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| Land Use Victoria Customer Information Bulletin 205 August 2020 |
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# **Processing time for land transactions**

Land Registry Services is committed to continuing to serve customers during the evolving coronavirus (COVID-19) restrictions. With all staff working from home, it is challenging to meet usual targets and timeframes.

Generally, plans of subdivision are registered within 15 business days of lodgment, with a target of five business days for priority plans (greater than 10 lots). Timeframes depend on the complexity of the plan and any requisitions involved. To be updated on the status of a plan, please go to [www.landata.online](http://www.landata.online/) and select ‘document tracking’ to subscribe to a Property Transaction Alert. Unless there is notification of a change in status, the lodgment is at ‘examination’ stage.

Transactions lodged using the generic residual dealing type are manually processed, so additional time is required. Ensuring that lodgment requirements set out in Customer Information Bulletins 200, 201 and 202 are met will ensure delays are minimised. Complex transactions with supporting evidence are also taking longer to examine.

Land Registry Services thank you for your patience, understanding and support.

# Melbourne Strategic Assessment program – notifications recorded under the new Act

The Melbourne Strategic Assessment (Environment Mitigation Levy) Act 2020 (MSA Act) took effect on 1 July 2020.

Councils issuing a Statement of Compliance (SOC) for a subdivision of levy-affected land must provide a copy of the SOC and plan of subdivision to the Secretary of the Department of Environment, Land, Water and Planning (DELWP), within seven days of issuing the SOC for assessment.

Levy-affected land will be identifiable by a notice on the folio of the Register (title) similar to a Growth Areas Infrastructure Contribution (GAIC) Notice. The Registrar of Titles, on receiving an application from the Secretary under section 45 of the MSA Act, will record a notice stating that the environment mitigation levy may be payable. The MSA Act also provides for an application by the Secretary to remove a levy recording under section 47 of the MSA Act.

Lodging parties will need to ensure that a Melbourne Strategic Assessment Certificate has been issued by DELWP prior to lodging a plan of subdivision of levy-affected land with the Registrar. If applicable, an application by the Secretary to remove a levy recording under section 47 of the Act will also need to be lodged by the lodging party.

An enhancement to [SPEAR](https://www.spear.land.vic.gov.au/spear/pages/about/what-is-spear/spear-dealing-types.shtml) to support the Melbourne Strategic Assessment program will be implemented in SPEAR Release 5.1, scheduled for September 2020. Until then, affected councils must provide the SOC and plan documents to DELWP manually.

For more information on the Melbourne Strategic Assessment program, please visit https://www.msa.vic.gov.au/ or email msa.habitatcompensation@delwp.vic.gov.au

# Victorian Water Register payment and process changes

Due to the continuing coronavirus (COVID-19) situation, payment methods for lodgments in the Victorian Water Register will change to ensure the safety of customers, service providers and staff.

From 31 August 2020 cheques will no longer be an accepted method of payment for lodgments. This includes bank or other authorised deposit-taking institution cheques, lawyers’ and conveyancers’ trust or office account cheques, personal cheques and money orders. Credit or debit card payments will be the only accepted form of payment. Once a lodgment is processed, the lodging party will be contacted by telephone to process the payment.

Confirmation that the lodgment has been processed will be emailed to the lodging party, buyer and seller (if applicable). Hard copy letters and receipts will no longer be posted to customers. When completing documents to be lodged please ensure that an email address for all parties involved has been provided. We will continue to deliver our full suite of services.

Lodgments must be mailed to:

Water Register

Victorian Land Registry Services

GPO Box 527

Melbourne VIC 3001

# Entitlement to sign registry instruments

The Australian Registrars’ National Electronic Conveyancing Council (ARNECC) has published an update to *Entitlement to sign Registry Instruments*, based on advice from the Victorian Legal Services Board and Commissioner (VLSB+C). This document is available at [www.arnecc.gov.au/resources/guidance-practitioner-regulators](http://www.arnecc.gov.au/resources/guidance-practitioner-regulators).

The VLSB+C have determined that supervised non-practitioner employees of law practices in Victoria will be permitted to sign registry instruments, provided they are appropriately supervised by the responsible principal. If a supervised non-practitioner employee is signing, the signer role ‘LAW PRACTICE’ should be selected.

This is in addition to the existing signer role options for law practices where if:

* an Australian Legal Practitioner (ALP) is signing ‘AUSTRALIAN LEGAL PRACTITIONER’ should be selected, and
* a supervised Licensed Conveyancer is signing ‘LICENSED CONVEYANCER’ should be selected.

# Mortgages lodged for registration must be on the same terms as mortgage granted by the mortgagor

Mortgages have recently been lodged for registration which seek to incorporate special conditions, terms, guarantees and covenants included in the mortgage granted by the mortgagor.

Under section 74(1A)(b) of the *Transfer of Land Act 1958* (TLA) the Registrar may register a mortgage if the mortgagee has ‘certified that… the mortgagee holds a mortgage granted by the mortgagor; and… the mortgage held by the mortgagee is on the same terms as the mortgage lodged for registration.’

The wording of the certification is set out in Certification 5 in Schedule 3 of the Participation Rules.

In the mortgages described in the first paragraph of this article, the mortgage granted by the mortgagor was not on the same terms as the mortgage lodged for registration. The certification was therefore invalidly given.

Other examples of when this certification has been invalidly given include:

* when the electronic mortgage contains no MCP reference, but the mortgage granted by the mortgagor contains a MCP reference
* when the electronic mortgage contains a MCP reference, but the mortgage granted by the mortgagor does not contain a MCP reference
* when the electronic mortgage contains a MCP reference, but the mortgage granted by the mortgagor contains a different MCP reference.

