



Attorney-General  
Minister for the Arts, Creative Industries and  
Cultural Events  
Minister for Building Quality Improvement  
Minister for Business and Regulatory Services  
Minister for Seniors and Veterans  
Member for Ginninderra

Mrs Giulia Jones MLA  
Chair  
Standing Committee on Justice and Community Safety (Legislative Scrutiny Role)  
ACT Legislative Assembly  
GPO Box 1020  
Canberra ACT 2601

Dear Mrs Jones,

I write in relation to comments made by the Standing Committee on Justice and Community Safety (Legislation Scrutiny Role) (the Committee) in its Scrutiny Report 40 in relation to the Electronic Conveyancing National Law (ACT) Bill 2020 and the Land Titles (Electronic Conveyancing) Legislation Amendment Bill 2020.

I thank the Committee for its detailed consideration of these Bills and provide my response to the concerns raised in [Attachment A](#).

I trust this response addresses the Committee's concerns.

I also write to provide notice that I will seek to table an amendment to the Electronic Conveyancing National Law (ACT) Bill 2020 to allow for electronic conveyancing (E-Conveyancing) to be available more quickly in the ACT.

I am mindful that social distancing obligations surrounding COVID-19 are impacting upon the ACT's paper-based land titling system, which is characterised by person to person meetings and the physical transfer of paper documents. E-Conveyancing will allow less person to person contact than our paper-based system, for reason that things can be done online.

In the event of the Bill and its amendment being supported, the initial disallowable rules published by the Registrar-General under the Electronic Conveyancing National Law (ACT) Bill 2020 will be able to come into effect on the day after they are notified on the Legislation Register, rather than the default 20 business days provided by the Electronic Conveyancing National Law.

In turn, this provides scope for the Registrar-General to receive applications from prospective Electronic Lodgment Network Operators (who offer an intermediary service to connect lawyers and

---

### ACT Legislative Assembly

London Circuit, Canberra ACT 2601, Australia    GPO Box 1020, Canberra ACT 2601, Australia  
Phone +61 2 6205 2615    Email [ramsay@act.gov.au](mailto:ramsay@act.gov.au)



@Gordon\_R\_Ramsay



Gordon Ramsay MLA



banks in property transactions) – and for approved operators to start accepting ACT subscribers, as early as possible.

Please find attached a copy of the proposed amendment ([Attachment B](#)) and a Replacement Explanatory Statement for the Electronic Conveyancing National Law (ACT) Bill 2020 ([Attachment C](#)).

Yours sincerely

Gordon Ramsay MLA

# ATTACHMENT A

## ELECTRONIC CONVEYANCING NATIONAL LAW (ACT) BILL 2020

### *Do any provisions of the Bill amount to an undue trespass on personal rights and liberties?— Committee terms of reference paragraph (3)(a)*

#### **Right to privacy and reputation (section 12 HRA)**

The Committee noted that:

- the examples presented in the explanatory statement of obligations placed on ELNOs and subscribers are not contained within the national law
- there is no requirement that the proposed model rules be adopted—they only have to be considered by Registrar-General in making any operating requirements and participation rules.

The Committee asked that the Minister confirm the basis of the legal duties to protect information and amend the explanatory statement to make this clear.

The Committee also noted that:

- the explanatory statement describes the need for verification to prevent against fraudulent behaviour and describes various ways in which verification could be achieved. However, it was not clear to the Committee how these alternative approaches will be encouraged under the framework
- the Land Titles (Electronic Conveyancing) Legislation Amendment Bill 2020 will provide for the Registrar-general to make Verification of Identity Rules, but it was not clear to the Committee how these rules will provide the protection of personal information and equal protection suggested by the explanatory statements accompanying these Bills.

The Committee asked that the Minister provide clarification on how the verification requirements in the national law will protect against undue interference with privacy and unequal treatment.

#### ***Response:***

The Land Titles (Electronic Conveyancing) Legislation Amendment Bill 2020, together with the companion Electronic Conveyancing National Law (ACT) Bill 2020, are regulatory reform initiatives to allow Canberrans to receive the benefit of best practice land titling processes.

