) in the definition of **proprietor** after “the
23 proprietor of that freehold land,” insert:
24

25 lease, mortgage, charge,
26

27 (3) After section 4(1b) insert:
28

29 (1CA) For the purposes of this Act, a document is a
30 **counterpart** in relation to another document if —

- 31 (a) the documents relate to the same conveyancing
32 transaction; and

- 1 (b) the documents contain exactly the same data or
2 information, apart from all or any of the
3 following —
4 (i) any signature created for or appearing
5 on each document;
6 (ii) the details of any attesting witness;
7 (iii) the date on which the documents were
8 signed or witnessed;
9 (iv) any data or information authorised or
10 required by a taxation Act (as defined in
11 the *Taxation Administration Act 2003*
12 Glossary);
13 (v) anything else prescribed by the
14 regulations for the purposes of this
15 paragraph.
16

17 **64. Section 14 replaced**

18 Delete section 14 and insert:
19

20 **14. Commissioner and Registrar may exercise functions**
21 **electronically**

- 22 (1) Anything that the Commissioner is required or
23 authorised to do under this Act may be done by the
24 Commissioner by electronic means in any way the
25 Commissioner determines is appropriate.
26 (2) Anything that the Registrar is required or authorised to
27 do under this Act may be done by the Registrar by
28 electronic means in any way the Registrar determines
29 is appropriate.
30 (3) If, in reliance on this section, something is done
31 electronically when it would otherwise be required to
32 have been done, or could have been done, using or with

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1 respect to a paper document, the doing of that thing
2 electronically has the same effect as if that thing had
3 been done using or with respect to a paper document.

4 (4) This section applies even though the provision
5 requiring or authorising the Commissioner or Registrar
6 to do something expressly or impliedly requires or
7 authorises the thing to be done by means of a paper
8 document.

9

10 **65. Section 30 amended**

11 Delete section 30(5) and insert:

12

13 (5) A caveat under this section cannot be lodged unless
14 one of the following is specified in it for the purposes
15 of the service of notices in relation to the caveat —
16 (a) an address in Australia;
17 (b) a number for a facsimile machine in Australia;
18 (c) a way of receiving notices electronically (for
19 example, an email address) that is prescribed by
20 the regulations for the purposes of this
21 paragraph.

22

23 **66. Section 48B amended**

24 Delete section 48B(4) and insert:

25

26 (4) If land is the subject of a certificate of title, the
27 Registrar may cancel the duplicate certificate of title
28 for the land if —
29 (a) a request is made in accordance with
30 subsection (5A) for the cancellation of the
31 duplicate certificate of title; and

- 1 (b) the duplicate certificate of title is delivered to
2 the Registrar for retention, disposal or
3 destruction.
- 4 (5A) A request may be made under subsection (4) by —
- 5 (a) a proprietor of the land (including the
6 proprietor of a registered mortgage or
7 registered charge over the land); or
- 8 (b) a person lodging an instrument for the
9 registration of a mortgage or charge over the
10 land (the *incoming mortgagee*), but only if the
11 incoming mortgagee satisfies the Registrar that
12 the incoming mortgagee holds an
13 acknowledgment from the registered proprietor
14 of the freehold estate in the land that the
15 incoming mortgagee intends to make the
16 request.
- 17 (5B) On cancelling a duplicate certificate of title under
18 subsection (4), the Registrar must endorse the
19 certificate of title to that effect.
20

21 **67. Section 52 amended**

22 Delete section 52(2) and insert:

- 23
- 24 (2) An instrument purporting to affect any land for which a
25 certificate of title has been registered is registered
26 when a memorandum referred to in section 56 in
27 relation to the original instrument has been entered in
28 the Register on the certificate.
29

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1 **68. Section 54 amended**

2 In section 54(3) delete “section and seal each memorandum.”
3 and insert:

4
5 section.
6

7 **69. Section 57 amended**

8 In section 57:

9 (a) delete “certificate of title, instrument” and insert:

10
11 certificate of title
12

13 (b) delete paragraph (a).

14 Note: The heading to amended section 57 is to read:

15 **Memoranda of instruments to be entered**

16 **70. Section 74 amended**

17 After section 74(5) insert:

18
19 (6) Nothing in this section applies if the production,
20 presentation, delivery up or lodging of a duplicate
21 certificate of title is dispensed with under regulations
22 made under section 181 or requirements determined
23 under section 182A.
24

25 **71. Section 74B amended**

26 After section 74B(2) insert:

27
28 (3) Subsection (4) applies if —

29 (a) a document is lodged electronically under the
30 *Electronic Conveyancing Act 2013*; and

- 1 (b) in connection with the lodging of that
2 document, a duplicate certificate of title is not
3 produced but is dealt with in another way in
4 accordance with —
- 5 (i) regulations made under this Act; or
6 (ii) requirements determined under
7 section 182A;
- 8 and
- 9 (c) that document is later withdrawn from
10 registration or is rejected.
- 11 (4) If this subsection applies, the Registrar may cause a
12 new duplicate certificate of title or, in the case of a
13 digital title, a new edition of the duplicate certificate of
14 title to be issued to —
- 15 (a) the proprietor of the land that is the subject of
16 the certificate of title; or
- 17 (b) a person named and authorised by the
18 proprietor as the person to whom the duplicate
19 may be issued.
20

21 **72. Section 81W amended**

22 Delete section 81W(9) and insert:

- 23
- 24 (9) A caveat cannot be lodged under subsection (6) unless
25 one of the following is specified in it for the purposes
26 of the service of notices in relation to the caveat —
- 27 (a) an address in Australia;
- 28 (b) a number for a facsimile machine in Australia;
- 29 (c) a way of receiving notices electronically (for
30 example, an email address) that is prescribed by
31 the regulations for the purposes of this
32 paragraph.
33

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- 1 **73. Section 105 amended**
- 2 After section 105(2) insert:
- 3
- 4 (3) Subsection (4) applies if —
- 5 (a) a counterpart of an instrument purporting to
- 6 mortgage or charge any land under the
- 7 operation of this Act (the **charging instrument**)
- 8 is lodged for registration in accordance with
- 9 regulations made under this Act or
- 10 requirements determined under section 182A;
- 11 and
- 12 (b) the counterpart of the charging instrument
- 13 lodged —
- 14 (i) purports to be signed by the person who,
- 15 on registration of the mortgage or
- 16 charge, will become the proprietor of
- 17 the mortgage or charge; but
- 18 (ii) does not purport to be signed by the
- 19 proprietor of the land;
- 20 and
- 21 (c) a counterpart of the charging instrument
- 22 purporting to be signed by the proprietor of the
- 23 land is not also lodged for registration; and
- 24 (d) the charging instrument is registered.
- 25 (4) If this subsection applies, the mortgage or charge is not
- 26 valid or binding against the proprietor of the land
- 27 unless, before the charging instrument was registered,
- 28 the proprietor of the land signed a counterpart of the
- 29 charging instrument.
- 30 (5) Subsection (4) overrides section 58.
- 31

1 **74. Section 127A inserted**

2 After section 126 insert:

3

4 **127A. Subsequent mortgages or charges**

5 (1) In this section —

6 *mortgage* includes a charge;

7 *mortgagee* includes an annuitant.

8 (2) If any land under the operation of this Act is subject to
9 a mortgage, the registration of a subsequent mortgage
10 does not require the consent of the existing mortgagee.

11 (3) If any land under the operation of this Act is subject to
12 a mortgage, the execution or attempted execution of a
13 subsequent mortgage does not —

14 (a) constitute a breach of any term, covenant or
15 condition contained in the existing mortgage; or

16 (b) give rise to any forfeiture or penalty; or

17 (c) make payable or accelerate the time for
18 payment of any sum or sums that, if the
19 execution or attempted execution of the
20 subsequent mortgage had not happened, would
21 not have been payable or would not have been
22 payable at that time.

23 (4) This section has effect despite any provision to the
24 contrary in any mortgage.

