
Electronic Conveyancing National Law – Client Authorisation Form

Australian Registrars National Electronic Conveyancing Council

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Acknowledgment

The Law Council acknowledges the assistance of its National Electronic Conveyancing System Working Group and the Law Society of New South Wales in the preparation of this submission.

Introduction

1. The Law Council is pleased to provide a submission to the Australian Registrars National Electronic Conveyancing Council (ARNECC) regarding the Client Authorisation Form (the Authorisation) contained in Schedule 4 of the draft Model Participation Rules (the Participation Rules) for electronic conveyancing.¹
2. ARNECC has been established pursuant to an Intergovernmental Agreement for an Electronic Conveyancing National Law (the IGA), which provides for participating States and Territories to cooperate in the implementation of a national electronic conveyancing system.² ARNECC has been responsible for facilitating the drafting of the Electronic Conveyancing National Law (the National Law) and its passage in New South Wales, which was selected as the host jurisdiction.³ The Law Council understands that other participating jurisdictions will enact legislation applying the National Law or corresponding to the National Law.⁴
3. The National Law provides for State and Territory Land Titles Registrars (the Registrars) to determine Operating Requirements and Participation Rules in each jurisdiction. In determining these requirements, Registrars are to have regard to the Model Operating Requirements and Participation Rules agreed by ARNECC.
4. The Operating Requirements regulate the relationship between an Electronic Lodgement Network Operator (the Operator) and the relevant Registrar. The Participation Rules regulate the relationship between an Operator and a subscriber. Legal practitioners who wish to participate in electronic settlement of conveyancing transactions and electronic lodgement of relevant Land Titles Registry instruments (registry instruments) will be subscribers. Other subscribers are anticipated to be licensed conveyancers and financial institutions. Some subscribers, such as legal practitioners and licensed conveyancers will be representative subscribers who act on behalf of clients.
5. The Law Council notes that the draft National Law, Model Operating Requirements and Participation Rules were released for public comment on 30 March 2012. The Law Council made a submission in response to this consultation on 25 May 2012.⁵ The Law Council also notes that a Consultation Regulation Impact Statement regarding the National Law was released on 5 July 2012. The Law Council made a submission in response to this consultation on 3 August 2012.⁶

¹ See http://www.arnecc.gov.au/_data/assets/pdf_file/0005/175415/121012_Model_Participation_Rules_-_MPR.pdf

² See Intergovernmental Agreement for an Electronic Conveyancing National Law, available at http://www.arnecc.gov.au/_data/assets/pdf_file/0009/173907/IGA_for_an_Electronic_Conveyancing_National_Law.pdf

³ See http://www.austlii.edu.au/au/legis/nsw/consol_act/econla2012451/; see also <http://www.parliament.nsw.gov.au/prod/parliament/nswbills.nsf/0/A843B43E984F7EA8CA257A99001EA2C1>

⁴ The National Law has been introduced in the Queensland and Victorian Parliaments, see <http://www.legislation.qld.gov.au/Bills/54PDF/2012/EConvNLQB12E.pdf>; and [http://www.legislation.vic.gov.au/domino/Web_Notes/LDMS/PubPDocs.nsf/ee665e366dcb6cb0ca256da400837f6b/c3903f30228b972fca257ab600121526/\\$FILE/571033exi1.pdf](http://www.legislation.vic.gov.au/domino/Web_Notes/LDMS/PubPDocs.nsf/ee665e366dcb6cb0ca256da400837f6b/c3903f30228b972fca257ab600121526/$FILE/571033exi1.pdf)

⁵ See http://www.lawcouncil.asn.au/shadomx/apps/fms/fmsdownload.cfm?file_uuid=96461D6C-1999-B243-6EF0-75343FEEB29A&siteName=lca

⁶ See http://www.lawcouncil.asn.au/shadomx/apps/fms/fmsdownload.cfm?file_uuid=FA423843-1999-B243-6E7D-F6D72ACAC718&siteName=lca

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6. The Law Council also participated in a consultation with ARNECC on 6 August 2012 and provided comments to ARNECC on the draft National Law on 10 September 2012.⁷
 7. The Law Council notes that a number of changes have been made to the Participation Rules as a result of these consultations by ARNECC. This submission addresses Draft 12 of the Participation Rules as at October 2012 and the National Law as enacted by the NSW Parliament.⁸
 8. The Law Council also notes that these consultations led to the formation of a joint stakeholder/ ARNECC Working Party to review the Authorisation. This Working Party held a meeting on 20 November 2012, which was attended by Law Council representatives, Murray McCutcheon and Michael James. As a result of this meeting, the Authorisation was redrafted and comments were requested regarding the redrafted Authorisation. This submission represents the Law Council's comments on the redrafted Authorisation as at the date of this submission.
 9. The Law Council notes that details of the electronic settlement model to be used in the Electronic Lodgment Network (ELN) are not available at the date of this submission. As the Authorisation refers to the completion of financial settlement, the Law Council cannot provide comprehensive comments in the absence of the details of the settlement model. The Law Council may wish to make further comments when these details are available.

