

# Future options for non-represented parties and certificates of title

Analysis of Responses



Land Use Victoria – December 2021



Environment,  
Land, Water  
and Planning

OFFICIAL

## Acknowledgment

We acknowledge and respect Victorian Traditional Owners as the original custodians of Victoria's land and waters, their unique ability to care for Country and deep spiritual connection to it. We honour Elders past and present whose knowledge and wisdom has ensured the continuation of culture and traditional practices.

We are committed to genuinely partner, and meaningfully engage, with Victoria's Traditional Owners and Aboriginal communities to support the protection of Country, the maintenance of spiritual and cultural practices and their broader aspirations in the 21st century and beyond.



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# Contents

<b>Introduction</b> .....	<b>2</b>
<b>Overview of stakeholder responses</b> .....	<b>2</b>
Options for non-represented parties .....	2
Options for certificates of title .....	2
Next steps.....	3
<b>Appendix 1</b> .....	<b>4</b>
Options for non-represented parties .....	4
Table of summarised submissions and Registrar responses .....	4
Options for certificates of title .....	7
Table of summarised submissions and Registrar responses .....	7

# Introduction

The [Future options for non-represented parties and certificates of title consultation paper](#) (Consultation Paper) was published on the Land Use Victoria website on 1 September 2021 and the Engage Victoria website on 21 September 2021.

Stakeholders were able to provide submissions in response to the Consultation Paper between 1 September 2021 and 1 November 2021. Nineteen submissions were provided to the Registrar including four anonymous submissions received via Engage Victoria.

Submissions were received from:

1. Australian Conveyancing Team
2. Australian Institute of Conveyancers
3. Department of Education
4. Engel Partners
5. First Class Legal
6. Holiday Concepts Group
7. LodgeX
8. Melbourne Water Corporation
9. National Australia Bank
10. Pro Convey
11. Sheriff of Victoria
12. South East Water Corporation
13. State Revenue Office
14. Sympli
15. Victorian School Building Authority

Submissions were generally supportive of the options preferred by the Registrar though some submissions raised concerns about particular aspects. The key issues stakeholders raised are outlined in further detail in **Appendix 1** along with the Land Use Victoria response to these issues. The issues raised have been grouped and summarised into themes, organised using the options set out in the Consultation Paper.

## Overview of stakeholder responses

### Options for non-represented parties

The Consultation Paper set out three options for non-represented parties:

Option 1 – Do nothing and continue to permit non-represented parties to lodge all transaction types

Option 2 – Remove the ability of non-represented parties to undertake their own transactions with land

Option 3 – Restrict the classes of transaction types that may be lodged by a non-represented party

Option 3 was the Registrar's preferred option.

There was good support for Option 3 to restrict the classes of dealings that a non-represented party may lodge. There was a preference among some industry stakeholders for Option 2 to remove all ability of non-represented parties to undertake their own transaction with land. There was only one response in support of Option 1 to do nothing and continue to permit non-represented parties to lodge all transaction types.

### Options for certificates of title

The Consultation Paper set out three options for certificates of title:

Option 1 – Do nothing and retain the paper certificate of title

Option 2 – Remove both paper and electronic certificates of title

Option 3 – Remove paper certificates of title and retain electronic certificates of title for all folios

Option 3 was the Registrar's preferred option.

There was support from a range of stakeholders for Option 3 to remove paper certificates of title and support from some industry stakeholders for Option 2 to remove both electronic and paper certificates of title and . There were no responses in relation to Option 1 to retain both paper and electronic certificates of title.

### **Next steps**

The Registrar will make recommendations to the Minister for Planning.

Following the Minister's consideration, further advice will be provided.

# Appendix 1

## Options for non-represented parties

### Table of summarised submissions and Registrar responses

#	Summary of submission	Registrar response
<b>Option 1 – Do nothing and continue to permit non-represented parties to lodge all transaction types</b>		
1	Non-represented parties should be able to continue to lodge all transactions types as they are fully capable of doing so correctly. There is no risk in doing so.	Transactions lodged by non-represented parties are often incomplete and occasionally do not achieve the outcome they intend. Further applications are often required to remedy these erroneously lodged transactions. This can have costly impacts on the non-represented lodging party and on other parties.
2	Allowing people without legal understanding to continue to lodge exposes them and others to legal claims. The conveyancing industry is there to assist and protect the public. The benefits outweigh any perceived gains of unlimited access to the Register.	The Registrar agrees.
3	The current landscape and framework are too difficult for non-represented parties to navigate.	Transactions with land are fundamentally complex. The current framework provides additional security and certainty to transactions. The Registrar does not consider that the changes that have impacted non-represented parties, namely verification of identity, has significantly changed the way non-represented parties transact.