25 (5) This section does not apply to or in relation to any
26 mortgage registered before the *Electronic*
27 *Conveyancing Act 2013* section 74 comes into
28 operation.
29

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1 **75. Section 129A amended**

2 In section 129A(3) delete “section 52(2)(a),” and insert:

3

4 section 52(2),

5

6 **76. Section 137 amended**

7 Delete section 137(1D) and insert:

8

9 (1D) A caveat under this section cannot be lodged unless
10 one of the following is specified in it for the purposes
11 of the service of notices in relation to the caveat —

12 (a) an address in Australia;

13 (b) a number for a facsimile machine in Australia;

14 (c) a way of receiving notices electronically (for
15 example, an email address) that is prescribed by
16 the regulations for the purposes of this
17 paragraph.
18

19 **77. Section 180 replaced**

20 Delete section 180 and insert:

21

22 **180. Commissioner may summons people to provide**
23 **information**

24 (1) For the purposes of enabling the Commissioner or the
25 Registrar to perform any function under this Act or any
26 other Act, the Commissioner may, by summons,
27 require any of the persons listed in subsection (2) to
28 appear at a time and place specified in the summons to
29 do all or any of the following —

30 (a) to give an explanation concerning —

31 (i) any land; or

- 1 (ii) any document affecting the title to any
2 land; or
- 3 (iii) any conveyancing transaction;
- 4 (b) to produce any grant, certificate of title, will,
5 mortgage or other instrument or document in
6 the person's possession or within the person's
7 control —
- 8 (i) affecting any land or the title to any
9 land; or
- 10 (ii) relating to any conveyancing
11 transaction.
- 12 (2) The persons referred to in subsection (1) are the
13 following —
- 14 (a) the proprietor, mortgagee or other person
15 interested in any land under, or proposed to be
16 brought under, the operation of this Act in
17 respect of which —
- 18 (i) any transfer, lease, mortgage, charge,
19 carbon right, carbon covenant, tree
20 plantation agreement or other dealing is
21 proposed to be transacted or registered;
22 or
- 23 (ii) any discharge from any mortgage or
24 charge, or any surrender of a carbon
25 right, carbon covenant or plantation
26 interest, is proposed to be transacted or
27 registered; or
- 28 (iii) any transmission is proposed to be
29 registered;
- 30 (b) any person whom the Commissioner reasonably
31 considers will be able to give an explanation
32 concerning a conveyancing transaction or

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- 1 produce a document relating to a conveyancing
2 transaction, including (without limitation) —
- 3 (i) a subscriber;
 - 4 (ii) any of a subscriber’s employees, agents,
5 contractors or officers;
 - 6 (iii) an Australian lawyer;
 - 7 (iv) a settlement agent as defined in the
8 *Settlement Agents Act 1981* section 3(1);
 - 9 (v) an ELNO;
 - 10 (vi) any of an ELNO’s employees, agents,
11 contractors or officers.
- 12 (3) A summons under subsection (1) must be —
- 13 (a) in an approved form; and
 - 14 (b) signed by the Commissioner; and
 - 15 (c) served on the person summoned in accordance
16 with section 240 as if it were a notice to which
17 that section applies.
- 18 (4) For the purposes of this section —
- 19 (a) the Commissioner may require a person
20 summoned under subsection (1) to take an oath
21 or to make an affirmation; and
 - 22 (b) the Commissioner may administer an oath or
23 affirmation to the person.
- 24 (5) If a person is summoned under subsection (1), the
25 Commissioner may deal with the person as in the case
26 of contempt of the Supreme Court if the person —
- 27 (a) fails, refuses or neglects —
 - 28 (i) to attend the Commissioner for the
29 purpose of being examined; or
 - 30 (ii) to produce any document as required by
31 the summons; or

- 1 (iii) to allow any document to which
2 subparagraph (ii) applies to be
3 inspected;
- 4 or
- 5 (b) refuses or neglects to give any explanation
6 required by the Commissioner.
- 7 (6) If the Commissioner considers that any information or
8 document that is withheld from the Commissioner in
9 the circumstances set out in subsection (5) is material,
10 the Registrar is not bound to proceed with the
11 transaction to which that information or document
12 relates.
- 13 **181A. Commissioner and Registrar may require**
14 **supporting documentation or evidence or**
15 **verification**
- 16 (1) In this section —
17 *lodge* includes deposit, present and file.
- 18 (2) For the purposes of performing any function under this
19 Act or any other Act, the Commissioner or the
20 Registrar may require any person who lodges any
21 document to do, or to arrange for someone to do, all or
22 any of the following —
- 23 (a) to submit or produce any document supporting
24 or authenticating the document;
- 25 (b) to provide specified information relating to the
26 document;
- 27 (c) to submit or produce evidence relating to a
28 certification given in or with the document,
29 including (without limitation) —
- 30 (i) evidence showing the truth of the
31 certification;

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- 1 (ii) evidence that the person who gave the
2 certification was entitled to give it;
- 3 (d) to verify any document, information, evidence,
4 certification or other matter by statutory
5 declaration.
- 6 (3) For the purposes of performing any function under this
7 Act or any other Act, the Commissioner or the
8 Registrar may, in relation to a document lodged or to
9 be lodged, require any person to do, or to arrange for
10 someone to do, all or any of the following —
- 11 (a) to give a certification in or in relation to the
12 document;
- 13 (b) to verify the identity and authority of —
- 14 (i) any person who is a party to the
15 conveyancing transaction to which the
16 document relates;
- 17 (ii) any person who signed or authorised the
18 signing of the document.
- 19 (4) A requirement made under subsection (2) or (3) —
- 20 (a) must be given by notice served on the person to
21 whom the requirement relates; and
- 22 (b) must specify a period within which the
23 requirement must be complied with; and
- 24 (c) may specify how the requirement is to be
25 complied with.
- 26 (5) If a requirement made under subsection (2) or (3) in
27 relation to a document is not complied with within the
28 period specified in accordance with subsection (4)(b),
29 the Commissioner or, as the case requires, the
30 Registrar —
- 31 (a) may reject the document; and

1 (b) if the document is rejected, must notify the
2 refusal to the person lodging the document.

3 (6) If a document is rejected under subsection (5),
4 section 192(2) applies as if the document had been
5 rejected under section 192(1).

6 **181B. Commissioner and Registrar may require**
7 **verification by statutory declaration**

8 (1) For the purposes of performing any function under this
9 Act or any other Act, the Commissioner or the
10 Registrar may require any person to verify any
11 document, information, evidence, certification or other
12 matter by statutory declaration.

13 (2) If a requirement under this section is not complied with
14 within the period allowed by the Commissioner or
15 Registrar, the Commissioner or Registrar may refuse to
16 take any action or, as the case requires, any further
17 action in relation to the matter to which the
18 requirement relates.

19
20 **78. Section 181 amended**

21 (1) After section 181(1)(bb) insert:

22
23 (bc) prescribing requirements relating to the
24 lodgment, presentation, filing or deposit of
25 documents with the Authority, the
26 Commissioner or the Registrar, including
27 (without limitation) —

28 (i) the types of document that can be
29 lodged electronically under the
30 *Electronic Conveyancing Act 2013*
31 section 7(1);

32 (ii) the form in which documents, or
33 documents of a particular class or type,

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- 1 can be lodged electronically under the
2 *Electronic Conveyancing Act 2013*
3 section 7(1);
- 4 (iii) the documents that must be lodged or
5 retained when a document is lodged
6 electronically under the *Electronic*
7 *Conveyancing Act 2013* section 7(1);
- 8 (iv) how long documents must be retained;
- 9 (v) the documents required to support or
10 authenticate a document lodged
11 electronically under the *Electronic*
12 *Conveyancing Act 2013* section 7(1);
- 13 and
- 14 (bd) prescribing requirements relating to duplicate
15 certificates of title when a document is lodged
16 electronically under the *Electronic*
17 *Conveyancing Act 2013* section 7(1), including
18 (without limitation) —
- 19 (i) dispensing with, or authorising the
20 Registrar to dispense with, any
21 requirement of this Act to produce or
22 present or deliver up to the Registrar, or
23 to bring in or lodge, a duplicate
24 certificate of title;
- 25 (ii) prescribing how a duplicate certificate
26 of title is to be dealt with if its
27 production, presentation, delivery up,
28 lodging or bringing in is dispensed with;
- 29 (iii) requiring a person who lodges a
30 document to have obtained possession
31 of any duplicate certificate of title that
32 would otherwise be required to be
33 produced, presented or delivered up to
34 the Registrar, or to be brought in or
35 lodged, and requiring that person to

- 1 destroy or invalidate that duplicate
2 certificate of title;
- 3 (iv) requiring a person who would otherwise
4 be required, at the request of any
5 person, to produce, present or deliver
6 up, to the Registrar, a duplicate
7 certificate of title to deliver the
8 duplicate certificate of title to someone
9 else in accordance with the regulations,
10 and prescribing how that other person is
11 to deal with the duplicate certificate of
12 title;
- 13 and
- 14 (be) prescribing requirements relating to
15 certifications that must be included in or with
16 documents lodged, presented, filed or deposited
17 with the Authority, the Commissioner or the
18 Registrar (whether electronically or in paper
19 form), including (without limitation) —
- 20 (i) the matters that are required to be
21 certified;
- 22 (ii) the persons or classes of persons who
23 can give certifications;
- 24 (iii) the form of certifications;
- 25 (iv) the evidence showing the truth of a
26 certification that must be retained and
27 how long the evidence must be retained;
- 28 and
- 29 (bf) prescribing requirements relating to things that
30 are required or authorised under this Act to be
31 endorsed on or included in documents lodged,
32 presented, filed or deposited with the Authority,
33 the Commissioner or the Registrar (whether
34 electronically or in paper form), including

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- 1 (without limitation) requiring or permitting
2 something that otherwise would be required or
3 authorised to be endorsed on or included in a
4 document to be lodged or given separately; and
- 5 (bg) prescribing requirements relating to consents,
6 permissions or approvals that are required or
7 authorised under this Act or any other written
8 law to accompany or be endorsed on, lodged
9 with or given in relation to a document lodged,
10 presented, filed or deposited with the Authority,
11 the Commissioner or the Registrar (whether
12 electronically or in paper form), including
13 (without limitation) —
- 14 (i) requiring or permitting a consent,
15 permission or approval to be endorsed,
16 lodged or given by electronic means;
- 17 (ii) requiring or permitting a consent,
18 permission or approval that otherwise
19 would be required or authorised to
20 accompany or be endorsed on or lodged
21 with a document to be lodged or given
22 separately;
- 23 and
- 24 (bh) prescribing requirements relating to the
25 verification of the identity and authority of
26 persons who are parties to a conveyancing
27 transaction or who sign or authorise the signing
28 of documents to be lodged, presented, filed or
29 deposited with the Authority, the
30 Commissioner or the Registrar (whether
31 electronically or in paper form), including
32 (without limitation) —
- 33 (i) the standards to which identity and
34 authority are to be verified;

