

05 May 2022

Mark Cridland  
A/Director-General  
Queensland Department of Resources

By email:

Dear Mr Cridland,



## Consultation on proposed regulation to mandate eConveyancing

The Australian Banking Association (**ABA**) continues to support efforts to accelerate the adoption of electronic mortgages and settlement for the convenience of consumers and the associated economic benefits. The banking industry is supportive of mandating electronic conveyancing (**e-conveyancing**) in Queensland, which is a pragmatic and natural development from the current regime. Mandating e-conveyancing in Queensland will create greater certainty for consumers and drive greater efficiencies.

The benefits of e-conveyancing are arguably greatest for those in regional, remote, and disaster affected areas. The benefits of e-conveyancing were again demonstrated in the recent Queensland floods where, despite significant disruption and restrictions on human movements, property settlements were still able to occur.

To enhance the benefits of mandating e-conveyancing, the ABA encourages the Queensland Government to also consider changes to allow paper registration of a counterpart mortgage executed only by the mortgagee and changes to the witnessing requirements in Queensland. These suggestions are explained further in Appendix A and would bring Queensland's regime more in line with other jurisdictions.

If you require further information or would like to discuss any of the content of this letter, please do not hesitate to contact Brendon Harper.

Regards,

**Hon. Anna Bligh AC**  
CEO  
Australian Banking Assoc

### [About the ABA](#)

The Australian Banking Association advocates for a strong, competitive and innovative banking industry that delivers excellent and equitable outcomes for customers. We promote and encourage policies that improve banking services for all Australians, through advocacy, research, policy expertise and thought leadership.



## Appendix A: Witnessing requirement of Queensland

Even with mandated e-conveyancing, there will still be circumstances where paper registration will or could occur. Electronic registration will not, for instance, be required where:

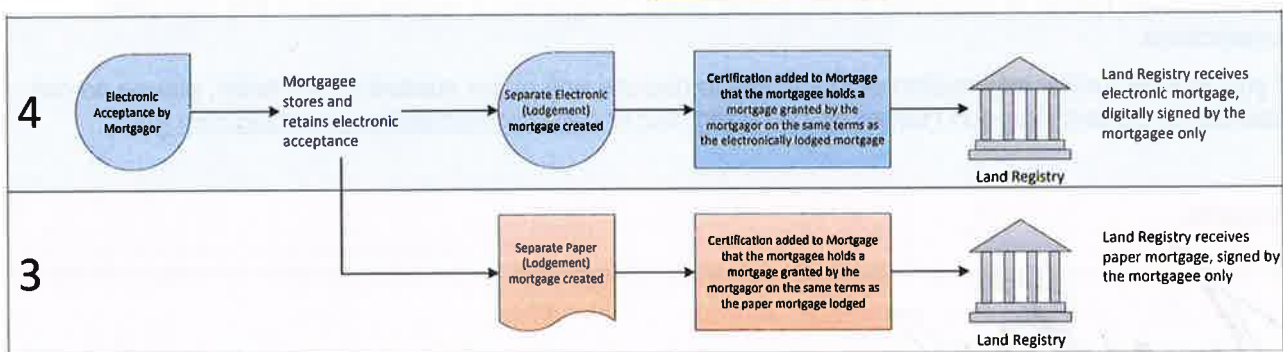
- one of the parties to the transaction is self-represented;
- change of name documentation needs to be submitted at the same time as the dealings;
- there is an internet or Electronic Lodgment Network Operators (ELNO) outage or the use of an ELNO is precluded by a natural disaster;
- a waiver has been granted to an ELNO subscriber involved in the transactions; or
- a consent or other documentation needs to be submitted at the same time as the dealings.

To enhance the benefits of mandating e-conveyancing, and to bring Queensland’s regime more in line with other state and territories, the ABA recommends the Queensland Government consider two associated changes:

- **permit the paper registration of a counterpart mortgage executed only by the mortgagee** where the mortgagee certifies it holds an original mortgage on the same terms executed electronically by the mortgagor; and
- **remove the requirement for the witnessing of any mortgage** and instead rely on the Verification of Identity requirements under which the mortgagee is required to verify the identity of the person executing the mortgage.

### Paper registration of a counterpart mortgage executed only by the mortgagee

There will unavoidably be instances where a mortgagor has accepted a mortgage electronically but, for example where a change of name document needs to be submitted at the same time as the dealings, a separate paper mortgage must be created and lodged (physically). In most jurisdictions (ACT, NSW, SA and VIC), it is possible for a mortgagee to lodge the mortgage by relying on the electronic acceptance when the mortgagee certifies it holds an original mortgage on the same terms executed electronically by the mortgagor. This example is illustrated in ‘Scenario 3’ in the National Mortgage Form Design Specification Version 1.5, available on [ARNECC’s website](#) and reproduced below.



This is currently not possible in Queensland. Rather, a mortgagee is required to obtain the wet signature from the mortgagor before lodgement. Removing this requirement would increase the speed and efficiency of these lodgements and increase customer certainty by increasing the likelihood of on-time settlement.

### Remove the requirement for the witnessing of mortgages

The recent insertion into the Queensland Property Law Act of section 78A removes the witnessing requirement where the mortgage is lodged electronically (that is, via an ELNO). It does not remove this requirement when a mortgage is lodged physically.

An alternative is virtual witnessing which was used by some mortgagors during periods of Covid-19 related restrictions and the recent Queensland floods, where, for example, a qualified witness



## Australian Banking Association

witnesses the execution of a paper document via a video call. These arrangements are suboptimal given:

- the need for the witness to examine identity documents;
- the difficulty of the witness knowing exactly what is being executed; and
- the need for the same paper document to be executed by the party and the witness, meaning the paper document needs to be sent from the party to the witness then back.

The Verification of Identity, under which the mortgagee is required to verify the identity of the person executing the mortgage, provides a well-tested, widely used and more secure alternative to witnessing. Completely removing the witnessing requirement for mortgages would also increase the speed and efficiency of these lodgements, and increase customer certainty by increasing the likelihood of on-time settlement.

