

First tranche of e-conveyancing to be rolled out in 2013

Queensland's Parliament is looking to implement the national system of electronic conveyancing by the end of 2013.

A report by a parliamentary committee on the provisions of the Electronic Conveyancing National Law (Queensland) Bill 2012 is expected to pass the second reading speech shortly.

The Bill implements the Electronic Conveyancing National Law by:

1. adopting the appendix to the Electronic Conveyancing (Adoption of National Law) Act 2012 passed in New South Wales as law in Queensland; and
2. amending the Land Title Act and Land Act to permit electronic land title forms.

The first tranche will comprise stand alone refinances and discharges and will only affect financial institutions. The second tranche is scheduled for the end of 2014 and will include all other dealings that can be lodged or conducted on Property Exchange Australia (PEXA) including transfers and caveats.

PEXA will not replace the land title registry of each State and Territory. Rather, PEXA is an electronic workspace in which parties will interact with the land titles registry (lodgement of dealings) and interact with each other (financial settlement). As such, implementing PEXA will not cause data integrity issues in the land titles registry as was the case with the Personal Property Securities Register.

Similarly, the Bill does not amend the substantive land title law. All other aspects of land transactions and conveyancing remain unaffected (such as exchange of contracts and preparation of loan documentation). The use of PEXA is voluntary and the Bill does not repeal the use of paper forms. It is anticipated that dealings such as transmission applications will continue to be lodged in paper form.

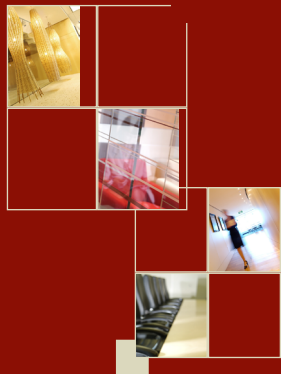
A client looking to conduct transactions on PEXA



must approach a "subscriber" who has access to PEXA. The client will need to authorise the subscriber to sign electronic documents and complete the financial settlement. In turn, the subscriber must take reasonable steps to identify the client. The proposed rules of PEXA are quite prescriptive when identifying a client, including the requirement that identification must be conducted by a "face-to-face in-person interview".

A subscriber will create a workspace and fill out electronic land title forms. These forms can then be "signed" by a subscriber on behalf of a client through the use of Public Key Infrastructure. A subscriber has a pair of linked mathematical keys, one made public and one kept private. A document is "signed" or encrypted by the private key and can then only be verified or unencrypted by use of the public key. Once all parties have fulfilled all requirements, PEXA will lock the workspace, submit documents to the land title registry for processing, complete the financial transfers and await confirmation of registration.

A document that is signed by the subscriber is binding on the subscriber personally in addition to the client (referred to as "attribution"). An attributed signature cannot be repudiated unless it was not created by the subscriber and was not caused by the failure of the subscriber or its employees or agents to take reasonable care or follow the subscriber rules.



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The policy behind such a strong rule of attribution is that it is necessary to protect the integrity of the system and allow parties to rely upon signed documents. The Queensland Law Society has raised concerns regarding the liability of the subscriber for fraudulent conduct of employees, mistakes by employees and third parties "hacking" the subscriber's private key. Unless the attribution rule is amended in the national law, it will be left with the subscriber to mitigate these areas of risk by implementing robust procedures, training and security.

Although areas of concern remain, e-conveyancing has finally gained momentum and is set to become a reality for Queensland this year.

Thynne & Macartney will stay abreast of any developments and will provide further updates as they occur.

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