|  |
| --- |
| Land Use Victoria  Customer Information Bulletin 196 January 2020 |
|  |

Reminder: Elimination of cheques as a payment method

From 1 February 2020 Land Use Victoria **will no** **longer accept cheques as a method of** **payment** for paper lodgments.

Bank or other authorised deposit-taking institution cheques, lawyers’ and conveyancers’ trust or office account cheques, personal cheques and money orders will not be accepted from that date.

Please refer to further information on payment options under ‘Lodging requirements’ at <https://www.propertyandlandtitles.vic.gov.au/forms-guides-and-fees/overview>. For more information on using direct debit as a form of payment please refer to the [Fees and direct debit](https://www.propertyandlandtitles.vic.gov.au/forms-guides-and-fees/fees) page at [www.propertyandlandtitles.vic.gov.au](http://www.propertyandlandtitles.vic.gov.au).

Any queries on the phasing out of cheques and/or conversion to direct debit payment may be directed to Land Registry Services Customer Call Centre on 9102 0401.

Participation Rules and Operating Requirements for electronic conveyancing transactions

The Australian Registrars' National Electronic Conveyancing Council (ARNECC) has published for consultation Model Participation Rules Version 6 Consultation Draft and Model Operating Requirements Version 6 Consultation Draft.  These consultation drafts propose amendments to the Model Participation Rules Version 5 and Model Operating Requirements Version 5 respectively.

The [Model Participation Rules Version 6 Consultation Draft](https://www.arnecc.gov.au/__data/assets/pdf_file/0009/1464327/mpr-consultation-draft-6-clean.pdf)  and [Model Operating Requirements Version 6 Consultation Draft](https://www.arnecc.gov.au/__data/assets/pdf_file/0007/1464352/mor-consultation-draft-6-clean.pdf)  are now published on the ARNECC website at <https://www.arnecc.gov.au/resources/consultation/model_participation_rules> and <https://www.arnecc.gov.au/resources/consultation/model_operating_requirements>.

Written submissions can be made to [chair@arnecc.gov.au](mailto:chair@arnecc.gov.au) by the due date, 19 February 2020.

ARNECC is holding a forum to discuss the proposed amendments to the Model Operating Requirements and the Model Participation Rules in Melbourne on Wednesday 5 February, 2-4 pm. For details email [chair@arnecc.gov.au](mailto:chair@arnecc.gov.au).

Statutory Declarations from 1 January 2020

A statutory declaration declared on or after 1 January 2020 must comply with the *Oaths and Affirmations Act 2018* (the Act) and the Oaths and Affirmations (Affidavits, Statutory Declarations and Certifications) Regulations 2018 (the Regulations).  Specifically:

* statutory declarations must be in the prescribed form (s. 30(1) of the Act)
* the statutory declaration must be declared in the presence of an authorised witness (s. 30(2) of the Act)
* the declarant and authorised witness must in each other’s presence sign or initial any alteration to the statutory declaration (s. 30(3)(a) of the Act)
* the declarant and authorised witness must in each other’s presence sign or initial each page (s. 30(3)(b) of the Act)
* if the statutory declaration refers to a separate document, the declarant and authorised witness must, in each other’s presence, sign a certificate attached to the document identifying it as an exhibit to the statutory declaration (s. 30(3)(c) of the Act)
* the declarant and authorised witness must in each other’s presence sign and date the statutory declaration (s. 30(3)(d) of the Act)
* the declarant must legibly write, type or stamp that person’s name and address on the statutory declaration (s. 30(3)(e) of the Act)
* the authorised witness must sign and write, type or stamp their name, personal or professional address and their qualification as a statutory declaration witness (s. 30(3)(e), 30(5) and 30(6) of the Act).

There are additional requirements set out in the Act and the Regulations which customers should also read. Statutory declarations purporting to be declared under the Act during the transitional period (which ended on 1 January 2020) must also comply with the requirements of the Act and the Regulations.

Reminders and directions to Representatives signing Registry Instruments on behalf of their clients

Potential consequences of providing certifications and submitting instruments for lodgment without undertaking proper enquiries

The New South Wales case of *Guirgis v JEA Developments Pty Ltd* [2019] NSWSC 164 is a reminder of the obligation of Subscribers to make proper enquiries when lodging a caveat.

The caveat claimed that the conveyancer’s client had an interest as chargee pursuant to an agreement. The caveat stated that the estate or interest claimed was supported by an outstanding loan. The conveyancer made certifications in accordance with the NSW Participation Rules for Electronic Conveyancing, which are the same as those required to be provided in Victoria. Among them, the conveyancer certified that reasonable steps had been taken to ensure that the instrument or document was correct and that the evidence was retained in support of the instrument or document.