- 1 (ii) the documents or classes of documents
2 in relation to which verification
3 requirements apply;
- 4 (iii) the persons or classes of persons who
5 can undertake verification;
- 6 (iv) the evidence showing the steps taken to
7 satisfy the verification requirements that
8 must be retained and how long the
9 evidence must be retained;
- 10 and
- 11 (bi) prescribing requirements relating to
12 applications made under this Act to the
13 Commissioner; and
- 14 (bj) the manner in which notices under this Act
15 must or may be given, including (without
16 limitation) requiring or permitting notices that
17 must or may be given to or by the Registrar or
18 the Commissioner to be given by electronic
19 means; and
20
- 21 (2) After section 181(3) insert:
22
- 23 (4) Despite the *Interpretation Act 1984* sections 3(3) and
24 43(6), section 43(6) of that Act applies in respect of
25 regulations and rules made under a power conferred by
26 this Act.
27

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1 **79. Sections 182A and 182B inserted**

2 After section 181 insert:

3

4 **182A. Commissioner and Registrar may determine**
5 **requirements**

6 (1) The Commissioner or the Registrar may determine
7 requirements relating to all or any of the following
8 matters —

9 (a) the lodgment, presentation, filing or deposit of
10 documents with the Authority, the
11 Commissioner or the Registrar, including
12 (without limitation) —

13 (i) the types of document that can be
14 lodged electronically under the
15 *Electronic Conveyancing Act 2013*
16 section 7(1);

17 (ii) the form in which documents, or
18 documents of a particular class or type,
19 can be lodged electronically under the
20 *Electronic Conveyancing Act 2013*
21 section 7(1);

22 (iii) the documents that must be lodged or
23 retained when a document is lodged
24 electronically under the *Electronic*
25 *Conveyancing Act 2013* section 7(1);

26 (iv) how long documents must be retained;

27 (v) the documents required to support or
28 authenticate a document lodged
29 electronically under the *Electronic*
30 *Conveyancing Act 2013* section 7(1);

31 (b) how duplicate certificates of title are to be dealt
32 with when a document is lodged electronically

- 1 under the *Electronic Conveyancing Act 2013*
2 section 7(1), including (without limitation) —
- 3 (i) dispensing with, or authorising the
4 Registrar to dispense with, any
5 requirement of this Act to produce or
6 present or deliver up to the Registrar, or
7 to bring in or lodge, a duplicate
8 certificate of title;
 - 9 (ii) how a duplicate certificate of title is to
10 be dealt with if its production,
11 presentation, delivery up, lodging or
12 bringing in is dispensed with;
 - 13 (iii) requiring a person who lodges a
14 document to have obtained possession
15 of any duplicate certificate of title that
16 would otherwise be required to be
17 produced, presented or delivered up to
18 the Registrar, or to be brought in or
19 lodged, and requiring that person to
20 destroy or invalidate that duplicate
21 certificate of title;
 - 22 (iv) requiring a person who would otherwise
23 be required, at the request of any
24 person, to produce, present or deliver
25 up, to the Registrar, a duplicate
26 certificate of title to deliver the
27 duplicate certificate of title to someone
28 else in accordance with the
29 requirements, and requiring that other
30 person to deal with the duplicate
31 certificate of title in accordance with the
32 requirements;
 - 33 (c) certifications that must be included in or with
34 documents lodged, presented or deposited with
35 the Authority, the Commissioner or the

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- 1 Registrar (whether electronically or in paper
2 form), including (without limitation) —
- 3 (i) the matters that are required to be
4 certified;
- 5 (ii) the persons or classes of persons who
6 may give certifications;
- 7 (iii) the form of certifications;
- 8 (iv) the evidence showing the truth of a
9 certification that must be retained and
10 how long the evidence must be retained;
- 11 (d) things that are required or authorised under this
12 Act to be endorsed on or included in documents
13 lodged, presented, filed or deposited with the
14 Authority, the Commissioner or the Registrar
15 (whether electronically or in paper form),
16 including (without limitation) requiring or
17 permitting something that otherwise would be
18 required or authorised to be endorsed on or
19 included in a document to be lodged or given
20 separately;
- 21 (e) consents, permissions or approvals that are
22 required or authorised under this Act or any
23 other written law to accompany or be endorsed
24 on, lodged with or given in relation to a
25 document lodged, presented, filed or deposited
26 with the Authority, the Commissioner or the
27 Registrar (whether electronically or in paper
28 form), including (without limitation) —
- 29 (i) requiring or permitting a consent,
30 permission or approval to be endorsed,
31 lodged or given by electronic means;
- 32 (ii) requiring or permitting a consent,
33 permission or approval that otherwise
34 would be required or authorised to
35 accompany or be endorsed on or lodged

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- 1 *Electronic Conveyancing Act 2013* section 46, the
2 regulation prevails to the extent of the conflict or
3 inconsistency.
- 4 (5) This section does not limit the matters that may be
5 prescribed under section 181.
- 6 **182B. Publication of requirements**
- 7 (1) In this section —
- 8 **requirement** means a requirement determined under
9 section 182A;
- 10 **working day** means a day other than a Saturday, a
11 Sunday or a public holiday throughout the State.
- 12 (2) The Registrar must ensure —
- 13 (a) that all current requirements are publicly
14 available free of charge; and
- 15 (b) that requirements, and any changes to
16 requirements, are made publicly available at
17 least 20 working days before the requirements
18 or, as the case requires, the changes to them
19 take effect.
- 20 (3) However, changes to requirements can take effect
21 within a shorter period (including immediately on
22 being made publicly available) if the Registrar or the
23 Commissioner is satisfied that the changes need to take
24 effect urgently.
- 25 (4) Requirements may be made publicly available in
26 accordance with this section in any manner the
27 Registrar considers appropriate, including (without
28 limitation) by all or any of the following means —
- 29 (a) by means of a website;

- 1 (b) by publication in a practice manual, customer
2 information bulletin or other similar publication
3 issued by the Authority.
4

5 **80. Section 188 amended**

6 Delete section 188(8) and insert:
7

- 8 (8) Despite any other provision of this Act, the Registrar
9 may destroy any document that is lodged, presented,
10 filed or deposited with the Authority or registered in its
11 office if —

12 (a) the Commissioner and the Registrar are of the
13 opinion that the retention of the document
14 serves no useful purpose; and

- 15 (b) the Minister approves the destruction of —
16 (i) the document; or
17 (ii) a class of documents in which that
18 document is included.

- 19 (9) The destruction of a cancelled duplicate certificate of
20 title does not require the Minister’s approval under
21 subsection (8).
22

23 **81. Section 189 amended**

24 In section 189(1) delete “appearing on the face of any
25 instrument” and insert:
26

27 in any instrument (whether in paper or electronic form)
28

1 (ii) in the course of any other action that the
2 Registrar is authorised under this Act or
3 any other Act to take with respect to the
4 document.

5 (4) This section does not apply to any document lodged
6 before the *Electronic Conveyancing Act 2013*
7 section 82 comes into operation.

8 **192B. Registrar may refuse lodgment for non-compliance**
9 **with certain requirements**

10 (1) In this section —

11 *lodge* includes deposit, present and file.

12 (2) The Registrar may refuse to accept a document for
13 lodgment if —

14 (a) the document does not comply with —

15 (i) the requirements of this Act or any
16 regulations made under this Act; or

17 (ii) a requirement determined under
18 section 182A; or

19 (iii) the requirements of the *Electronic*
20 *Conveyancing Act 2013* or any
21 participation rules;

22 or

23 (b) any requirement mentioned in paragraph (a)(i)
24 to (iii) that relates to the lodging of the
25 document is not complied with.

26 (3) This section does not limit or affect any other
27 obligation or power to refuse to accept a document for
28 lodgment.

- 1 **192C. Commissioner may refuse to take action if**
2 **requirements not complied with**
- 3 (1) The Commissioner may refuse to take any action that
4 the Commissioner is required or authorised to take
5 under this Act if —
- 6 (a) the taking of that action is dependent on
7 compliance with —
- 8 (i) a requirement of this Act or any
9 regulations made under this Act; or
10 (ii) a requirement determined under
11 section 182A; or
12 (iii) a requirement of the *Electronic*
13 *Conveyancing Act 2013* or any
14 participation rules;
- 15 and
- 16 (b) that requirement has not been complied with.
- 17 (2) For the purposes of subsection (1), taking an action
18 includes (without limiting subsection (1)) —
- 19 (a) accepting an application under this Act or any
20 regulations made under this Act; and
21 (b) giving a direction to the Registrar.
- 22 (3) Before refusing to take action in the circumstances set
23 out in subsection (1), the Commissioner may direct the
24 Registrar to give notice of the non-compliance to any
25 person specified by the Commissioner.
- 26 (4) A notice given under subsection (3) —
- 27 (a) must be served on the person to whom it is
28 directed; and
29 (b) must specify a period within which the
30 non-compliance must be rectified; and
31 (c) may specify how the non-compliance is to be
32 rectified.