The Electronic Conveyancing National Law (ACT) Bill adopts the Electronic Conveyancing National Law (ECNL) and in doing so, allows the ACT to join New South Wales, Victoria, Queensland, Western Australia and South Australia in providing for electronic conveyancing (E-Conveyancing).

The ECNL allows for the lawful collection of personal information through the establishment of an Electronic Lodgment Network - an electronic system that enables the lodging of registry instruments in electronic form for the purpose of the land titles legislation. Personal information, such as name and address, is included as part of these instruments, just as it is under the current paper-based system. Collection of this data under E-Conveyancing is necessary to ensure accurate and legal transfer of title or registration of other dealings relating to land.

The regulatory framework for E-Conveyancing governs the way in which personal information is used and protected for online transfers and other land dealings and operates within the broader laws on privacy and confidentiality. Electronic Lodgment Network Operators (ELNOs) and subscribers are required to comply with the Operating Requirements (ECNL section 18) and Participation Rules (ECNL section 26), respectively.

- An ELNO must maintain confidentiality of all information provided to the ELNO in which the provider of the information would reasonably expect confidentiality to be maintained and must comply with all applicable privacy laws and laws relating to document and information collection, storage and retention. (Please see ECNL sections 15, 16, 17, 18, 22, Operating Requirements clauses 5.3(g), (h))
- A subscriber must take reasonable steps to ensure that information provided to the subscriber by any other subscriber, any client, the Registrar or the ELNO is protected from unauthorised use, reproduction or disclosure. (Please see ECNL sections 23, 26, Participation Rules, Compliance with laws and Participation Rules; clause 6.7, definition of privacy laws, Protection of information, clause 6.10, Client Authorisation Form)

Parties to an in-person settlement also undergo verification of identity and authority, through the Verification of Identity and Verification of Authority Rules established by the Land Titles (Electronic Conveyancing) Legislation Amendment Bill 2020.

The proposed Verification of Identity and Verification of Authority Rules, and the proposed Model Participation Rules, were tabled in the Legislative Assembly on 20 February 2020. These set out the rules for legal practitioners and banks to follow when verifying a person's right to deal. The legal practitioner or bank then certifies to the Land Titles Office that they have undertaken this verification process. The certification must be provided, or the documents will not be accepted for registration.

The Registrar-General can take steps to ensure compliance with these certification requirements by auditing a representative for certain documents.

The rules relating to E-Conveyancing include provisions ensuring that information collected for the purposes of the proposed Acts can only be collected and used for those purposes (see for example clause 6.10 of the proposed Participation Rules and clauses 7.1 through to 9.2 of the Model Operating Requirements). These rules are not final, although it is intended that final rules across all instruments, as is proposed to be made by the Registrar-General, will be tabled when the Bill is debated in the Assembly.

It should be noted that the ECNL and the relevant rules are not, of themselves, a complete statement of the privacy and confidentiality laws that apply the management and disclosure of personal information in the Australian Capital Territory and elsewhere in Australia. Normal privacy and confidentiality laws that apply in the ACT will apply to verification arrangements for electronic and in person-lodgments. This includes the requirement that information be handled in accordance with the *Information Privacy Act 2014* and relevant Territory Privacy Principles (TPPs).

The Information Privacy Act provides individuals with the right to make a complaint about an agency or contractor covered by the Information Privacy Act, if they think the agency or contractor has not dealt with their personal information in accordance with a TPP, they can make a privacy complaint. The clients are provided with information in the Client Authorisation Form that advise and direct them how to find the CMTEDD Privacy Policy, which provides instructions and the policy<sup>1</sup> on how an individual may make a complaint.

The client of the subscriber consents to the collection and disclosure of information by the subscriber to specified parties to be used for the purpose of maintaining publicly searchable registers and indexes required by law. The proposed Client Authorisation Form includes privacy statements and the collection of a client's acknowledgement, designed to ensure the client consents to the collection of their personal information by a third party (their Legal Practitioner), and is made aware of how their information will be handled. By signing this form the client agrees to those terms.