Relevant provisions

10. The Participation Rules deal with a number of matters including the general obligations of subscribers. These include the obligation to use the Authorisation for any client authorisation they enter into if they are representative subscribers (cl 6.3). A client authorisation is defined in section 10 of the National Law as a document:
 - (a) That is in the form required by the Participation Rules; and
 - (b) By which a party to a conveyancing transaction authorises a subscriber to do one or more things on that party's behalf in connection with the transaction so that the transaction, or part of the transaction, can be completed electronically.
11. The National Law defines a conveyancing transaction as a transaction that involves one or more parties and the purpose of which is:
 - (a) To create, transfer, dispose of, mortgage, charge, lease or deal with in any other way an estate or interest in land, or
 - (b) To get something registered, noted or recorded in the titles register, or
 - (c) To get the registration, note or record of something in the titles register changed, withdrawn or removed (s 3, Appendix, National Law).
12. The National Law provides the following examples of things that a client authorisation may authorise a subscriber to do:

⁷ See Law Council of Australia letter to ARNECC, 10 September 2012

⁸ See note 1

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- (a) To digitally sign registry instruments or other documents;
 - (b) To present registry instruments or other documents for lodgment electronically;
 - (c) To authorise or complete any associated financial transaction (s 10, Appendix, National Law).
13. Digitally sign means to create a digital signature for a document and digital signature means encrypted electronic data which identifies a particular person as the signer of a document (s 3, Appendix, National Law).
14. An associated financial transaction means a transaction of a financial nature associated with a conveyancing transaction such as the payment of the purchase price for the sale and purchase of an interest in land (s 3, Appendix, National Law).
15. The National Law also provides that a properly completed client authorisation has effect according to its terms and is not a power of attorney. It also provides that the requirements of any other law of that jurisdiction relating to execution, signing, witnessing, attestation or sealing of documents are to be regarded as satisfied if the client authorisation is properly completed (s 11, Appendix, National Law).
16. The Participation Rules also provide that the subscriber must enter into a client authorisation before the subscriber digitally signs any document. The subscriber is also obliged to comply with the authorisation and act in accordance with its terms. A further requirement is for the subscriber to take reasonable steps to verify the authority of each person entering into a client authorisation on behalf of a client party to both bind the client party to the client authorisation and to the relevant conveyancing transaction (cl 6.3).
17. The Participation Rules also provide that the subscriber must take reasonable steps to establish that the client is entitled to enter into the conveyancing transaction identified in the client authorisation (cl 6.4).
18. The subscriber is also required to take reasonable steps to verify the identity of a number of persons including each client party or client party agent at or before the signing of the client authorisation (cl 6.5). A client party is defined as a person making up all or part of the client. A client party agent is defined as a person authorised to act on behalf of a client party (cl 2.1).
19. The Authorisation is in Schedule 4 of the Participation Rules. The redrafted Authorisation is at Attachment B of this submission.
20. The Authorisation requires the completion of client, transaction and subscriber details. It also requires the client party or the client party agent to sign the Authorisation in the presence of the subscriber or the subscriber agent.
21. The National Law defines 'sign' in Schedule 1 as including the affixing of a seal or the making of a mark (s 12). Schedule 1 also provides that if a form is prescribed for the purpose of the National Law, strict compliance with the form is not necessary and substantial compliance is sufficient (s 11). It also provides that if the prescribed form requires:
- (a) The form to be completed in a specified way; or
 - (b) Specified information or documents to be included in, attached to or given with the form; or

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- (c) The form or information or documents included in, attached to or given with the form, to be verified in a specified way;

the form is not properly completed unless the requirement is complied with.

22. The Law Council submits that ARNECC should clarify whether it intends that the Authorisation must be a stand-alone document and strictly complied with or whether it intends that subscribers may incorporate the required details into other documents such as a retainer document used by a legal practitioner. While the Law Council has previously submitted that retainer documents serve a number of other functions which need not be addressed in the Authorisation, it also considers that the matters addressed in the Authorisation could be incorporated into such a document provided that this would meet the requirements in the Participation Rules and the National Law. It suggests that this needs to be clarified by ARNECC.
23. It is also not clear whether the Authorisation can be completed solely by electronic means. It appears that physical signature by clients who are individuals is contemplated. The Law Council submits that the Authorisation must be able to be completed electronically. The Law Council notes that government agencies and corporations regularly use electronic signatures and suggests that the Authorisation should accommodate the use of such signatures. While clients who are individuals may not have electronic signatures, this should not preclude the capacity for such signatures to be used in the Authorisation.

Authorisation heading

24. The Authorisation is currently headed, 'Client Authorisation' with the explanation in the heading that:

When this Authorisation is signed, an agency agreement is created which authorises the subscriber to act for the client in a conveyancing transaction or conveyancing transactions being completed using the Electronic Lodgment Network (ELN) as required by the Electronic Conveyancing National Law (ECNL).