#	Summary of submission	Registrar response
<b>Option 2 – Remove the ability of non-represented parties to undertake their own transactions with land</b>		
4	This option would assist conveyancers and lawyers in dealing with non-represented parties.	<p>The Registrar notes this but is mindful that where there is an inter-party transaction or a transaction that involves no monetary consideration, it is of comparatively lower risk and it may be inappropriate to require the party/parties to engage a conveyancer or lawyer.</p> <p>As non-represented parties are not expected to transact electronically, they are not required to navigate electronic conveyancing.</p>
5	It is fair for non-represented parties to engage a legal representative. Every property is worth a significant amount of money so to pay a fee is not onerous.	
6	Electronic settlement and electronic conveyancing create operational efficiencies, ensures the integrity of the Register of land and bolsters community confidence in the process. But the systems is significantly more complicated so non-represented parties should be excluded from lodging.	
7	This approach will ensure consistency with NSW.	
<b>Option 3 – Restrict the classes of transaction types that may be lodged by a non-represented party</b>		
8	The limited types of transactions that a non-represented person may lodge is appropriate.	The Registrar notes this feedback.
9	Time share owners should continue to be allowed to transfer their interests as these are for holiday use only and are low in value. 98 per cent of timeshare owners are non-represented.	The Registrar does not consider that transfers for monetary consideration should be included in the subset.
10	An additional option would be to restrict the proposed transaction types and impose a fee to cover the additional time taken by the Registrar to process these transactions. A fee set at \$165 to \$330 (inclusive of GST) would be less than engaging a conveyancer or solicitor. The fee could be contributed to the fidelity fund.	Lodgment fees are set on a cost recovery basis. This could potentially be considered when fees are next reviewed.

#	Summary of submission	Registrar response
11	This option is only of limited assistance to conveyancers and lawyers as they will still have to deal with non-represented parties in related party transfers and has a negative impact on the benefits of electronic conveyancing. The dealing types form part of the everyday transactions that are dealt with by conveyancers and lawyers.	The Registrar notes this but points out that across the 2019 and 2020 financial years, non-represented parties who lodged one of the proposed dealing types made up 0.26 per cent of the total dealings lodged with the Registrar. This represents a very small fraction of typical transactions.
12	Prefer that this is means tested but understand that is probably not an option.	The Registrar does not consider it appropriate to means test lodging parties.
13	An exception should be made for government authorities as they are not able to be a subscriber because of direct debit requirements.	The Registrar encourages all government authorities to investigate becoming a subscriber to an electronic lodgment network. Many government authorities have already done so and are transacting without needing to use intermediaries.
14	Lodging creation of easements electronically increases time and cost for parties and requires manual processing once lodged.	Electronic lodgment is an efficient, time-saving process. While manual examination is required for this particular transaction type, the validations, verifications and certification regime provided certainty, security and efficient lodgment.
15	Having the identity of non-represented parties verified by Australia Post may be too onerous.	Verification of identity is an integral safeguard in the conveyancing process. Australia Post has numerous branches at which verification of identity can occur. The Registrar has received very little indication that the identity process is onerous.
16	The proposed transaction types present an increased potential for fraud, delay due to error and may create negative and significant impacts on the non-represented parties and other affected parties.	The Registrar considers that the types of applications are limited in complexity and do not necessarily require technical expertise.
17	If this option is selected, strict time limits for completion of document lodgements should be implemented.	There are no time limits prescribed in the legislation and the Registrar does not consider it appropriate to introduce time limits for the lodgment of these transaction types.



#	Summary of submission	Registrar response
18	The Registrar should direct non-represented parties to access services offered by a subscriber and set pricing.	The Registrar already encourages non-represented parties to engage a conveyancer or lawyer to assist them in transacting with land. It would be inappropriate for the Registrar to direct parties to particular subscribers or to set pricing.
19	Noted that this is the preferred approach from the Registrar and raises no issues with this approach.	The Registrar notes this feedback.