Customers are referred to Notice to Subscribers 2016-NS2 issued by ARNECC which can be found at: https://www.arnecc.gov.au/publications/notices\_to\_subscribers

If a mortgage has been registered and is not on the same terms as the mortgage which has been granted by the mortgagor, then the mortgagee should take immediate steps to discharge the mortgage.

The preferred way to incorporate terms into a mortgage is to use a Memorandum of Common Provisions. If specific variations are required they can be included under Additional Covenants.

Mortgagees are reminded that it is unnecessary and inappropriate to repeat loan agreement and guarantee terms and conditions in a mortgage.

Before signing electronic mortgages, mortgagees or their conveyancers and lawyers should carefully check each electronic mortgage to ensure it is on the same terms as the mortgage granted by the mortgagor.

Further information about the national mortgage can be found in the on the ARNECC website at [www.arnecc.gov.au/publications/national-mortgage](http://www.arnecc.gov.au/publications/national-mortgage)

Giving invalid certifications is a breach of the Participation Rules for electronic conveyancing and can lead to a Subscriber being suspended or terminated. It is also an offence under section 119 of the Transfer of Land Act.

# Administrative Notices to convert pCTs to eCTs and Certification 6

Certification 6 is in Schedule 3 of the Participation Rules and states that a certifier has retrieved and either securely destroyed or made invalid a duplicate certificate of title.

**Retrieved title**

Certification 6 is used when a Subscriber holds a paper certificate of title (pCT) and wishes to either convert it to an electronic certificate of title (eCT) or convert it to an eCT and nominate it to an electronic workspace or a paper instrument.

The Certifier must hold the pCT before giving Certification 6.

Land Use Victoria has examples of where Certification 6 has been given inappropriately when:

* the pCT was not retrieved from a storage facility
* the pCT was lost or destroyed instead of making an application under section 31 of the Transfer of Land Act 1958 (TLA) or as well as making an application under section 31 of the TLA (see Customer Information Bulletin 198 for more information on the second scenario)
* the pCT was held by a third party.

**Title securely destroyed or made invalid**

Land Use Victoria has examples where Certification 6 has been given but the pCT has not been securely destroyed or invalidated. One reason given for this is that the Subscriber wished to retain the pCT (without it being made invalid) until settlement, in case settlement did not proceed.

It is not appropriate to retain the pCT without it being made invalid for any reason. The pCT must be either securely destroyed or invalidated before Certification 6 is given. Even if settlement does not proceed, the eCT should be retained so that it can be nominated to future electronic workspaces or paper instruments.

Giving invalid certifications is a breach of the Participation Rules for electronic conveyancing and can lead to a Subscriber being suspended or terminated. It is also an offence under section 119 of the Transfer of Land Act.

# New ARNECC Notice to Subscribers

ARNECC has published a new Notice to Subscribers relating to verification of identity which can be found here: https://www.arnecc.gov.au/publications/notices\_to\_subscribers.

# Adverse possession applications and the Fences Act 1968 – Magistrates’ Court Orders

Under section 30E of the *Fences Act 1968*, “the Magistrates' Court may make an order in relation to who is entitled to title by possession of that part of the adjoining lands on which the fencing works and any subsidiary works are to be carried out”.

If such an order is obtained, it can be used to support an application under section 60 of the *Transfer of Land Act 1958* (TLA). As part land is being claimed, the declaration will need to rely on, and refer to, a survey by a licensed surveyor of the land claimed.

Any application under section 60 of the TLA will need to be supported by the Court’s declaration, together with the survey by the licensed surveyor referred to, and relied on, in the declaration. The applicant will also be required to provide the licensed surveyor’s abstract of field records and surveyor’s report.

A declaration by consent, when there is no finding by the Court as to who is entitled to title by possession, will not be sufficient to support an application under section 60 of the TLA.

It is not appropriate to seek orders that the Registrar of Titles amend the Register of land under section 103(1) of the TLA, or to make an application under that section.

# SPEAR ELN payment methods

Lodging parties subscribed to the SPEAR Electronic Lodgment Network (ELN) can pay lodgment fees in SPEAR using direct debit or credit card. Lodging parties should use the direct debit method when their account is linked to a VOTS customer account.

Credit card payments are limited to a transaction amount up to $100,000.  This limit is set by LUV’s payment gateway provider (financial institution). Lodgment fees over this amount must be paid using direct debit.

# Crown Diagrams – for Crown folios and Plans of Crown Allotments

A Crown Diagram (CD) is the diagram location for a Crown folio. It is created to assist in locating a Crown land parcel and has been prepared from Vicmap. It indicates parcel shapeand includes abuttals. No warranty is given as to the accuracy or completeness of the plan. Some CDs will show the parcel with some measurement definition of its boundaries and its abuttals, but more recently Enhanced Crown Diagrams are also being prepared.

**Enhanced Crown Diagrams** are Crown Diagrams for Crown allotments which are defined on a Plan of Crown Allotment (OP) and refer to the OP as the source diagram defining the parcel.  A copy of the OP plan will now be attached to the CD diagram, avoiding the need for a separate search for the OP plan once the Crown Diagram has been retrieved. This enhancement will save customers additional searching time and the costs associated with that.

# Subscribe

To receive notification when a *Customer Information Bulletin* is published, please send an email to lv.cib@delwp.vic.gov.au with SUBSCRIBE in the subject line – include your name and email address in the body of the email.

# Contact us

For [location and contact details](http://www.dtpli.vic.gov.au/property-and-land-titles/contact-us), go to [www.propertyandlandtitles.vic.gov.au/contact-us](http://www.propertyandlandtitles.vic.gov.au/contact-us).