25. The Law Council submits that the Authorisation should be amended to include a reference to the Electronic Conveyancing National Law in the heading itself rather than in the explanation as outlined below.
26. The Law Council also submits that financial institutions which may use this Authorisation are likely to refer to "customers" rather than "clients". The Law Council submits that the heading should be changed to "Client/Customer Authorisation" or clause 8 of the terms relating to the authorisation should refer to the meaning of the word "client" as: "client includes customer". The Law Council notes that the relationship between a client and a legal practitioner is of a different nature to that of a financial institution and a customer as it involves a fiduciary relationship and not differentiating the two may have adverse legal consequences for some subscribers..
27. The Law Council also submits that the Authorisation should be described consistently as an "authorisation" rather than sometimes as an "agreement" or "agency agreement". The Authorisation is
- (i) an authority by the client/customer to the subscriber allowing the subscriber to electronically authorize the equivalent of a paper transfer of land or a mortgage document in an ELNO and to otherwise represent the client / customer in the ELN. It also allows the subscriber to conduct

the financial settlement and otherwise represent the client/customer in the conveyancing transaction as occurs at present in the paper system. It is not necessary to duplicate this implicit authorization so long as professional standards apply to lawyers and licensed conveyancers in each jurisdiction and financial institutions have appropriate authorization from their customers and are suitably regulated; and

- (ii) a warranty and representation by the client /customer to the subscriber and all the other subscribers and their clients in the conveyancing transaction, that the subscriber has: obtained this authorisation from the client/customer and has taken reasonable steps to: verify the authority of each person entering into the authorisation; established that the client is entitled to enter into the conveyancing transaction and verified the identity of the client party, any client party agent and a mortgagor if the subscriber is representing a mortgagee unless the mortgagee was already taken steps to verify this identity (cll 6.3, 6.4, 6.5).

28. The Law Council submits that the Authorisation is neither an agreement nor an agency agreement because it simply grants an authority to a subscriber to undertake certain functions. The subscriber may choose to accept this authority or not but does not have to enter any agreement with the client to do so and is not carrying out an agency role. The Law Council submits that the references to “agency” should be deleted.

29. The Law Council submits that the heading should be amended to read as follows:

”Client/Customer e-Signing Authorisation”

“Electronic Conveyancing National Law”

“The Client/Customer authorises the subscriber to digitally sign the required documents and to authorise the conveyancing transactions described below in an electronic lodgment network. The client/customer also makes the warranties and representations specified below.”

Client details

30. The Authorisation provides for various details of the client parties. The Authorisation is in an electronic format that allows the section boxes to expand so that some additional information can be included. However, provision needs to be made to enable more than two persons who are the client to use the Authorisation. The Law Council notes that the Client Authorisation Completion Guide (the Guide), which is also contained in Schedule 4 of the Participation Rules states that if there are more than two client parties, the additional client parties should be set out on annexure pages signed by the client parties or the client party representatives and the subscriber.

31. The Law Council notes that the reference in the Guide to “client party representatives” is probably intended to refer to client party agents as the concept of “client party representative” appears to have been replaced by “client party agent” in other clauses of the Participation Rules.

32. The Law Council suggests that the expressions “Client party 1” and “Client party 2” will be confusing to clients and submits that only the expression “client or “client /customer” should be used.

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33. The Law Council also submits that the only details that are required are those necessary to help distinguish the client for the purpose of this document. The only person in the ELN who will sight this document is the subscriber. The phone number, contact person, email and capacity data relating to the client are not essential to distinguish the client and should not be included. The client's name and address should be sufficient for this purpose.
 34. The Law Council has previously suggested that the Authorisation should have separate boxes for clients/ customers who are individuals and companies. This would also overcome some issues with signing by "Client Party Agents" who are authorised to sign on behalf of companies. These issues are discussed below.

Transaction details

35. The Authorisation provides for transaction details regarding the type of authority being given, the property address and title reference, the transaction type and any special instructions. In line with the comments at paragraph 23 regarding electronic completion of the Authorisation, the Law Council suggests that the square boxes on the Authorisation relating to the transaction details, such as those to identify the authority type and the transaction type should be able to be completed electronically.
36. The Law Council also suggests that a standing authority should be able to be indefinite in some instances and therefore there should be an option for an indefinite authority as well as to complete the authority expiration date.
37. The Law Council has previously submitted that the fact that some details on the Authorisation cannot be completed should not mean that it is not "properly completed" for the purpose of being effective under the National Law (s 11, Appendix, National Law). An example is being unable to complete the title reference where the purchase is "off the plan" for a strata title that is not yet registered but a mortgage document needs to be prepared. The Law Council submits that it should be made clear that the Authorisation can be "properly completed" without all details being completed.
38. There appear to be insufficient conveyancing transactions permitted by the Authorisation. A typical scenario would be a husband and wife selling their home and discharging at least one mortgage to purchase another home and enter into one or more new mortgages. The Authorisation does not seem to accommodate more than one mortgage and more than one discharge.
39. The Law Council acknowledges that the Guide states that for specific authorities involving more than two conveyancing transactions, the additional transactions should be set out on annexure pages. The additional transactions and other instructions can also be referred to in the section relating to special instructions. The Guide also refers to annexures for standing authorities and a schedule for batch authorities. These mechanisms for incorporating additional transactions appear to be cumbersome particularly if the Authorisation is intended to largely be completed electronically. The Law Council submits that ARNECC should consider less cumbersome mechanisms for incorporating additional transactions in the Authorisation. If the Authorisation was redesigned to remove some unnecessary details such as the client details referred to above and the meaning of words referred to below, there will be more capacity to include more transaction details.

