

2020

AUSTRALIAN CAPITAL TERRITORY

LAND TITLES (VERIFICATION OF IDENTITY) RULES 2020

DI2020–112

MADE UNDER THE

LAND TITLES ACT 1925

EXPLANATORY STATEMENT

David Pryce
Registrar-General

Background

In July 2008 the Council of Australian Governments agreed pursuant to the *Seamless National Economy National Partnership Agreement* that there should be a new electronic conveyancing system for the settling of real property transactions in all Australian States and Territories.

The *Intergovernmental Agreement for an Electronic Conveyancing National Law* (IGA) came into operation on 21 November 2011. The Electronic Conveyancing National Law makes possible the implementation of a national electronic conveyancing system in Australia and has the object of promoting efficiency throughout Australia in property conveyancing.

The Electronic Conveyancing National Law is set out in the Appendix to the *Electronic Conveyancing (Adoption of National Law) Act 2012* (New South Wales).

In the ACT the Electronic Conveyancing National Law is adopted by operation of the *Electronic Conveyancing (National Law) Act 2020*.

Pursuant to section 23 of the Electronic Conveyancing National Law the Registrar-General may issue Participation Rules for operators of, and subscribers to, an Electronic Lodgement Network.

Those Participation Rules may, and do, include provisions relating to verification of identity and can require the taking reasonable steps to verify the identity of a client or other entity involved in a conveyancing transaction.

These are companion rules to the Participation Rules and align the verification of identity processes for in-person conveyances with those that apply in the electronic conveyancing context.

Outline

Establishing confidence in a person's identity is a critical starting point for delivering a range of government services and benefits, as it is for many transactions conducted by the private sector and other non-government organisations.

These Verification Rules reflect the Commonwealth's *National Identity Proofing Guidelines* which are part of the *National Identity Security Strategy* administered by the Commonwealth Department of Home Affairs. They are intended to provide a high to very high level of assurance of identity (Level 3 to Level 4 from the guidelines).

These Rules require that "reasonable steps" are taken to verify authority. Verifying a person's authority in accordance with these Rules requires inspection of supporting documents that connect the person to the land which is being conveyed, or which otherwise show their authority to be a party to the Registry Instrument. The supporting documents to be inspected will vary depending on the circumstances.

These requirements serve a legitimate objective, that is, the protection of individual land ownership from fraudulent behaviour.

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

The requirements reflect ‘best practice’, are similar to those already followed within the industry, and are not considered onerous.

Detail

Clause 1 provides definition of terms used in these Rules.

Clause 2 provides an overview and summary of the Rules.

Clause 3 provides that these rules apply to paper Registry Instruments and documents under the *Land Titles Act 1925* to be lodged in-person at the Australian Capital Territory Land Titles Office.

Clause 4 explains, amongst other things:

- the obligation on lawyers and mortgagees to take reasonable steps to verify the identity of clients and mortgagees
- that there are various methods of complying with the verification of identity obligations and that it is up to the Legal Practitioner or mortgagee to determine what constitutes reasonable steps specific to the circumstances
- that identity agents may be used
- certification requirements, and
- retention of evidence requirements.

The requirements reflect ‘best practice’, are similar to those already followed within the industry, and are not considered onerous.

Clause 5 explains the process for identity verification for self-represented parties. Self-represented parties in conveyancing transactions can use the services of an authorised person for the purposes of identity verification. A list of Authorised Persons is at Appendix C of these rules.

Clause 6 applies verification of identity standards based on the Commonwealth’s *National Identity Proofing Guidelines* which are part of the *National Identity Security Strategy* administered by the Commonwealth Department of Home Affairs. They are intended to provide a high to very high level of assurance of identity (Level 3 to Level 4 from the guidelines).

Appendix A lists the various types of conveyancing documents and the person/persons needing to be identified for the purposes of that document.

Appendix B lists identity document categories based on the Commonwealth's *National Identity Proofing Guidelines* which are part of the *National Identity Security Strategy* administered by the Commonwealth Department of Home Affairs.

Appendix C lists Authorised Persons for the purposes of verifying identity.

Appendix D lists insurance requirements for 'identity agents' (see Clause 4).

Appendix E provides the form for identity agent certifications.

Appendix F provides the form for an Identifier Declaration.