

Explanatory document

Real Property Amendment (Certificates of Title) Bill 2020

Introduction

The Office of the Registrar General (ORG) is seeking your feedback on the Exposure Draft of the *Real Property Amendment (Certificates of Title) Bill 2020*. The aim of the Bill is to help move NSW away from paper processes to electronic processes when it comes to dealing with land.

The Bill is the result of public consultation undertaken in December 2018 with the release of the discussion paper entitled [Certificates of title: the next evolution](#). After considering the feedback on the discussion paper, ORG released a [position paper](#) in December 2019. That position paper detailed the next phase of electronic conveyancing in NSW, which includes cancelling all paper certificates of title (paper CTs) and control of the right to deal (CoRD) and removing impediments from moving towards a fully digital conveyancing environment. This Bill is the next step to achieving this reform.

Why the need for change?

The take up of eConveyancing in NSW has been strong since its inception back in 2013, with about 90% of documents lodged electronically where they are capable of being lodged electronically. Participants have enjoyed efficiency benefits associated with the electronic process.

However, paper CTs and the associated requirements with respect to production hinder the digital process of eConveyancing. Paper CTs and CoRD are no longer required when NSW reaches 100% digital lodgment of land dealings. The Bill will remove all references to paper CTs and CoRD and remove any implied paper-based process in land title law.

The Bill will also enable other documents, such as powers of attorney and deeds to be lodged electronically with the Registrar General. Currently these documents must be lodged in paper.

What changes are proposed?

Details of the amendments are outlined below.

Paper CTs, eCTs and CoRD

The Bill will give effect to the cancellation of all paper CTs, electronic certificates of title (eCTs) and the CoRD concept. The words 'certificates of title' will be removed and replaced with 'folio of the Register' where appropriate. This will affect about 30 other pieces of legislation that reference CTs. Any associated processes with respect to production of CTs will also be removed. The effect will be that paper CTs will no longer be considered legal documents.

The right to deal with land, traditionally evidenced by holding a paper CT, will instead be established by Subscribers to an ELNO. Subscribers have strict obligations to comply with the Conveyancing Rules and Participation Rules and can be audited to ensure compliance with those rules.

A paper CT also traditionally provided registration information to the lodging party after the registration of an instrument to provide confirmation of the registration and the details on title at that particular point in time. The Bill will introduce a new requirement for an 'information notice' to be issued to the lodging party. This notice is a more comprehensive version of the current registration notice and will replace the registration information that a lodging party would have received on receipt of a paper CT.

The proposal will also further align NSW with the other Australian jurisdictions. South Australia, Queensland and the Australian Capital Territory have removed CTs and Victoria and Western Australia are looking to abolish their CTs in the future.

Electronic lodgment otherwise than via an ELNO

The Bill will amend the *Real Property Act 1900* to enable electronic lodgment directly with the land registry. This will cater to the electronic lodgment of additional documents. It will also ensure the electronic system remains reliable and resilient if an ELNO becomes unavailable or if external factors prevent or hinder physical lodgment.

How will my interests be protected?

The proposals in the Bill do not affect your registered land interests. It is important to note that it is the Torrens Register that confirms ownership. The paper CT is only a copy of what appears on the Register at a particular point in time.

The Torrens Register will continue to record interests in land. All registered interests will continue to be backed by the state guarantee of title, supported by the Torrens Assurance Fund.

The eConveyancing system is a closed and secure system that can only be accessed by Subscribers. The Subscribers have obligations to verify the identity of clients, establish their right to deal with the land and obtain a client authorisation, and they may be audited to ensure compliance with those obligations. There have been no fraud cases relating to eConveyancing since it began in NSW in 2013, but during that time, the NSW Government has paid over \$7 million for fraud cases involving paper conveyancing transactions.

What are the next steps?

Your feedback will help to inform any further amendments to the Bill, which is intended to be introduced into Parliament in early 2021. The Registrar General will then nominate a date for the cancellation of CTs once all system changes are implemented and public education has occurred.

In order to support this reform, the Registrar General will ensure that:

- all system and operational changes are implemented before the cancellation of CTs,
- clear guidelines are produced to support practitioners and industry participants on the practical changes associated with the cancellation of CTs, and
- a communications strategy is in place to educate industry and the community about the reform.

For further information about this reform, please send an email to ORG-eConveyancing@customerservice.nsw.gov.au.