Client authorisation and execution

40. The Law Council considers that the title of this section of the Authorisation should be changed to “Signing” as this term will be more familiar to clients/customers than “execution” and is more consistent with the National Law where it is defined (Schedule 1, s 12) .
41. The Authorisation can be signed by a “client party” or a “client party agent” with the capacity for two client parties or client party agents to sign it. If there are more than two client parties or client party agents, the Guide states that they can sign on annexure pages.
42. “Client party agent” is defined in the Participation Rules as a person authorised to act on behalf of a client party. However, in the Authorisation it appears to be used to refer to a person authorised to sign on behalf of the client/customer, such as an attorney acting under a power of attorney or representatives of a company authorised to sign documents in accordance with section 127 of the *Corporations Act 2001* (the Corporations Act). The effect of section 127 is that the signature of two directors or the signatures of a director and the secretary become the manifestation of the signature of the company. They are not agents as such. However, an attorney under power is the agent of the grantor and the usual attestation clauses generally provide that the grantor signs by his or her attorney. In each case the signature of the natural person is the signature of the client.
43. The Law Council notes that the different capacities in which people may sign documents such as documents to be submitted to the Victorian Registrar may be reflected in attestation clauses and suggests that this is preferable to creating a new concept of client agent. The attestation clause indicates the capacity in which someone is signing such as the grantee of a power of attorney. The Law Council also notes that the capacity to sign under a written delegation is not generally used in practice.
44. The Law Council notes that the Guide refers to sections 128 and 129 of the Corporations Act which together with section 127 provide certain assumptions that can be relied on by other persons in relation to dealings with companies. The references to sections 128 and 129 are in the section of the Authorisation dealing with certifications by the subscriber or the subscriber agent. The Law Council suggests that section 127 should also be referred to in the Guide if the references to sections 128 and 129 are maintained. However, the Law Council considers that these references are unnecessary as these provisions are well understood by legal practitioners, licensed conveyancers and financial institutions.
45. The Authorisation contains a certification that the named client party or client party agent has the legal authority to instruct the subscriber in relation to the conveyancing transaction. A client party agent also has to certify that he, she or it has had no notice of the revocation of the authority to act on behalf of the client party. The Law Council suggests that the remedies at law that are available to other persons would be improved if the client /customer *warranted* and *represented* the facts stated in the certification clause on the Authorisation if it stated:

“The client/customer signatory represents and warrants to all the subscribers and clients/customers in the conveyancing transaction and each related conveyancing transaction that the client/customer has the legal authority:

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- (i) to carry out the conveyancing transaction and any related financial settlement; and
 - (ii) to instruct the subscriber to digitally sign documents on the client/customer's behalf in order to carry out the conveyancing transaction.
46. The Authorisation also contains an authorisation clause which appears to be repeated in clause 1 of the "Terms of this Agreement". These clauses provide that the client authorises the subscriber to act as the client's agent in the ELN in accordance with the terms of the "agreement" and the Participation Rules to:
- (a) Electronically sign documents on the client's behalf as required for the conveyancing transaction type; and
 - (b) Submit or authorise submission of documents for lodgment with the relevant Registrar; and
 - (c) Authorise any financial settlement involved in the conveyancing transaction; and
 - (d) Do anything else necessary in the ELN to complete the conveyancing transaction.
47. The Law Council queries the use of the expression "electronically sign" rather than "digitally sign" as used in the National Law and the Participation Rules. The Law Council also queries the reference to "Terms of this Agreement" as the Authorisation is in the nature of an authorisation rather than an agreement and should be referred to consistently as such.
48. The Law Council suggests that a consumer protection warning should be added to the signing section such as:
- "This is an important legal document. Consult your legal practitioner or licensed conveyancer before signing."
49. Such a warning would not only protect clients/customers but also other subscribers, the ELNO and Registrars.

Subscriber details and execution

50. The subscriber details and execution section of the Authorisation includes contact details for the subscriber and any subscriber agent. The phone and email address are not essential elements to distinguish the subscriber and will not be used by anyone other than the client/customer and the subscriber. They will both already have a documented legal relationship that would include that information. Furthermore, the phone number and email address are likely to change when the transaction is dealt with by different personnel in the subscriber's organization. These items should be deleted.
51. The word "capacity" in the signing boxes does not appear to be necessary. A subscriber will always be acting in a legal capacity (although the subscriber may have additional fiduciary obligations if the subscriber is acting for a client as a legal practitioner or licensed conveyancer).