## Options for certificates of title

### Table of summarised submissions and Registrar responses

#	Summary of responses	Registrar response
<b>Option 1 – Do nothing and retain the paper certificate of title</b>		
The Registrar received no submissions in relation to this option.		
<b>Option 2 – Remove both paper and electronic certificates of title</b>		
1	This option will bring Victoria into line with other jurisdictions and increase operating efficiencies for transactions. This will improve the customer experience.	The Registrar notes this feedback.
2	There are significant burdens associated with the control of the electronic certificate of title including maintaining a register of all owners and providing nominations (without payment for this effort). There are also difficulties and delays encountered when changes in the structure and ownership of banking institutions, law firms and conveyancing businesses that require that processes be developed for tracking and tracing of the electronic certificate of title.	The Registrar notes this feedback.

#	Summary of responses	Registrar response
3	Safeguards are sufficient to support removal of all certificates of title.	The Registrar notes this feedback.
4	This option increases certainty around the right to deal as every party must be properly verified.	The Registrar considers that with or without certificates of title a transacting party's right to deal must be verified.
5	Audit controls should be created for transactions.	The Registrar already has audit controls in place. The Registrar undertakes compliance examinations and aims to audit each subscriber at least once every three years.
6	The Registrar should notify first mortgagees of the registration of subsequent dealings, such as second mortgages. It is acknowledged that mortgagees will receive notices of caveats and other like dealings with land.	Mortgagees do not receive notice of caveats or of other dealings with land. One of the reasons the Registrar prefers Options 3 is that mortgagees hold control of the electronic certificate of title. If the mortgagee is not party to a transaction, and a particular dealing requires a nomination, they will need to be satisfied that nomination will be appropriate before making the electronic certificate of title available to the particular dealing. Consequently, mortgagees receive advance notice of second mortgages and other transactions lodged for registration.
7	Prior to the removal of certificates of title, there should be harsher penalties for conveyancers and solicitors who do not comply with verification of identity requirements. They should have their ability to lodge taken away.	The Registrar undertakes compliance examinations and aims to audit each subscriber at least once every three years. Failure to verify identity is considered a serious breach of the participation rules and is likely to result in a subscriber being suspended.
8	Suggest the adoption or expansion of scope for a registered proprietor's caveat to add additional safeguards to prevent improper dealings.	The Registrar considers that the very limited circumstance in which a registered proprietor can lodge a caveat are appropriate. The requirement that a subscriber verify identity and right to deal is intended to prevent improper dealings.
<b>Option 3 – Remove paper certificates of title and retain electronic certificates of title for all folios</b>		
9	The subscriber controlling the certificate of title should not be allowed to charge a fee for transferring control to another subscriber.	The Registrar holds no view on the charging of fees by subscribers for the transfer of control. No fee is imposed by the electronic lodgment network operators.

#	Summary of responses	Registrar response
10	Need to wait another 10 or 20 years as many older people do not understand electronic certificates of title.	The Registrar notes this feedback.
11	Process will be streamlined and will save consumers and owners the costly error of losing their paper certificates of title and only discovering this once they have already entered a binding contract of sale. Lawyers and conveyancers will save time by no longer needing to locate and store paper certificates of title. This will make it easier for lawyers and conveyancers when they sell their practice. It is better for the environment and a good way forward for the Registrar.	The Registrar notes this feedback.
12	A cost-effective (cheaper than the commemorative version) option to purchase a non-legal plain copy of a certificate of title should be available.	A Register Search Statement is available for a small fee which contains the same information that is set out on a paper certificate of title.
13	Information about the change should be widely distributed in particular to lenders that provide funds on the 'security' of a paper certificate of title and the broader community.	The Registrar notes this feedback and will publicise any changes.
14	This is the safest option for registered proprietors and the legal industry.	The Registrar notes this feedback.
15	Information should be provided about timeframes for the change, the processes for converting paper certificates of title, the costs involved (if any) and whether a report of all certificates of title issued to or controlled by a subscriber can be obtained.	The Registrar notes these requests and will advise customers of these details in Customer Information Bulletins.
16	There may be less competition as a proprietor is more likely to engage the conveyancer or lawyer that holds control of their electronic certificate of title.	The process to transfer control of electronic certificates of title is a straightforward one and there should be little practical impediment to switching representatives.
17	Requiring a party to hold control of the electronic certificate of title and for non-controlled titles to be held by the Registrar may be cumbersome.	Efficient, and to the extent possible, automated processes will be implemented to reduce effort and minimise impact on customers.

#	Summary of responses	Registrar response
18	What are the impacts on sales by the Sheriff's Office?	There will be no change to the Sheriff's sale process as the creditor will still be required to seek orders from the Court as to the control of the electronic certificate of title.