In fact, the conveyancer had made no proper enquiries to ensure that the client had a caveatable interest and did not receive or retain evidence to support the claim in the caveat.

The Court stated that the person giving the certification must have reasonable grounds to give the requisite representation and certifications. The Court found that the certifications given were deficient.

Entitlement to sign instruments – Victorian law practice

Customers must ensure instruments are correctly signed. Customer Information Bulletin 172, November 2019 sets out the entitlement to sign instruments in more detail.

Victorian lawyers are reminded that the Victorian Legal Services Board/Commissioner has determined that only an Australian Legal Practitioner (ALP) or a Licensed Conveyancer employed by an ALP can sign instruments on behalf of a client. A non-practitioner employee of an ALP cannot sign. In the list of signing role options, ‘AUSTRALIAN LEGAL PRACTITIONER’ or ‘LICENSED CONVEYANCER’ should be selected.

Although ‘LAW PRACTICE’ is included in the options, as the signing list is a national list, it must not be used by Victorian law practices.

The Registrar may take steps to suspend Subscribers signing incorrectly and may refer the law practice to the Legal Services Board/Commissioner.

The ARNECC website has included under the Resources - Guidance from Practitioner Regulators tab a document setting out the Entitlement to sign Registry Instruments for each of the jurisdictions.

Conveyancing work and lodging caveats

Conveyancers can only undertake work that is defined as conveyancing work under the *Conveyancers Act 2006* (the Act).

Conveyancers must ensure they comply with section 4 of the Act when preparing and lodging documents, including caveats.

Section 4(1) of the Act sets out what constitutes conveyancing work, being legal work carried out in connection with any transaction that creates, varies, transfers, conveys or extinguishes a legal or equitable interest in any real or personal property such as, for example, any of the following transactions:

* the sale of a freehold interest in land
* the creation, sale or assignment of a leasehold interest in land
* the grant of a mortgage or other charge.

Section 4(2) sets out that conveyancing work also includes:

* legal work involved in preparing any document necessary for a transaction in section 4(1)
* legal work consequential or ancillary to a transaction in section 4(1) and

any other legal work prescribed as constituting conveyancing work in the regulations under the Act.

Section 4(3) of the Act specifies that conveyancing work does not include, among other things:

* legal work carried out for:

1. litigation matters
2. wills, probate or administration matters
3. *Corporation Act 2001* matters
4. trust matters
5. giving investment or financial advice
6. investment of money unless permitted by the Act

* legal advice in relation to:

1. obtaining the consent of a person for the development or use of land
2. adverse possession applications under section 60 of the *Transfer of Land Act 1958*

* work prescribed by the regulations as not constituting conveyancing work.

Preparing and lodging caveats relating to a legal or equitable interest in real property or a transaction relating to those interests would be considered conveyancing work under the Act. If a caveat does not relate to conveyancing work within the meaning of the Act, it cannot be lodged by a conveyancer.

The preparation and lodgment of caveats with the following grounds of claim would not be considered conveyancing work and cannot be lodged by a conveyancer:

1. Court Order under the *Family Law Act 1975*
2. Estoppel
3. Trustee of the bankrupt estate of parties under the *Bankruptcy Act 1986*
4. Declaration of Trust
5. Implied, resulting or constructive trust
6. Beneficiaries under a will where probate has been granted
7. Adverse possession by exclusive occupation.

This is a non-exhaustive list. The preparation and lodgment of caveats relating to other grounds of claim may also not constitute conveyancing work.

# 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).

|  |  |
| --- | --- |
| © The State of Victoria Department of Environment, Land, Water and Planning 2020  LogoThis work is licensed under a Creative Commons Attribution 4.0 International licence. You are free to re-use the work under that licence, on the condition that you credit the State of Victoria as author. The licence does not apply to any images, photographs or branding, including the Victorian Coat of Arms, the Victorian Government logo and the Department of Environment, Land, Water and Planning (DELWP) logo. To view a copy of this licence, visit http://creativecommons.org/licenses/by/4.0/  Disclaimer  This publication may be of assistance to you but the State of Victoria and its employees do not guarantee that the publication is without flaw of any kind or is wholly appropriate for your particular purposes and therefore disclaims all liability for any error, loss or other consequence which may arise from you relying on any information in this publication. | Accessibility  If you would like to receive this publication in an alternative format, please telephone the DELWP Customer Service Centre on 136186, email [customer.service@delwp.vic.gov.au](mailto:customer.service@delwp.vic.gov.au), or via the National Relay Service on 133 677 [www.relayservice.com.au](http://www.relayservice.com.au). This document is also available on the internet at [www.delwp.vic.gov.au](http://www.delwp.vic.gov.au). |