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52. The word “capacity” may be a confusion of the identity of the *signatory* who signs on behalf of the subscriber. In most cases this will be a trusted employee of a financial institution, or a legal practitioner or conveyancing firm or company. There is no logical reason why the legal practitioner or conveyancing firm or company signatory must sign in a particular capacity such as a proprietor, partner or director.
53. The Law Council also notes that the certification in the subscriber details section regarding reasonable steps to verify the identity of the person “whose signature appears above” could be misinterpreted as verifying the identity of the subscriber as it is the subscriber’s signature that appears immediately above. The signature of the client party or the client party agent appears in the client authorisation and execution section. The Law Council submits that this certification should be clarified to refer to verification of the identity of the client or client party signing the Authorisation.
54. The Law Council also queries the requirement for the Authorisation to be signed in the presence of the subscriber or the subscriber’s agent. This is potentially an unnecessary major inefficiency. In most, if not all, jurisdictions at present, the transfer document is NOT required to be signed before a legal practitioner, licensed conveyancer or mortgagee. The law does not mandate that the equivalent of the subscriber witnessing the signing of the transfer, mortgage and caveat documents even where the law requires specially qualified witnesses.
55. The Authorisation would not require a signature by a subscriber if it is limited to its principal function of being a client/customer e-signing authority. This is because it is a legal authority *given to* the subscriber. It is NOT an agreement even though the subscriber can reject the authority, not act on the authority given to it or accept the authority by conduct in the context of the legal relation of customer and banker or client and practitioner. The reality of practice is that the authority will usually be prepared by practitioners at the time that they prepare the terms of their engagement and by the financial institutions when they prepare their loan documentation.
56. While the requirement for signature before the subscriber or the subscriber’s agent could be seen as an additional fraud mitigation measure, this should not be necessary if the rigorous Verification of Identity process is carried out as required by the Participation Rules before or at the signing of the Authorisation (cl 6.5.1).
57. The Law Council notes that the Verification of Identity process being conducted by Australia Post in Western Australia appears to have been positively received by legal practitioners as a an efficient means of conducting an identity verification in the context of a conveyancing transaction.

Terms of agreement

Title and what is authorised

58. As noted above, the Law Council queries the reference to “Terms of this Agreement” and suggests that “Terms of this Authorisation” be used instead. Clause 1 is also discussed at paragraph 43.

Changing instructions

59. The provision in clause 2 of the “Terms of this Agreement” for subscribers who receive inconsistent instructions from two or more client parties not to proceed until they receive consistent instructions appears to be unnecessary as legal practitioners,

licensed conveyancers and financial institutions already have procedures for dealing with fluctuating instructions.

Execution under power of attorney or written delegation

60. The Law Council queries the wording of the provision in clause 3 of the “Terms of this Agreement” relating to the implications of the execution of the “agreement” under a power of attorney or written delegation. The implication is that the attorney or the relevant person has stated that no notice of revocation of the power of attorney or delegation has been received. The Law Council suggests that, in line with its submission regarding the Authorisation being a warranty and representation by the client /customer to the subscriber and all the other subscribers and their clients in the conveyancing transaction, the wording of this clause be replaced with:

“The signatory warrants and represents to all subscribers in the conveyancing transaction and associated conveyancing transactions that he, she or it has not received notice of revocation of any power of attorney or written delegation under which he, she or it has signed this authority.”

Mortgages

61. Clause 4 of the “Terms of this Agreement” provides that where the subscriber represents the client as a mortgagee and the client represents that the client has taken reasonable steps to verify the identity of the mortgagor, the client indemnifies the subscriber for any loss resulting from a failure to take such steps. In line with its submission about the Authorisation being a warranty and representation by the client/customer, the Law Council suggests that the wording of clause 4 be changed to:

“A client which is a mortgagee warrants and represents to all subscribers in a conveyancing transaction which is a mortgage, and associated conveyancing transactions, that the client has taken reasonable steps to verify the identity of the mortgagor. However, this warranty and representation does not apply if the mortgagor is separately represented in the mortgage by another subscriber.”

Termination

62. Clause 5 provides that the “agreement” ends on the earlier of:

- (a) The client or the subscriber giving notice in writing to the other that they wish to end the “agreement”; or
- (b) The completion or termination of the conveyancing transaction described in a specific authority or of the conveyancing transactions described in a batch authority; or
- (c) The expiration of any standing authority; or
- (d) The client or the subscriber dying or ceasing to exist as a person.

63. The Law Council considers that the heading for this clause should be changed to “Ending this Authorisation”. The Law Council also considers that it is not necessary to specify that the authorisation comes to an end when the conveyancing transactions in a batch or specific authority are completed. Furthermore, there may be adverse legal consequences in doing so. It may imply that there is a cessation of liabilities for the

subscriber's obligations in carrying out the authorisation, or the client's warranties and representations which are made when the client gives the authorisation.