- 1 (5) If a notice of non-compliance given under
2 subsection (3) relates to a document —
- 3 (a) the notice is to be taken to be a notice given
4 under section 192(1) by the Registrar in relation
5 to the document; and
- 6 (b) section 192 applies accordingly with all
7 necessary changes.
- 8 (6) This section does not limit or affect any other
9 obligation or power to refuse to take any action.
- 10 **192D. Registrar may refuse registration, noting or**
11 **recording for non-compliance with requirements**
- 12 (1) In this section —
13 *lodge* includes deposit, present and file.
- 14 (2) This section applies to any document that is lodged —
- 15 (a) for registration; or
- 16 (b) in relation to any land, title, estate or interest; or
- 17 (c) in connection with any application or dealing.
- 18 (3) The Registrar may refuse to register, note, file or
19 record a document to which this section applies if —
- 20 (a) the document does not comply with —
- 21 (i) the requirements of this Act or any
22 regulations made under this Act; or
- 23 (ii) a requirement determined under
24 section 182A; or
- 25 (iii) the requirements of the *Electronic*
26 *Conveyancing Act 2013* or any
27 participation rules;
- 28 or
- 29 (b) any requirement mentioned in paragraph (a)(i)
30 to (iii) that relates to the registration, noting,

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- 1 filing or recording of the document is not
2 complied with.
- 3 (4) For the purposes of subsection (3), noting a document
4 (the **first document**) includes (without limiting
5 subsection (3)) —
- 6 (a) noting another document to the effect that a
7 provision of the first document is incorporated
8 in the other document; and
- 9 (b) endorsing another document to an effect stated
10 in the first document; and
- 11 (c) removing a notification from, or modifying a
12 notification in, another document in a way
13 requested in the first document.
- 14 (5) This section does not limit or affect any other
15 obligation or power to refuse to register, note or record
16 a document.
- 17 **192E. Notice of non-compliance under section 192D**
- 18 (1) Before refusing to register, note, file or record a
19 document in the circumstances set out in
20 section 192D(3), the Registrar may give notice of the
21 non-compliance to the person who lodged the
22 document.
- 23 (2) A notice given under subsection (1) —
- 24 (a) must be served on the person who lodged the
25 document; and
- 26 (b) must specify a period within which the
27 non-compliance must be rectified; and
- 28 (c) may specify how the non-compliance is to be
29 rectified.

- 1 (3) If a notice of non-compliance is given under
2 subsection (2) in relation to a document —
3 (a) the notice is to be taken to be a notice given
4 under section 192(1) in relation to the
5 document; and
6 (b) section 192 applies accordingly with all
7 necessary changes.
8

9 **83. Section 192 amended**

10 In section 192(2)(b) delete “as a penalty”.

11 **84. Section 193 amended**

12 In section 193 after “by this Act” insert:

13
14 or the *Electronic Conveyancing Act 2013*
15

16 **85. Section 198 amended**

17 In section 198 delete “this Act.” and insert:

18
19 this Act or the *Electronic Conveyancing Act 2013*.
20

21 **86. Sections 214 to 214B replaced**

22 Delete sections 214 to 214B and insert:
23

24 **214. Offences**

- 25 (1) A person must not do any of the things set out in
26 subsection (3).

27 Penalty: imprisonment for 10 years and a fine of
28 \$100 000.

- 1 (iii) any erasure or alteration in any entry in
2 the Register;
- 3 (h) whether fraudulently or not, without lawful
4 excuse —
- 5 (i) defacing, erasing or altering any words,
6 memorandum or diagram in or on any
7 duplicate certificate or duplicate
8 instrument; or
- 9 (ii) destroying any duplicate certificate or
10 duplicate instrument;
- 11 (i) misleading or deceiving any person authorised
12 to require an explanation or information in
13 respect of —
- 14 (i) any land, or the title to any land, under
15 the operation of this Act; or
- 16 (ii) any land, or the title to any land, that is
17 the subject of an application to bring it
18 under the operation of this Act; or
- 19 (iii) any land or the title to any land in
20 respect of which any dealing or
21 transmission is proposed to be
22 registered;
- 23 (j) without reasonable excuse, neglecting to lodge
24 with the Registrar a duplicate certificate of title
25 or Crown lease when required to do so under
26 this Act.

27 **214A. Effect of fraud**

28 Any certificate of title, instrument, entry, erasure or
29 alteration procured or made by fraud in any of the
30 circumstances set out in section 214 is void as against
31 all persons who are party to that fraud, whether or not
32 anyone is convicted of that fraud.
33

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1 **87. Sections 232A and 232B inserted**

2 After section 231 insert:

3

4 **232A. Effect of dealing with duplicate certificate of title in**
5 **accordance with requirements as alternative to**
6 **production**

7 (1) In this section —

8 *lodge* includes deposit, present and file;

9 *produce* includes present, deliver up, bring in and
10 provide.

11 (2) This section applies if —

12 (a) a document is lodged —

13 (i) for registration; or

14 (ii) in relation to any land, title, estate or
15 interest; or

16 (iii) in connection with any application or
17 dealing;

18 and

19 (b) a provision of this Act requires a duplicate
20 certificate of title to be produced in connection
21 with the lodging of that document; and

22 (c) that duplicate certificate of title is not produced
23 but is dealt with in another way in accordance
24 with —

25 (i) regulations made under this Act; or

26 (ii) requirements determined under
27 section 182A.

28 (3) If this section applies —

29 (a) for the purposes of this Act and any other
30 written law, dealing with the duplicate
31 certificate of title as mentioned in

- 1 subsection (2)(c) is to be taken to be
2 compliance with the requirement to produce the
3 duplicate certificate of title in connection with
4 the lodged document; and
- 5 (b) the Registrar or, as the case requires, the
6 Commissioner or the Authority may take any
7 action that they are required or authorised to
8 take under this Act or any other written law as
9 if the duplicate certificate of title had been
10 produced, in accordance with that requirement,
11 in connection with the lodged document.

12 **232B. Effect of using alternative means to provide**
13 **consent, permission or approval**

- 14 (1) This section applies if —
- 15 (a) a consent, permission or approval is required or
16 authorised under this Act or any other written
17 law to accompany or be endorsed on, lodged
18 with or given in relation to a document lodged,
19 presented, filed or deposited with the Authority,
20 the Commissioner or the Registrar; and
- 21 (b) the consent, permission or approval is not
22 provided in the way required or authorised
23 under this Act or the other written law but is
24 provided in another way in accordance with —
- 25 (i) regulations made under this Act; or
26 (ii) requirements determined under
27 section 182A.
- 28 (2) If this section applies —
- 29 (a) for the purposes of this Act and any other
30 written law, providing the consent, permission
31 or approval as mentioned in subsection (1)(b) is
32 to be taken to be authorised by this Act or, as
33 the case requires, the other written law; and

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- 1 (b) for the purposes of this Act and any other
2 written law, the consent, permission or
3 approval provided as mentioned in
4 subsection (1)(b) —
- 5 (i) is to be taken to have been provided in
6 the way required or authorised under
7 this Act or, as the case requires, the
8 other written law; and
- 9 (ii) has the same effect as if it had been
10 provided in the way required or
11 authorised under this Act or, as the case
12 requires, the other written law;
- 13 and
- 14 (c) the Registrar or, as the case requires, the
15 Commissioner or the Authority may take any
16 action that they are required or authorised to
17 take under this Act or any other written law as
18 if the consent, permission or approval had been
19 provided in the way required under this Act or
20 the other written law.
- 21

22 **88. Section 234 amended**

23 In section 234(1) delete “the said” and insert:

24

25 this

26

27 **89. Sections 238A and 238B inserted**

28 After section 238 insert:

29

30 **238A. Registrar’s copy to be definitive**

31 (1) In this section —

32 *lodge* includes deposit, present and file.

- 1 (2) If a document is lodged electronically under the
2 *Electronic Conveyancing Act 2013* section 7(1), the
3 Registrar may produce, as often as the Registrar thinks
4 necessary for any purpose, a record, copy, print-out or
5 image of the document in any medium determined by
6 the Registrar.
- 7 (3) If the Registrar produces, under subsection (2), a
8 record, copy, print-out or image of a document, the
9 record, copy, print-out or image is to be taken to be the
10 definitive form of the document on and from the day
11 on which it was lodged.
- 12 (4) The Registrar may produce, as often as the Registrar
13 thinks necessary for any purpose and in any medium
14 determined by the Registrar, a record, copy, print-out
15 or image of a document that —
- 16 (a) is lodged electronically under the *Electronic*
17 *Conveyancing Act 2013* section 7(1); and
18 (b) is registered, noted or recorded in the Register.
- 19 (5) If the Registrar produces, under subsection (4), a
20 record, copy, print-out or image of a document, the
21 record, copy, print-out or image is to be taken to be the
22 definitive form of the document as registered, noted or
23 recorded in the Register at the time the record, copy,
24 print-out or image is produced.