---

<sup>1</sup> [https://www.cmtedd.act.gov.au/\\_\\_data/assets/word\\_doc/0010/773389/CMTEDD-Information-Privacy-Complaint-Handling-Policy-and-Procedures.docx](https://www.cmtedd.act.gov.au/__data/assets/word_doc/0010/773389/CMTEDD-Information-Privacy-Complaint-Handling-Policy-and-Procedures.docx)

The privacy statements on the forms that will be used for in-person settlements will be available on the Access Canberra website in these terms:

**CLIENT AUTHORISATION**

***Approved under Section 48BA (5)(b) "client authorisation", Land Titles Act 1925***

***When this form is signed, the Legal Practitioner is authorised to act for the Client(s) in a Conveyancing Transaction(s).***

***Privacy Collection Statement:***

***The information in this form is collected under statutory authority and collection of this data remains necessary to ensure accurate and legal transfer of title or registration of other interests relating to land and for maintaining publicly searchable registers and indexes under the Land Titles Act 1925.***

***Privacy and Client information***

***The Client acknowledges that information relating to the Client that is required to complete a Conveyancing Transaction, including the Client's Personal Information, may be collected by and disclosed to the Duty Authority, the Land Registry, the Registrar-General and third parties (who may be located overseas) involved in the completion of the Conveyancing Transaction or the processing of it, and consents to the collection and disclosure of that information to any of those recipients, including to those who are overseas.***

***The Legal Practitioner or Legal Practitioner Agent acknowledges that the personal information collected from its Client(s) is for the purpose of registration of interests in land and the Legal Practitioner or Legal Practitioner Agent must not disclose this information to third parties outside this purpose.***

***For further information about the collection and disclosure of your Personal Information, refer to the Access Canberra privacy policy at [www.accesscanberra.act.gov.au](http://www.accesscanberra.act.gov.au).***

A private person is not permitted to use the information provided by the client other than for the purpose of registrations of interests in land.

The requirement for verification of identity serves a legitimate objective, that is, the protection of individual land ownership from fraudulent behaviour. The Verification of Identity Rules, Verification of Authority Rules, Model Operating Requirements and Model Participations Rules as tabled in the Legislative Assembly provide members of the Assembly with a view as to the scope of the obligations involved.

The Land Titles Office will provide training for staff as part of the overall transition to the new regime, including compliance obligations with the TPPs, Territory Records Act and Land Titles Act.

**Rights in Criminal proceedings (section 22 HRA) and Privilege against exposure to a penalty**

The Committee is concerned that:

- the power which allows the Registrar-general, instead of or during a compliance examination, to refer a matter to another authority empowered to take investigatory, disciplinary or other action, including regulatory or disciplinary bodies and bodies in another State or Territory is very broadly expressed, and
- this can include providing personal information that might be in the possession of the Registrar-general, subject to only a limited form of the privilege against self-incrimination.

The Committee requested further information on why the power to give information to another body in section 35 of the Electronic Conveyancing National Law is justified given its potential limits on the right against self-incrimination or liability to a civil penalty and the protection of privacy and reputation protected by section 12 of the HRA.

The Committee also suggested consideration should be given to amending the explanatory statement to include such a justification.

**Response:**

The proposed powers of disclosure are not intended to authorise the Registrar-General to broadcast information to other agencies and organisations, but rather are an integral part of combatting fraud and other kinds of misfeasance that may occur in the conveyancing process. It is not possible to forecast exactly what kinds of fraud may occur, which parties may be party to a fraud and which regulatory or law enforcement agencies may need to be advised of potential frauds or misfeasance.

Adoption of the ECNL will engage the privilege against self-incrimination (s22(2)(i) of the HRA) in relation to compliance activities undertaken by the Registrar-General to ensure that ELNOs and subscribers are adhering to the regulatory framework.

ELNOs and subscribers are obliged under the ECNL to comply with any reasonable requirement to provide information or documents or to take specified action, even if compliance may tend to incriminate the person or make them liable to a penalty. The ECNL provides that information, answers and documents provided for a compliance examination are not admissible in evidence, nor is information directly derived from that information, answer or document. However, the immunity does not extend to instances where a document may incriminate the individual if the document is required to be kept under the ECNL nor does the immunity extend to a proceeding about the false or misleading nature of anything in the information, answer or document.