64. The Law Council also considers that it is not necessary to specify that the authorisation comes to an end when the client or subscriber dies. Lawyers deal with clients dying in the paper system and the electronic system is not so different that it requires special rules. A lawyer can continue to complete a conveyance if a client dies provided that the client has done all in his or her power to complete the transaction and the client is contractually committed to completion. In other words, the client has signed the transfer, handed over the title to his or her lawyer and there is nothing more to be done other than the settlement and an executor has not directed the lawyer not to proceed (the executor takes power from the date of death even though probate has not yet been granted).
65. The provision relating to the death of a subscriber who is a legal practitioner would only be applicable to the rare case of a sole practitioner subscriber dying. In that case, another practitioner or the relevant Law Society would immediately obtain a grant of letter of administration ad colligenda bona by the court in order to maintain the practice.
66. The Law Council also considers that it is not necessary or desirable to specify that the authorisation comes to an end when the client or subscriber ceases to exist as a person. This would appear to only apply on de-registration by the Australian Securities and Investment Commission or on dissolution by the operation of legislation. It does not apply to an insolvency event or the appointment of an external administrator such as a receiver, manager or liquidator. Legislative dissolution generally provides for the transfer of all assets and liabilities to another entity.

Privacy and client information

67. Clause 6 provides that the subscriber may disclose client information to the Operator and the Registrar.
68. "Client information" does not appear to be defined in the National Law, the Participation Agreement or the "Terms of this Agreement". "Personal information" is defined in clause 2.1 of the Participation Rules as having the meaning given in the *Privacy Act 1988* (Cth). However, "personal information" does not appear to be used in other clauses of the Participation Rules.
69. Clause 6.7 of the Participation Rules requires the subscriber to comply with any applicable laws (including any applicable privacy laws) for the jurisdiction in which the land the subject of the conveyancing transaction is situated.
70. Other clauses of the Participation Rules contain requirements in relation to the protection of information, providing correct information and drawing attention to incorrect information (clauses 6.10, 6.11, 7.4 and 7.7). However, "information" is not defined.
71. In the absence of clarity about what is meant by "client information", the Law Council can only suggest that the purpose of disclosure be made clear by adding the words "in accordance with the requirement of the Electronic Conveyancing National Law" at the end of clause 6.
72. Such an addition would also appear to be consistent with similar requirements in the paper system. The standard statement on Victorian documents for registration is as follows:

Privacy Collection Statement

The information from this Authorisation is collected under statutory authority and is used for the purpose of maintaining publicly searchable registers and indexes in the Victorian Land Registry.

73. This Authorisation of limited disclosure appears to be consistent with that contemplated by clause 6.

Meaning of words used in the client authorisation and completion guide

74. Clause 8 contains a list of terms which are used in the Authorisation and the Guide. Some of these terms are also defined in the National Law and the Participation Rules.
75. The Law Council notes that some of the terms are defined more broadly than in ordinary usage such as “purchase” and “sale” which are defined to include not only the preparation of all documents required to effect a purchase or sale of land respectively but also “the liaison with, where relevant, any proposed mortgagee”. These terms are not defined in the National Law or the Participation Rules. The Law Council suggests that these terms should also be defined to include transfers without any or with non-monetary consideration.
76. The Law Council also notes that the definition of “Discharge of Mortgage” as including an instrument of release under the relevant Queensland legislation is also necessary.
77. However, the Law Council considers that the meaning of the other terms in clause 8 is evident from the Authorisation, the Guide or common use and that these other terms should be deleted.

Other obligations for the subscriber

78. The Guide provides that the subscriber is responsible for ensuring the “agreement” is completed in compliance with the Participation Rules and any Prescribed Requirements. Clause 2.1 of the Participation Rules defines “Prescribed Requirements” as any published requirement of the Registrar that subscribers are required to comply with. These Prescribed Requirements have not yet been published. In the absence of information about them, the Law Council is unable to provide comprehensive comments on the Authorisation and the Guide and may need to provide further comments when the prescribed Requirements are published.

Conclusion

79. The Law Council is pleased that ARNECC has engaged in consultation regarding the Authorisation and has redrafted it as a result of such consultation, particularly the joint stakeholder/ARNECC Working Party meeting of 20 November 2012. However, the Law Council considers that there are still a number of significant issues to be resolved before the Authorisation can be finalised. The Law Council hopes that this submission will contribute to resolving these issues.

Attachment A: Profile of the Law Council of Australia

The Law Council of Australia exists to represent the legal profession at the national level, to speak on behalf of its Constituent Bodies on national issues, and to promote the administration of justice, access to justice and general improvement of the law.

The Law Council advises governments, courts and federal agencies on ways in which the law and the justice system can be improved for the benefit of the community. The Law Council also represents the Australian legal profession overseas, and maintains close relationships with legal professional bodies throughout the world.

The Law Council was established in 1933, and represents 16 Australian State and Territory law societies and bar associations and the Large Law Firm Group, which are known collectively as the Council's Constituent Bodies. The Law Council's Constituent Bodies are:

- Australian Capital Territory Bar Association
- Australian Capital Territory Law Society
- Bar Association of Queensland Inc
- Law Institute of Victoria
- Law Society of New South Wales
- Law Society of South Australia
- Law Society of Tasmania
- Law Society Northern Territory
- Law Society of Western Australia
- New South Wales Bar Association
- Northern Territory Bar Association
- Queensland Law Society
- South Australian Bar Association
- Tasmanian Independent Bar
- The Large Law Firm Group (LLFG)
- The Victorian Bar Inc
- Western Australian Bar Association

Through this representation, the Law Council effectively acts on behalf of approximately 60,000 lawyers across Australia.