25 **238B. Resubmission of document lodged electronically if**
26 **data capture defective**

- 27 (1) This section applies if —
- 28 (a) a document is lodged electronically under the
29 *Electronic Conveyancing Act 2013* section 7(1);
30 and
31 (b) for any reason it is impracticable to properly
32 capture the data in the document.

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- 1 (2) If this section applies —
- 2 (a) the Registrar may refuse to complete or to
- 3 proceed with the registration of the document
- 4 or, as the case requires, to make any entry or do
- 5 any other act in relation to the document; and
- 6 (b) the Registrar must —
- 7 (i) notify the refusal to the subscriber
- 8 lodging the document; and
- 9 (ii) request the subscriber to resubmit the
- 10 document.
- 11 (3) If subsection (2) applies —
- 12 (a) the priority of the document is not affected as
- 13 long as it is resubmitted within 2 months after
- 14 the date on which it was lodged or any longer
- 15 period the Registrar allows; and
- 16 (b) if the document is not resubmitted in
- 17 accordance with this section within the period
- 18 applicable under paragraph (a), it is to be taken
- 19 never to have been lodged.
- 20 (4) If subsection (3)(b) applies to the document, then —
- 21 (a) if the impracticability of properly capturing the
- 22 data in the document was not due, in whole or
- 23 in part, to any fault on the part of the subscriber
- 24 that lodged the document or any person for
- 25 whom the subscriber was acting at the time of
- 26 lodging the document, or the ELNO that
- 27 operates the ELN by means of which the
- 28 document was lodged, all fees paid on the
- 29 lodging of the document must be refunded; and
- 30 (b) if paragraph (a) does not apply —
- 31 (i) the Registrar must retain from the fees
- 32 paid on the lodging of the document
- 33 (the *fees*) the amount prescribed by the

- 1 regulations (the *prescribed amount*);
2 and
3 (ii) the prescribed amount is forfeited and
4 must be dealt with under section 190;
5 and
6 (iii) the amount (if any) that is the difference
7 between the fees and the prescribed
8 amount must be returned to the
9 subscriber that lodged the document
10 when the document is withdrawn from
11 lodgment.
- 12 (5) This section is in addition to the powers conferred by
13 section 192.
14

15 **90. Section 239 amended**

16 After section 239(3) insert:
17

- 18 (4) Subsection (5) applies if —
19 (a) 2 or more counterpart documents are lodged
20 electronically under the *Electronic*
21 *Conveyancing Act 2013* section 7(1); and
22 (b) those counterpart documents are consolidated
23 electronically into one document, with or
24 without the addition of further material.
- 25 (5) If this subsection applies —
26 (a) the consolidated document, but not those
27 counterpart documents, is available for
28 inspection in accordance with subsection (1);
29 and
30 (b) a copy of the consolidated document, but not of
31 the counterpart documents, may be produced in
32 accordance with subsection (2); and

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- 1 (c) a copy or print-out of the consolidated
2 document, but not of the counterpart
3 documents, is available for purchase in
4 accordance with subsection (3); and
- 5 (d) section 239B applies as if the consolidated
6 document, but not the counterpart documents,
7 were a document referred to in subsection (1).
8

9 **91. Section 239B amended**

10 In section 239B(1)(a) and (b) delete “and sealed”.

11 **92. Section 240 amended**

12 (1) In section 240(1):

13 (a) in paragraph (c) delete “number.” and insert:
14
15 number; or

16
17 (b) after paragraph (c) insert:
18

19 (d) by sending the notice by electronic means in
20 accordance with the regulations.
21

22 (2) In section 240(3):

23 (a) in paragraph (b)(ii) delete “transmission.” and insert:
24
25 transmission;

26
27 (b) after paragraph (b) insert:
28

29 and

30 (c) service by electronic means is deemed to be
31 effected as prescribed in the regulations.
32

1 **93. Section 240A replaced**

2 Delete section 240A and insert:

3

4 **240A. Notification of change of address, fax number or**
5 **way of receiving notices electronically**

6 (1) In this section —

7 *notification details* means —

8 (a) an address for service; or

9 (b) a facsimile number for service; or

10 (c) a way of receiving notices electronically.

11 (2) A person may apply to the Registrar to —

12 (a) change the record of the person's notification
13 details that have been specified in an approved
14 form for the purposes of section 240 or in a
15 caveat; or

16 (b) notify the Registrar of any change to the
17 notification details recorded in the Register in
18 respect of the person.

19 (3) An application must be in an approved form and
20 accompanied by the prescribed fee.

21 (4) On receiving an application, the Registrar, if satisfied
22 that it would be in order to do so, must alter the
23 notification details accordingly.
24

1 **94. Part XV inserted**

2 After section 243 insert:

3

4 **Part XV — Transitional provisions for**
5 ***Electronic Conveyancing Act 2013***

6 **244. Term used: amending Act**

7 In this Part —

8 ***amending Act*** means the *Electronic Conveyancing*
9 *Act 2013*.

10 **245. Transitional provision for section 52(2)**

11 An instrument referred to in section 52(2) (as replaced
12 by the amending Act) includes an instrument presented
13 for registration before the day on which the amending
14 Act section 67 comes into operation.

15 **246. Transitional provision for section 105(4)**

16 Section 105(4) (as inserted by the amending Act)
17 applies only to and in relation to instruments registered
18 after the amending Act section 73 comes into
19 operation.

20 **247. Transitional provision for section 182A**
21 **(requirements)**

22 (1) This section applies to any statement that —

- 23 (a) is included in any practice manual, customer
24 information bulletin or other similar publication
25 issued by the Authority before the amending
26 Act section 79 comes into operation; and
27 (b) relates to any matter in relation to which a
28 requirement can be determined under
29 section 182A(1); and

- 1 (c) specifies or has the effect of specifying a
2 requirement in relation to one of those matters;
3 and
4 (d) has not been superseded or overridden by any
5 other statement included in any publication of
6 the kind mentioned in paragraph (a) and issued
7 before the amending Act section 79 comes into
8 operation.
- 9 (2) A statement to which this section applies is to be taken
10 to be a requirement determined under section 182A in
11 the same terms as the original statement, and to
12 continue in force under and subject to this Act.
13

- 14 **95. Twenty-fifth Schedule deleted**
15 Delete the Twenty-fifth Schedule.

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Schedule 1 — Miscellaneous provisions relating to interpretation

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Part 1 — Preliminary

1. Displacement of Schedule by contrary intention

The application of this Schedule may be displaced, wholly or partly, by a contrary intention appearing in this Act.

Part 2 — General

2. Act to be construed not to exceed legislative power of Legislature

(1) This Act is to be construed as operating to the full extent of, but so as not to exceed, the legislative power of the Legislature of this jurisdiction.

(2) If a provision of this Act, or the application of a provision of this Act to a person, subject matter or circumstance, would, but for this clause, be construed as being in excess of the legislative power of the Legislature of this jurisdiction —

(a) it is a valid provision to the extent to which it is not in excess of the power; and

(b) the remainder of this Act, and the application of the provision to other persons, subject matters or circumstances, is not affected.

(3) This clause applies to this Act in addition to, and without limiting the effect of, any provision of this Act.

3. Every section to be a substantive enactment

Every section of this Act has effect as a substantive enactment without introductory words.

4. Material that is, and is not, part of this Act

(1) The heading to a Part, Division or Subdivision into which this Act is divided is part of this Act.

- 1 (2) A Schedule to this Act is part of this Act.
2 (3) Punctuation in this Act is part of this Act.
3 (4) A heading to a section or subsection of this Act does not form part of
4 this Act.
5 (5) Notes included in this Act (including footnotes and endnotes) do not
6 form part of this Act.

7 **5. References to particular Acts and to enactments**

8 In this Act —

- 9 (a) an Act of this jurisdiction may be cited —
10 (i) by its short title; or
11 (ii) by reference to the year in which it was passed and its
12 number;
13 and
14 (b) a Commonwealth Act may be cited —
15 (i) by its short title; or
16 (ii) in another way sufficient in a Commonwealth Act for
17 the citation of such an Act,
18 together with a reference to the Commonwealth; and
19 (c) an Act of another jurisdiction may be cited —
20 (i) by its short title; or
21 (ii) in another way sufficient in an Act of the jurisdiction
22 for the citation of such an Act,
23 together with a reference to the jurisdiction.

24 **6. References taken to be included in Act citation etc.**

- 25 (1) A reference in this Act to an Act includes a reference to —
26 (a) the Act as originally enacted, and as amended from time to
27 time since its original enactment; and
28 (b) if the Act has been repealed and re-enacted (with or without
29 modification) since the enactment of the reference, the Act as
30 re-enacted, and as amended from time to time since its
31 re-enactment.