The limitation of the privilege against self-incrimination in these circumstances is justified because it serves a legitimate objective, namely the preservation of and confidence in the ACT system of land titling. For those who own land in any form, it is usually their most significant asset and ACT landowners would expect that Government would take action to ensure that this asset is protected.

The purpose of the immunity is to encourage the free, open and truthful provision of information in a compliance audit by protecting the ELNO or subscriber from criminal proceedings or a penalty as this will allow the Registrar-General to have access to the information they need to check compliance. The immunity is justifiably abrogated in the two circumstances mentioned above to ensure there is a meaningful compliance regime. Without the power to require a document that must be kept under ECNL, effective compliance of E-Conveyancing participants would be significantly eroded. It would bring into question the capacity to undertake electronic transactions based on certification that appropriate steps had been taken.

Similarly, the provision of false or misleading information or documentation would clearly not assist the Registrar-General in their compliance duties and so no immunity should be afforded in these circumstances.

As mentioned in the Explanatory Statement, given that:

- personal information of the type that will be submitted through the ELN is already publicly available;
- the ECNL framework allows for the lawful collection and use of personal information, and imposes obligations on subscribers and ELNOs to protect that data; and
- personal information is essential to effect a legal transfer of land or register other dealings;

the proposed measures will likely limit the right to privacy in a reasonably justified manner.

**Whether the explanatory statement meets the technical or stylistic standards expected by the Committee—Committee terms of reference paragraph 2**

The Committee notes that the explanatory statement is accurate as far as the effect of clause 1.1 of the Bill but should be reworded to accurately reflect the wording of the new section 25 of the Act.

**Response:**

A Replacement Explanatory Statement is attached and will be tabled in the Assembly upon commencement of debate. The Replacement Explanatory Statement will include this text in the explanation clause 25 of the Bill:

*This clause will displace existing section 25 of the Electronic Conveyancing National Law for the purposes of the Australian Capital Territory. Subclause (1) clarifies that an operating requirement and a participation rule are disallowable instruments. Subject to other circumstances allowing for an earlier commencement set out in section 25, an operating requirement or participation rule must be notified 20 business days before the changes take effect.*

*The intention of this provision is to provide accountability to the Legislative Assembly and reasonable notice of any changes to users of the electronic conveyancing system.*

*The exception is set out in subclause (2) and is where the Registrar is satisfied that an operating rule or a participation rule must be changed urgently because an emergency situation exists. In that case the requirement or rule may be commenced earlier than the period of 20 business days specified in subclause (1)(b).*

*Subclause (3) provides guidance on when an emergency situation exists. Under that provision an emergency situation exists if the Registrar considers that, because of the occurrence of an event or the existence of particular circumstances, the operation, security, integrity or stability of an electronic lodgment network is being, or is likely to be, jeopardised.*

*Subclause (4) provides for the validity of an operating requirement or participation rule which is notified less than 20 days before its commencement, although confirms such a measure will commence on the 20<sup>th</sup> business day after its notification.*

*A second exception is set out in subclause (5). Notwithstanding the operation of subclause (1)(b) and (4), an operating requirement or participation rule published by the Registrar under the Electronic Conveyancing National Law (ACT) prior to 1 June 2020, will be able to come into effect on the day after they are notified on the Legislation Register.*

### **Do any provisions of the Bill insufficiently subject the exercise of legislative power to parliamentary scrutiny?—Committee terms of reference paragraph (3)(e)**

#### **National Scheme Laws**

The Committee is concerned that amendments to the national law will automatically lead to changes to the law in the Territory, possibly without any opportunity for scrutiny of those changes by the Assembly (or the Committee) and possibly without notice to persons who may be impacted by those changes.

The Committee requests further information on how the Minister will ensure that the Assembly and the public is informed of any changes to the national law with sufficient time to allow consideration by the Assembly.

#### **Response:**

Over the years the ACT has taken a variety of approaches to adopting a law that is in force in another Australian jurisdiction. This has been noted by the Committee, which has on occasion sought explanation where Bills adopting interstate laws do not provide for a disallowance period, as is the case for the Electronic Conveyancing National Law (ACT) Bill.