The Law Council is governed by a board of 17 Directors – one from each of the Constituent Bodies and six elected Executives. The Directors meet quarterly to set objectives, policy and priorities for the Law Council. Between the meetings of Directors, policies and governance responsibility for the Law Council is exercised by the elected Executive, led by the President who serves a 12 month term. The Council's six Executive are nominated and elected by the board of Directors. Members of the 2012 Executive are:

- Mr Joe Catanzariti, President
- Mr Michael Colbran QC, President-Elect
- Mr Duncan McConnel, Treasurer
- Ms Fiona McLeod SC, Executive Member
- Mr Justin Dowd, Executive Member
- Ms Leanne Topfer, Executive Member

The Secretariat serves the Law Council nationally and is based in Canberra.

Attachment B: Client Authorisation Form

CLIENT AUTHORISATION

When this form is signed, an agency agreement is created which authorises the Subscriber to act for the Client in a Conveyancing Transaction or Conveyancing Transactions being completed using the Electronic Lodgement Network (ELN) as required by the Electronic Conveyancing National Law (ECNL)

Subscriber Reference: _____

	CLIENT PARTY 1	CLIENT PARTY 2
CLIENT DETAILS	NAME _____	NAME _____
	ABN/ACN/ARBN _____	ABN/ACN/ARBN _____
	ADDRESS _____	ADDRESS _____
	PHONE _____	PHONE _____
	CONTACT PERSON _____	CONTACT PERSON _____
	EMAIL _____	EMAIL _____
	CAPACITY _____	CAPACITY _____

	AUTHORITY TYPE <input type="checkbox"/> SPECIFIC AUTHORITY (details of transactions to be provided below) <input type="checkbox"/> STANDING AUTHORITY (details to be attached when available) <input type="checkbox"/> BATCH AUTHORITY (details to be attached)	
	AUTHORITY EXPIRATION DATE: ___/___/___	
TRANSACTION DETAILS	CONVEYANCING TRANSACTION(S) 1	CONVEYANCING TRANSACTION(S) 2
	PROPERTY ADDRESS) _____	PROPERTY ADDRESS) _____
	TITLE REFERENCE(S) (and/or property description) _____	TITLE REFERENCE(S) (and/or property description) _____
	TRANSACTION TYPE <input type="checkbox"/> SALE <input type="checkbox"/> PURCHASE <input type="checkbox"/> MORTGAGE <input type="checkbox"/> DISCHARGE <input type="checkbox"/> CAVEAT <input type="checkbox"/> WITHDRAW CAVEAT	TRANSACTION TYPE <input type="checkbox"/> SALE <input type="checkbox"/> PURCHASE <input type="checkbox"/> MORTGAGE <input type="checkbox"/> DISCHARGE <input type="checkbox"/> CAVEAT <input type="checkbox"/> WITHDRAW CAVEAT
	SPECIAL INSTRUCTIONS (use for describing other transaction types) _____	

	CLIENT PARTY 1 / CLIENT PARTY AGENT 1	CLIENT PARTY 2 / CLIENT PARTY AGENT 2
CLIENT AUTHORISATION AND EXECUTION	CAPACITY: _____ DATE / /	CAPACITY: _____ DATE / /
	PRINT NAME _____	PRINT NAME _____
	I CERTIFY that: (a) I am the Person named above as a Client Party or Client Party Agent; and (b) I have the legal authority to instruct the Subscriber in relation to the Conveyancing Transaction; and (c) If I am acting as a Client Party Agent that I have no notice of the revocation of my authority to act on behalf of the Client Party.	
	I AUTHORISE the Subscriber to act as my agent in the ELN in accordance with the terms of this Agreement and the Participation Rules to:	
	(a) electronically sign Documents on my behalf as required for the Conveyancing Transaction Type; and (b) submit or authorise submission of Documents for Lodgement with the relevant Land Registry; and (c) authorise any financial settlement involved in the Conveyancing Transaction; and (d) do anything else necessary in the ELN to complete the Conveyancing Transaction	

	SUBSCRIBER	SUBSCRIBER'S AGENT (if used)
SUBSCRIBER DETAILS AND EXECUTION	NAME _____	NAME _____
	ABN/ACN/ARBN _____	ABN/ACN/ARBN _____
	PHONE _____	PHONE _____
	EMAIL _____	EMAIL _____
	ADDRESS _____	ADDRESS _____
	CAPACITY: _____ DATE / /	CAPACITY: _____ DATE / /
	PRINT NAME _____	PRINT NAME _____
	I CERTIFY that: <input type="checkbox"/> reasonable steps have been taken to verify the identity and authority of the Persons whose signature(s) appear(s) above in accordance with the Participation Rules; and <input type="checkbox"/> this Agreement was signed by each of the Client Parties or their respective Client Party Agent in my or my Subscriber Agent's presence	

Terms of this Agreement

1. What is Authorised

The Client authorises the Subscriber to act as the Client's agent in the ELN in accordance with the terms of this Agreement and the Participation Rules to:

- (a) electronically sign Documents on the Client's behalf as required for the Conveyancing Transaction Type; and
- (b) submit or authorise submission of Documents for Lodgement with the relevant Registrar; and
- (c) authorise any financial settlement involved in the Conveyancing Transaction; and
- (d) do anything else necessary in the ELN to complete the Conveyancing Transaction.