- 1 (2) A reference in this Act to a provision of this Act or of an Act includes
2 a reference to —
- 3 (a) the provision as originally enacted, and as amended from
4 time to time since its original enactment; and
- 5 (b) if the provision has been omitted and re-enacted (with or
6 without modification) since the enactment of the reference,
7 the provision as re-enacted, and as amended from time to
8 time since its re-enactment.
- 9 (3) Subclauses (1) and (2) apply to a reference in this Act to a law of the
10 Commonwealth or another jurisdiction as they apply to a reference in
11 this Act to an Act and to a provision of an Act.
- 12 **7. Interpretation best achieving Act's purpose**
- 13 (1) In the interpretation of a provision of this Act, the interpretation that
14 will best achieve the purpose or object of this Act is to be preferred to
15 any other interpretation.
- 16 (2) Subclause (1) applies whether or not the purpose is expressly stated in
17 this Act.
- 18 **8. Use of extrinsic material in interpretation**
- 19 (1) In this clause —
- 20 *extrinsic material* means relevant material not forming part of this
21 Act, including, for example —
- 22 (a) material that is set out in the document containing the text of
23 this Act as printed by the Government Printer; and
- 24 (b) a relevant report of a Royal Commission, Law Reform
25 Commission, commission or committee of inquiry, or a
26 similar body, that was laid before the Parliament of this
27 jurisdiction before the provision concerned was enacted; and
- 28 (c) a relevant report of a committee of the Parliament of this
29 jurisdiction that was made to the Parliament before the
30 provision was enacted; and
- 31 (d) a treaty or other international agreement that is mentioned in
32 this Act; and
- 33 (e) an explanatory note or memorandum relating to the Bill that
34 contained the provision, or any relevant document, that was

- 1 laid before, or given to the members of, the Parliament of this
2 jurisdiction by the member bringing in the Bill before the
3 provision was enacted; and
- 4 (f) the speech made to the Parliament of this jurisdiction by the
5 member in moving a motion that the Bill be read a second
6 time; and
- 7 (g) material in the Votes and Proceedings of the Parliament of
8 this jurisdiction or in any official record of debates in the
9 Parliament of this jurisdiction; and
- 10 (h) a document that is declared by this Act to be a relevant
11 document for the purposes of this clause;

12 **ordinary meaning** means the ordinary meaning conveyed by a
13 provision having regard to its context in this Act and to the purpose of
14 this Act.

- 15 (2) Subject to subclause (3), in the interpretation of a provision of this
16 Act, consideration may be given to extrinsic material capable of
17 assisting in the interpretation —
- 18 (a) if the provision is ambiguous or obscure, to provide an
19 interpretation of it; or
- 20 (b) if the ordinary meaning of the provision leads to a result that
21 is manifestly absurd or is unreasonable, to provide an
22 interpretation that avoids such a result; or
- 23 (c) in any other case, to confirm the interpretation conveyed by
24 the ordinary meaning of the provision.
- 25 (3) In determining whether consideration should be given to extrinsic
26 material, and in determining the weight to be given to extrinsic
27 material, regard is to be had to —
- 28 (a) the desirability of a provision being interpreted as having its
29 ordinary meaning; and
- 30 (b) the undesirability of prolonging proceedings without
31 compensating advantage; and
- 32 (c) other relevant matters.

1 **9. Effect of change of drafting practice**

2 If —

3 (a) a provision of this Act expresses an idea in particular words;
4 and

5 (b) a provision enacted later appears to express the same idea in
6 different words for the purpose of implementing a different
7 legislative drafting practice, including, for example —

8 (i) the use of a clearer or simpler style; or

9 (ii) the use of gender neutral language,

10 the ideas must not be taken to be different merely because different
11 words are used.

12 **10. Use of examples**

13 If this Act includes an example of the operation of a provision —

14 (a) the example is not exhaustive; and

15 (b) the example does not limit, but may extend, the meaning of
16 the provision; and

17 (c) the example and the provision are to be read in the context of
18 each other and the other provisions of this Act, but, if the
19 example and the provision so read are inconsistent, the
20 provision prevails.

21 **11. Compliance with forms**

22 (1) If a form is prescribed or approved by or for the purpose of this Act,
23 strict compliance with the form is not necessary and substantial
24 compliance is sufficient.

25 (2) If a form prescribed or approved by or for the purpose of this Act
26 requires —

27 (a) the form to be completed in a specified way; or

28 (b) specified information or documents to be included in,
29 attached to or given with the form; or

30 (c) the form, or information or documents included in, attached
31 to or given with the form, to be verified in a specified way,

32 the form is not properly completed unless the requirement is complied
33 with.

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Schedule 1 Miscellaneous provisions relating to interpretation

Part 3 Terms and references

cl. 12

- 1 **country** includes —
- 2 (a) a federation; or
- 3 (b) a state, province or other part of a federation;
- 4 **date of assent**, in relation to an Act, means the day on which the Act
- 5 receives the Royal Assent;
- 6 **definition** means a provision of this Act (however expressed) that —
- 7 (a) gives a meaning to a word or expression; or
- 8 (b) limits or extends the meaning of a word or expression;
- 9 **document** means any record of information however recorded, and
- 10 includes —
- 11 (a) anything on which there is writing; or
- 12 (b) anything on which there are marks, figures, symbols or
- 13 perforations having a meaning for persons qualified to
- 14 interpret them; or
- 15 (c) anything from which sounds, images or writings can be
- 16 reproduced with or without the aid of anything else; or
- 17 (d) a map, plan, drawing or photograph; or
- 18 (e) any record of information that exists in a digital form and is
- 19 capable of being reproduced, transmitted, stored and
- 20 duplicated by electronic means;
- 21 **expire** includes lapse or otherwise cease to have effect;
- 22 **external Territory** means a Territory, other than an internal Territory,
- 23 for the government of which as a Territory provision is made by a
- 24 Commonwealth Act;
- 25 **fail** includes refuse;
- 26 **financial year** means a period of 12 months beginning on 1 July;
- 27 **foreign country** means a country (whether or not an independent
- 28 sovereign State) outside Australia and the external Territories;
- 29 **function** includes a power, authority or duty;
- 30 **Gazette** means the Government Gazette of this jurisdiction;
- 31 **gazetted** means published in the *Gazette*;
- 32 **Gazette notice** means notice published in the *Gazette*;

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Part 3 Terms and references

cl. 12

- 1 **provision**, in relation to this Act or an Act, means words or other
2 matter that form or forms part of this Act or the Act, and includes —
- 3 (a) a Chapter, Part, Division, Subdivision, section, subsection,
4 paragraph, subparagraph, sub-subparagraph or Schedule of or
5 to this Act or the Act; or
- 6 (b) a section, clause, subclause, item, column, table or form of or
7 in a Schedule to this Act or the Act; or
- 8 (c) the long title and any preamble to this Act or the Act;
- 9 **record** includes information stored or recorded by means of a
10 computer;
- 11 **repeal** includes —
- 12 (a) revoke or rescind; or
- 13 (b) repeal by implication; or
- 14 (c) abrogate or limit the effect of this Act or the instrument
15 concerned; or
- 16 (d) exclude from, or include in, the application of this Act or the
17 instrument concerned any person, subject matter or
18 circumstance;
- 19 **sign** includes the affixing of a seal or the making of a mark;
- 20 **statutory declaration** means a declaration made under an Act, or
21 under a Commonwealth Act or an Act of another jurisdiction, that
22 authorises a declaration to be made otherwise than in the course of a
23 judicial proceeding;
- 24 **statutory instrument** means an instrument made or in force under or
25 for the purposes of this Act, and includes an instrument made or in
26 force under any such instrument;
- 27 **swear**, in relation to a person allowed by law to affirm, declare or
28 promise, includes affirm, declare or promise;
- 29 **word** includes any symbol, figure or drawing;
- 30 **writing** includes any mode of representing or reproducing words in a
31 visible form.
- 32 (2) In a statutory instrument —
- 33 **the Act** means this Act.

1 **13. Provisions relating to defined terms and gender and number**

2 (1) If this Act defines a word or expression, other parts of speech and
3 grammatical forms of the word or expression have corresponding
4 meanings.

5 (2) Definitions in or applicable to this Act apply except so far as the
6 context or subject matter otherwise indicates or requires.

7 (3) In this Act, words indicating a gender include each other gender.

8 (4) In this Act —
9 (a) words in the singular include the plural; and
10 (b) words in the plural include the singular.

11 **14. Meaning of “may” and “must” etc**

12 (1) In this Act, the word *may*, or a similar word or expression, used in
13 relation to a power indicates that the power may be exercised or not
14 exercised, at discretion.

15 (2) In this Act, the word *must*, or a similar word or expression, used in
16 relation to a power indicates that the power is required to be
17 exercised.

18 (3) This clause has effect despite any rule of construction to the contrary.

19 **15. Words and expressions used in statutory instruments**

20 (1) Words and expressions used in a statutory instrument have the same
21 meanings as they have, from time to time, in this Act, or relevant
22 provisions of this Act, under or for the purposes of which the
23 instrument is made or in force.

24 (2) This clause has effect in relation to an instrument except so far as the
25 contrary intention appears in the instrument.

26 **16. Effect of express references to bodies corporate and individuals**

27 In this Act, a reference to a person generally (whether the expression
28 “person”, “party”, “someone”, “anyone”, “no-one”, “one”, “another”
29 or “whoever” or another expression is used) —

30 (a) does not exclude a reference to a body corporate or an
31 individual merely because elsewhere in this Act there is

1 particular reference to a body corporate (however expressed);
2 and

3 (b) does not exclude a reference to a body corporate or an
4 individual merely because elsewhere in this Act there is
5 particular reference to an individual (however expressed).