The approach taken to the E-Conveyancing National Law is based on the need for core provisions of that law to be in place in the ACT, and not disallowed, in circumstances where:

- the ACT is looking to adapt a national framework, and
- the ACT can propose and vote upon any proposed amendments to the National Law through the operation of Intergovernmental Agreement for an Electronic Conveyancing National Law.

If the circumstance were to arise that the ACT is outvoted at a jurisdictional level on a matter of crucial importance to the Territory, the Minister can exercise the application provision to ensure there is sufficient

time for the Legislative Assembly to amend the Electronic Conveyancing National Law (ACT), so that the Territory did not adopt the disagreed amendment. In such a circumstance, the Minister would notify the Assembly of the Government's intention to move an amendment to the Electronic Conveyancing National Law (ACT).

As the Committee has noted the Bill provides that amendments to the E-Conveyancing National Law automatically commence in the ACT three months after they commence in NSW, unless a date is fixed by the Minister via instrument. This will ensure a sufficient transition period can be provided as necessary to ensure that all interested parties can be made aware of the changes.

The ACT is now a member of the Australian Registrars' National Electronic Conveyancing Council. ARNECC has sought the views of stakeholders on potential changes to the Model Operating Requirements and Participation Rules in their development stage. While there have been no amendments to the ECNL since its creation, in its normal course of operation, this same process of consultation will see ACT stakeholders invited to comment on proposals to amend the ECNL prior to those amendments being put to a vote of the jurisdictions.

Members of the public will be informed of upcoming changes in the law by the Land Titles Office, through stakeholder alerts, so they can be ready to operate under any changed requirements. Further, in the event of amendment to the Electronic Conveyancing National Law, on notification by the Directorate, the ACT legislation register will note those amendments will come into effect on a specified date (being the 90th day after the law commenced in New South Wales) unless the Minister varies the commencement date.

## **LAND TITLES (ELECTRONIC CONVEYANCING) LEGISLATION AMENDMENT BILL 2020**

### **Do any provisions of the Bill amount to an undue trespass on personal rights and liberties?— Committee terms of reference paragraph (3)(a)**

#### **Right to recognition and equality before the law (section 8 HRA)**

The Committee notes that:

- there is no explicit requirement that the Verification of Identity Rules include obligations in regard to the collection and protection of personal information so collected
- it is not clear to the Committee how the requirement of reasonable steps will be incorporated into the verification rules, and how parties subject to the verification rules would be encouraged to permit alternative forms of identification.

The Committee requests further information on how personal information and equality before the law will be protected under the Bill.

#### ***Response:***

Verification of identity is an important part of the proposed regulatory framework for in-person settlements. Represented and self-represented parties will have their identity and authority to deal verified before dealings are registered.

As explained in the Explanatory Statement the verification of identity process has the potential to engage the following rights under the Human Rights Act:

- right to privacy (s12). The Verification of Identity Rules sets out standards for undertaking verification of identity such as in a face to face interview and checking of identity documents, and
- right to equality before the law and protection from discrimination (s8). Some sectors of the community may find it challenging to meet the verification of identity document requirements.

However, the requirement for verification of identity serves a legitimate objective; that is, the protection of individual land ownership from fraudulent behaviour. The measure supports the right to non-interference with home (s12) by protecting the sanctity and validity of the land titles register.

Where people are unable to establish their identity through official documents, it is possible for a subscriber to verify the identity of a person in some other way that constitutes the taking of reasonable steps. For example, it may be possible to obtain other documents which support identity or to make inquiries with the client or a third party such as a doctor, nurse or government officer.

Moreover, the introduction of verification of identity requirements will help protect all sectors of the community against fraud, including groups who may be particularly vulnerable to fraudulent activity in an electronic environment, such as the elderly, refugees or the intellectually impaired.

Thus, to the extent that verification of identity may engage with the rights of privacy, equality and non-discrimination, these limitations are justifiable.

As referred to above, normal privacy and confidentiality laws that apply in the ACT will apply to verification arrangements for electronic and in-person lodgments. This includes the requirement that information be handled in accordance with the *Information Privacy Act 2014* and relevant TPPs. When combined with the provisions of the Client Authority Form, clients have a sound basis for protection of their personal information.