The Client acknowledges that the Client is bound by any electronic Documents required in connection with a Conveyancing Transaction that the Subscriber signs digitally on the Client's behalf in accordance with this Agreement.

2. Changing instructions

The Client may change the Client's instructions to the Subscriber in connection with a Conveyancing Transaction (including by terminating them) at any time before the Subscriber is no longer able to change information entered by the Subscriber into the ELN in connection with a Conveyancing Transaction. However, if the Subscriber receives inconsistent instructions from any two or more Client Parties before that time, the Subscriber is not to proceed further with the Conveyancing Transaction until the Subscriber receives in writing consistent instructions from all of the Client Parties.

3. Execution Under power of attorney or Written Delegation

If this Agreement is executed by an attorney or other Person acting under a power of attorney or Written Delegation from the Client then, by executing this Agreement, the attorney or Person states that the attorney or Person has received no notice of revocation of the power of attorney or Written Delegation.

4. Mortgagees

Where the Subscriber represents the Client in the Client's capacity as mortgagee and the Client represents to the Subscriber that the Client has taken reasonable steps to verify the identity of the mortgagor, the Client indemnifies the Subscriber for any loss resulting from the Client's failure to take reasonable steps to verify the identity of the mortgagor.

5. Termination

This Agreement ends on the earlier of:

- (a) the Client or the Subscriber giving notice in writing to the other that they wish to end this Agreement; or
- (b) the completion or termination of the Conveyancing Transaction described in a Specific Authority or of the Conveyancing Transactions described in a Batch Authority; or
- (c) the expiration of any Standing Authority; or
- (d) the Client or the Subscriber dying or ceasing to exist as a Person.

6. Privacy and Client Information

The Client acknowledges that the Subscriber may disclose Client information to the ELNO and to the Registrar.

7. Applicable Law

This Agreement is governed by the law in force in the Jurisdiction in which the Property is situated. The Client and the Subscriber submit to the non-exclusive jurisdiction of the courts of that place.

8. Meaning of Words Used in the Client Authorisation & Completion Guide

8.1. A term used in this Agreement and also in the ECNL has the same meaning in this Agreement as it has in the ECNL. Terms defined in the ECNL have been capitalised in this Agreement.

8.2. In this Agreement, capitalised terms have the meaning set out below:

Agreement means this Client Authorisation for use in completing Conveyancing Transactions using the ELN.

Authority Type means a Specific Authority, a Standing Authority or a Batch Authority.

Batch Authority means an authority for the Subscriber to act for the Client in a batch of Conveyancing Transactions described in a schedule attached to this Agreement.

Capacity means the role being taken by a Signatory in signing this Agreement (for example an attorney or a director of a company).

Client means a Person or Persons who has or have appointed a Subscriber as its Representative in accordance with the Participation Rules.

Client Party means a Person making up all or part of the Client.

Client Party Agent means a Person authorised to act on behalf of a Client Party.

Conveyancing Transaction Type means the nature of the Conveyancing Transaction being completed, described in this Agreement.

Director means a Person appointed as a director of a corporation.

Discharge of Mortgage includes an instrument of release as defined in section 81 of the Land Title Act 1994 (QLD).

ECNL means the Electronic Conveyancing National Law as adopted or implemented in a Jurisdiction by the application law, as amended from time to time.

Land Registry means the agency of a State or Territory responsible for maintaining the Jurisdiction's Titles Register(s).

Prescribed Requirement means any requirement of the Registrar that Subscribers are required to comply with.

Property means the land and its improvements described by the Title Reference(s) set out in the Conveyancing Transaction details.

Property Address means the street address of the Property.

Purchase, in relation to a Transaction Type, includes the preparation of all documents required to effect a purchase of land and the liaison with, where relevant, any proposed mortgagee.

Sale, in relation to a Transaction Type, includes the preparation of all documents required to effect a sale of land and the liaison with, where relevant, any mortgagee.

Secretary means a Person appointed as a secretary of a corporation.

Signatory means the legal Person signing this Agreement.

Sole Director and Secretary means a Person who is both the sole Director and the sole Secretary of a corporation.

Special Instructions means any instructions by the Client to the Subscriber not specifically provided for in this Agreement.

Specific Authority means an authority for the Subscriber to act for the Client in completing the Conveyancing Transactions described in this Agreement.

Standing Authority means an authority for the Subscriber to act for the Client for a period of time set out in the Special Instructions of this Agreement.

Subscriber has the meaning given to it in the ECNL. The Subscriber is the Person named in this Agreement.

Subscriber Agent means a Person authorised by a Subscriber to act as the Subscriber's agent.

Title Reference means the relevant Land Registry's unique identifier(s) for the Property.

Written Delegation means an authorisation in writing to represent a corporation or other organisation.