6 **17. Production of records kept in computers etc.**

7 If a person who keeps a record of information by means of a
8 mechanical, electronic or other device is required by or under this
9 Act —

- 10 (a) to produce the information or a document containing the
11 information to a court, tribunal or person; or
12 (b) to make a document containing the information available for
13 inspection by a court, tribunal or person,

14 then, unless the court, tribunal or person otherwise directs —

- 15 (c) the requirement obliges the person to produce or make
16 available for inspection, as the case may be, a document that
17 reproduces the information in a form capable of being
18 understood by the court, tribunal or person; and
19 (d) the production to the court, tribunal or person of the
20 document in that form complies with the requirement.

21 **18. References to this jurisdiction to be implied**

22 In this Act —

- 23 (a) a reference to an officer, office or statutory body is a
24 reference to such an officer, office or statutory body in and
25 for this jurisdiction; and
26 (b) a reference to a locality or other matter or thing is a reference
27 to such a locality or other matter or thing in and of this
28 jurisdiction.

29 **19. References to officers and holders of offices**

30 In this Act, a reference to a particular officer, or to the holder of a
31 particular office, includes a reference to the person for the time being
32 occupying or acting in the office concerned.

1 **21. Reference to provisions of this Act or an Act is inclusive**

2 In this Act, a reference to a portion of this Act or an Act includes —

- 3 (a) a reference to the Chapter, Part, Division, Subdivision,
4 section, subsection or other provision of this Act or the Act
5 referred to that forms the beginning of the portion; and
6 (b) a reference to the Chapter, Part, Division, Subdivision,
7 section, subsection or other provision of this Act or the Act
8 referred to that forms the end of the portion.

9 **Example:** A reference to “sections 5 to 9” includes both section 5 and
10 section 9. It is not necessary to refer to “sections 5 to 9 (both
11 inclusive)” to ensure that the reference is given an inclusive
12 interpretation.

13 **Part 4 — Functions and powers**

14 **22. Performance of statutory functions**

- 15 (1) If this Act confers a function or power on a person or body, the
16 function may be performed, or the power may be exercised, from time
17 to time as occasion requires.
- 18 (2) If this Act confers a function or power on a particular officer or the
19 holder of a particular office, the function may be performed, or the
20 power may be exercised, by the person for the time being occupying
21 or acting in the office concerned.
- 22 (3) If this Act confers a function or power on a body (whether or not
23 incorporated), the performance of the function, or the exercise of the
24 power, is not affected merely because of vacancies in the membership
25 of the body.

26 **23. Power to make instrument or decision includes power to amend
27 or repeal**

28 If this Act authorises or requires the making of an instrument or
29 decision —

- 30 (a) the power includes power to amend or repeal the instrument
31 or decision; and

- 1 (5) A statutory instrument may authorise a matter or thing to be from time
2 to time determined, applied or regulated by a specified person or
3 body.
- 4 (6) If this Act authorises or requires a matter to be regulated by statutory
5 instrument, the power may be exercised by prohibiting by statutory
6 instrument the matter or any aspect of the matter.
- 7 (7) If this Act authorises or requires provision to be made with respect to
8 a matter by statutory instrument, a statutory instrument made under
9 this Act may make provision with respect to a particular aspect of the
10 matter despite the fact that provision is made by this Act in relation to
11 another aspect of the matter or in relation to another matter.
- 12 (8) A statutory instrument may provide for the review of, or a right of
13 appeal against, a decision made under the statutory instrument, or this
14 Act, and may, for that purpose, confer jurisdiction on any court,
15 tribunal, person or body.
- 16 (9) A statutory instrument may require a form prescribed by or under the
17 statutory instrument, or information or documents included in,
18 attached to or given with the form, to be verified by statutory
19 declaration.

20 **25. Presumption of validity and power to make**

- 21 (1) All conditions and preliminary steps required for the making of a
22 statutory instrument are presumed to have been satisfied and
23 performed in the absence of evidence to the contrary.
- 24 (2) A statutory instrument is taken to be made under all powers under
25 which it may be made, even though it purports to be made under this
26 Act or a particular provision of this Act.

27 **26. Appointments may be made by name or office**

- 28 (1) If this Act authorises or requires a person or body —
29 (a) to appoint a person to an office; or
30 (b) to appoint a person or body to exercise a power; or
31 (c) to appoint a person or body to do another thing,
32 the person or body may make the appointment by —
33 (d) appointing a person or body by name; or

- 1 (e) appointing a particular officer, or the holder of a particular
2 office, by reference to the title of the office concerned.
- 3 (2) An appointment of a particular officer, or the holder of a particular
4 office, is taken to be the appointment of the person for the time being
5 occupying or acting in the office concerned.
- 6 **27. Acting appointments**
- 7 (1) If this Act authorises a person or body to appoint a person to act in an
8 office, the person or body may, in accordance with this Act,
9 appoint —
- 10 (a) a person by name; or
11 (b) a particular officer, or the holder of a particular office, by
12 reference to the title of the office concerned,
- 13 to act in the office.
- 14 (2) The appointment may be expressed to have effect only in the
15 circumstances specified in the instrument of appointment.
- 16 (3) The appointer may —
- 17 (a) determine the terms and conditions of the appointment,
18 including remuneration and allowances; and
19 (b) terminate the appointment at any time.
- 20 (4) The appointment, or the termination of the appointment, must be in,
21 or evidenced by, writing signed by the appointer.
- 22 (5) The appointee must not act for more than one year during a vacancy
23 in the office.
- 24 (6) If the appointee is acting in the office otherwise than because of a
25 vacancy in the office and the office becomes vacant, then, subject to
26 subclause (2), the appointee may continue to act until —
- 27 (a) the appointer otherwise directs; or
28 (b) the vacancy is filled; or
29 (c) the end of a year from the day of the vacancy,
30 whichever happens first.

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Part 4 Functions and powers

cl. 28

- 1 (7) The appointment ceases to have effect if the appointee resigns by
2 writing signed and delivered to the appointer.
- 3 (8) While the appointee is acting in the office —
4 (a) the appointee has all the powers and functions of the holder
5 of the office; and
6 (b) this Act and other laws apply to the appointee as if the
7 appointee were the holder of the office.
- 8 (9) Anything done by or in relation to a person purporting to act in the
9 office is not invalid merely because —
10 (a) the occasion for the appointment had not arisen; or
11 (b) the appointment had ceased to have effect; or
12 (c) the occasion for the person to act had not arisen or had
13 ceased.
- 14 (10) If this Act authorises the appointer to appoint a person to act during a
15 vacancy in the office, an appointment to act in the office may be made
16 by the appointer whether or not an appointment has previously been
17 made to the office.

18 **28. Powers of appointment imply certain incidental powers**

- 19 (1) If this Act authorises or requires a person or body to appoint a person
20 to an office —
21 (a) the power may be exercised from time to time as occasion
22 requires; and
23 (b) the power includes —
24 (i) power to remove or suspend, at any time, a person
25 appointed to the office; and
26 (ii) power to appoint another person to act in the office if
27 a person appointed to the office is removed or
28 suspended; and
29 (iii) power to reinstate or reappoint a person removed or
30 suspended; and
31 (iv) power to appoint a person to act in the office if it is
32 vacant (whether or not the office has ever been
33 filled); and

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- 1 (6) A delegated function that purports to have been exercised by the
2 delegate is taken to have been properly exercised by the delegate
3 unless the contrary is proved.
- 4 (7) A delegated function that is properly exercised by the delegate is
5 taken to have been exercised by the delegator.
- 6 (8) If, when exercised by the delegator, a function is dependent on the
7 delegator's opinion, belief or state of mind, then, when exercised by
8 the delegate, the function is dependent on the delegate's opinion,
9 belief or state of mind.
- 10 (9) If —
- 11 (a) the delegator is a specified officer or the holder of a specified
12 office; and
- 13 (b) the person who was the specified officer or holder of the
14 specified office when the delegation was made ceases to be
15 the holder of the office,
- 16 then —
- 17 (c) the delegation continues in force; and
- 18 (d) the person for the time being occupying or acting in the office
19 concerned is taken to be the delegator for the purposes of this
20 clause.
- 21 (10) If —
- 22 (a) the delegator is a body; and
- 23 (b) there is a change in the membership of the body,
- 24 then —
- 25 (c) the delegation continues in force; and
- 26 (d) the body as constituted for the time being is taken to be the
27 delegator for the purposes of this clause.
- 28 (11) If a function is delegated to a specified officer or the holder of a
29 specified office —
- 30 (a) the delegation does not cease to have effect merely because
31 the person who was the specified officer or the holder of the
32 specified office when the function was delegated ceases to be
33 the officer or the holder of the office; and

- 1 (b) the function may be exercised by the person for the time
2 being occupying or acting in the office concerned.
- 3 (12) A function that has been delegated may, despite the delegation, be
4 exercised by the delegator.
- 5 (13) The delegation of a function does not relieve the delegator of the
6 delegator's obligation to ensure that the function is properly
7 exercised.
- 8 (14) Subject to subclause (15), this clause applies to a subdelegation of a
9 function in the same way as it applies to a delegation of a function.
- 10 (15) If this Act authorises the delegation of a function, the function may be
11 subdelegated only if the Act expressly authorises the function to be
12 subdelegated.

13 **30. Exercise of powers before commencement**

- 14 (1) If a provision of this Act (the *empowering provision*) that has not
15 commenced would, had it commenced, confer a power —
- 16 (a) to make an appointment; or
17 (b) to make a statutory instrument of a legislative or
18 administrative character; or
19 (c) to do another thing,
- 20 then —
- 21 (d) the power may be exercised; and
22 (e) anything may be done for the purpose of enabling the
23 exercise of the power or of bringing the appointment,
24 instrument or other thing into effect,
- 25 before the empowering provision commences.
- 26 (2) If a provision of an Act (the *empowering provision*) that does not
27 commence on its enactment would, had it commenced, amend a
28 provision of this Act so that it would confer a power —
- 29 (a) to make an appointment; or
30 (b) to make a statutory instrument of a legislative or
31 administrative character; or

- 1 (c) to do another thing,
2 then —
3 (d) the power may be exercised; and
4 (e) anything may be done for the purpose of enabling the
5 exercise of the power or of bringing the appointment,
6 instrument or other thing into effect,
7 before the empowering provision commences.
- 8 (3) If —
9 (a) this Act has commenced and confers a power to make a
10 statutory instrument (the *basic statutory instrument-making*
11 *power*); and
12 (b) a provision of an Act that does not commence on its
13 enactment would, had it commenced, amend this Act so as to
14 confer additional power to make a statutory instrument (the
15 *additional instrument-making power*),
16 then —
17 (c) the basic instrument-making power and the additional
18 instrument-making power may be exercised by making a
19 single instrument; and
20 (d) any provision of the instrument that required an exercise of
21 the additional instrument making power is to be treated as
22 made under subclause (2).
- 23 (4) If an instrument, or a provision of an instrument, is made under
24 subclause (1) or (2) that is necessary for the purpose of —
25 (a) enabling the exercise of a power mentioned in the subclause;
26 or
27 (b) bringing an appointment, instrument or other thing made or
28 done under such a power into effect,
29 the instrument or provision takes effect —
30 (c) on the making of the instrument; or
31 (d) on such later day (if any) on which, or at such later time (if
32 any) at which, the instrument or provision is expressed to take
33 effect.

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Part 6 Effect of repeal, amendment or expiration

cl. 32

- 1 (b) in any other case, by including the day on which the purpose
2 is to be fulfilled.
- 3 (3) If the last day of a period provided or allowed by this Act for doing
4 anything is not a business day in the place in which the thing is to be
5 or may be done, the thing may be done on the next business day in the
6 place.
- 7 (4) If the last day of a period provided or allowed by this Act for the
8 filing or registration of a document is a day on which the office is
9 closed where the filing or registration is to be or may be done, the
10 document may be filed or registered at the office on the next day that
11 the office is open.
- 12 (5) If no time is provided or allowed for doing anything, the thing is to be
13 done as soon as possible, and as often as the prescribed occasion
14 happens.
- 15 (6) If, in this Act, there is a reference to time, the reference is, in relation
16 to the doing of anything in a jurisdiction, a reference to the legal time
17 in the jurisdiction.
- 18 (7) For the purposes of this Act, a person attains an age in years at the
19 beginning of the person's birthday for the age.

20 **Part 6 — Effect of repeal, amendment or expiration**

21 **32. Time of Act ceasing to have effect**

22 If a provision of this Act is expressed —

- 23 (a) to expire on a specified day; or
24 (b) to remain or continue in force, or otherwise have effect, until
25 a specified day,

26 the provision has effect until the last moment of the specified day.

27 **33. Repealed Act provisions not revived**

28 If a provision of this Act is repealed or amended by an Act, or a
29 provision of an Act, the provision is not revived merely because the
30 Act or the provision of the Act —

- 31 (a) is later repealed or amended; or

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Part 7 Instruments under Act

cl. 37

- 1 (2) The fact that a provision of this Schedule refers to this Act and not
2 also to a statutory instrument does not, by itself, indicate that the
3 provision is intended to apply only to this Act.

4

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Defined terms

*[This is a list of terms defined and the provisions where they are defined.
The list is not part of the law.]*

Defined term	Provision(s)
Act	Sch. 1, cl. 12(1)
additional instrument-making power	Sch. 1, cl. 30(3)
adult	Sch. 1, cl. 12(1)
affidavit.....	Sch. 1, cl. 12(1)
amend.....	Sch. 1, cl. 12(1)
appellable decision.....	28(1)
appoint	Sch. 1, cl. 12(1)
appropriate authority	35(1)
ARNECC	3(1)
associated financial transaction.....	3(1)
Australia.....	Sch. 1, cl. 12(1)
authorised person	45(1)
Authority.....	3(1)
basic statutory instrument-making power	Sch. 1, cl. 30(3)
business day	43(1), Sch. 1, cl. 12(1)
calendar month.....	Sch. 1, cl. 12(1)
calendar year	Sch. 1, cl. 12(1)
client authorisation.....	3(1)
commencement	Sch. 1, cl. 12(1)
Commissioner	3(1)
Commonwealth.....	Sch. 1, cl. 12(1)
compliance examination	3(1), 33(1)
confer	Sch. 1, cl. 12(1)
contravene.....	Sch. 1, cl. 12(1)
conveyancing transaction.....	3(1)
corresponding law.....	3(1)
country	Sch. 1, cl. 12(1)
date of assent.....	Sch. 1, cl. 12(1)
definition.....	Sch. 1, cl. 12(1)
digital signature.....	3(1)
digitally sign	3(1)
document.....	Sch. 1, cl. 12(1)
ECNL.....	3(1)
Electronic Conveyancing National Law	3(1)
ELN	3(1), 13(1)
ELNO.....	3(1), 15(1), 32
empowering provision	Sch. 1, cl. 30(1), (2)
expire	Sch. 1, cl. 12(1)
external Territory	Sch. 1, cl. 12(1)

Defined terms

extrinsic material.....	Sch. 1, cl. 8(1)
fail.....	Sch. 1, cl. 12(1)
financial year.....	Sch. 1, cl. 12(1)
foreign country.....	Sch. 1, cl. 12(1)
function.....	Sch. 1, cl. 12(1)
Gazette.....	Sch. 1, cl. 12(1)
Gazette notice.....	Sch. 1, cl. 12(1)
gazetted.....	Sch. 1, cl. 12(1)
Government Printer.....	Sch. 1, cl. 12(1)
individual.....	Sch. 1, cl. 12(1)
insert.....	Sch. 1, cl. 12(1)
instrument.....	Sch. 1, cl. 12(1)
Intergovernmental Agreement.....	3(1)
internal Territory.....	Sch. 1, cl. 12(1)
Jervis Bay Territory.....	Sch. 1, cl. 12(1)
jurisdiction.....	3(1)
land titles legislation.....	3(1)
law.....	3(1)
law of this jurisdiction.....	3(1)
lodge.....	3(1)
make.....	Sch. 1, cl. 12(1)
may.....	Sch. 1, cl. 14(1)
minor.....	Sch. 1, cl. 12(1)
model provisions.....	24(1)
modification.....	Sch. 1, cl. 12(1)
month.....	Sch. 1, cl. 12(1)
must.....	Sch. 1, cl. 14(2)
named month.....	Sch. 1, cl. 12(1)
Northern Territory.....	Sch. 1, cl. 12(1)
number.....	Sch. 1, cl. 12(1)
oath.....	Sch. 1, cl. 12(1)
office.....	Sch. 1, cl. 12(1)
omit.....	Sch. 1, cl. 12(1)
operating requirements.....	3(1), 22(1)
ordinary meaning.....	Sch. 1, cl. 8(1)
participating jurisdiction.....	3(1)
participation agreement.....	3(1)
participation rules.....	3(1), 23(1)
party.....	Sch. 1, cl. 12(1)
penalty.....	Sch. 1, cl. 12(1)
person.....	Sch. 1, cl. 12(1)
power.....	Sch. 1, cl. 12(1)
printed.....	Sch. 1, cl. 12(1)
proceeding.....	Sch. 1, cl. 12(1)
provision.....	Sch. 1, cl. 12(1)

Defined terms

record	Sch. 1, cl. 12(1)
Registrar	3(1)
registry instrument	3(1)
repeal	Sch. 1, cl. 12(1)
responsible tribunal	3(1)
review period	47(1)
section 28	30(2)
sign	Sch. 1, cl. 12(1)
State	3(1), 7A(2)
statutory declaration	Sch. 1, cl. 12(1)
statutory instrument	Sch. 1, cl. 12(1)
subscriber	3(1), 32
swear	Sch. 1, cl. 12(1)
Territory	3(1)
the Act	Sch. 1, cl. 12(2)
this jurisdiction	3(1)
titles register	3(1)
word	Sch. 1, cl. 12(1)
writing	Sch. 1, cl. 12(1)