



Electronic Conveyancing: Is it really you?

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In 2008, the Council of Australian Governments (COAG) agreed to the development of a system which would allow practitioners and conveyancers to efficiently and conveniently complete property transactions electronically. Since then, the National Electronic Conveyancing System (NECS) has come forward in leaps and bounds in providing this service.

Legal Practitioner and Conveyancer Guidelines

Since the introduction of NECS, the Australian Registrars National Electronic Conveyancing Council (ARNECC) introduced stringent guidelines which legal practitioners and conveyancers must follow. These guidelines are a combination of the:

- [Model Operating Requirements \(MOR\)](#); and
- [Model Participation Rules \(MPR\)](#)

One of the first and most important steps a legal practitioner should take in any electronic transaction is the Verification of Identity requirements (VOI). The MOR and MPR, as implemented by ARNECC, set out these requirements.

Proposed Amendments to the VOI Requirements

On 2 March 2020, ARNECC closed submissions for public consultation on VOI requirements. All of the proposed amendments may be found [here](#).

The VOI requirements in accordance with the MPR are:

- by applying the VOI Standard (Schedule 8 of the MPR); or
- when the VOI Standard cannot be applied in full, verification may be done by taking "reasonable steps".

The proposed amendments are that the VOI Standard must be applied and if not, evidence must be retained by the legal practitioner or conveyancer which



demonstrates why the VOI Standard could not be applied.

Consequently, the current "reasonable steps" will no longer be an acceptable way to verify identity for those clients wishing to instruct practitioners to electronically transact their property dealings.

"High Risk" Issues

It is expected that the majority of clients will be able to provide sufficient identification evidence from category 1 to 4 within the "Minimum Document Requirements" schedule in the MPR.

However, for other clients (such as elderly clients who do not have a current drivers' licence or passport), a legal practitioner will need to assess on other means to verify identity and to evidence why the VOI Standard cannot be applied. Here, a

legal practitioner might assess whether there is a competent professional who can complete an Identifier Declaration. The Identity Declarant, in accordance with the MPR, must be:

"an Australian Legal Practitioner, a Bank Manager, Community Leader, Court Officer, Doctor, Land Council Officeholder, Licensed Conveyancer, Local Government Officeholder, Nurse, Police Officer or Public Servant"

and who has known the client giving instructions for a period of more than 12 months.

What Clients should Expect

Clients should expect a practitioner witnessing to request at least the following documents, to satisfy verification requirements:

Category	For Persons who are Australian Citizens or Residents
1	Australian Passport or foreign passport or Australian Evidence of Immigration Status ImmiCard or Australian Migration Status ImmiCard <u>plus</u> Australian drivers' licence or Photo Card <u>plus</u> change of name or marriage certificate <i>if necessary</i>
2	Australian Passport or foreign passport or Australian Evidence of Immigration Status ImmiCard or Australian Migration Status ImmiCard <u>plus</u> full birth certificate or citizenship certificate or descent certificate <u>plus</u> Medicare or Centrelink or Department of Veterans' Affairs card <u>plus</u> change of name or marriage certificate <i>if necessary</i>
3	Australian drivers' licence or Photo Card plus full birth certificate or citizenship certificate or descent certificate <u>plus</u> Medicare or Centrelink or Department of Veterans' Affairs card <u>plus</u> change of name or marriage certificate <i>if necessary</i>
4	a) Australian Passport or foreign passport or Australian Evidence of Immigration Status ImmiCard or Australian Migration Status ImmiCard <u>plus</u> another form of government issued photographic identity Document <u>plus</u> change of name or marriage certificate <i>if necessary</i> b) Australian Passport or foreign passport or Australian Evidence of Immigration Status ImmiCard or Australian Migration Status ImmiCard <u>plus</u> full birth certificate plus another form of government issued identity Document <u>plus</u> change of name or marriage certificate <i>if necessary</i>
5	a) Identifier Declaration <u>plus</u> full birth certificate or citizenship certificate or descent certificate <u>plus</u> Medicare or Centrelink or Department of Veterans' Affairs card <u>plus</u> change of name or marriage certificate <i>if necessary</i> b) Identifier Declaration by a Person specified in Verification of Identity Standard paragraph 4.4(e) <u>plus</u> Medicare or Centrelink or Department of Veterans' Affairs card <u>plus</u> change of name or marriage certificate <i>if necessary</i>



	For Persons who are not Australian Citizens or Residents
6	<p>a) Foreign passport <u>plus</u> another form of government issued photographic identity Document <u>plus</u> change of name or marriage certificate <i>if necessary</i></p> <p>b) Foreign passport <u>plus</u> full birth certificate plus another form of government issued identity Document <u>plus</u> change of name or marriage certificate <i>if necessary</i></p>

In addition to verifying identity, clients need to provide evidence that they are the person (or, in the case of entities, authorised to deal) named on title and are legally entitled to sign the document (Right to Deal). A current rates notice or body corporate levy notice for the property showing the same name as that on title is an obvious example.

If you are transacting under a power of attorney, a copy of the registered power of attorney must be provided or obtained. The power of attorney must be expressed in terms that give the attorney the power to transact and sign. A general power of attorney usually gives the attorney power to do anything that the donor may lawfully do but a practitioner will need to be satisfied about the powers given in the document. Registration of the client's instrument is a necessity.

If clients are unable to meet face to face with their legal practitioner as the qualified witness, they should seek the above information and a legal practitioner may request a copy of the VOI and Right to Deal documentation for their records.

Real estate agents must comply with certain requirements when verifying the identity of a seller. The verification of identity process also applies to directors of companies dealing with land.

Surprisingly, and as a reflection of the times, practitioners may no longer solely rely on the fact that a client may have been a client for many years, or otherwise known personally. Pleasingly, once the VOI is done, it may not be required again for another two years. Whilst the process

seems cumbersome and unnecessary in all cases, it serves to assist to reduce the risks of fraudulent dealings with land.

Some property lawyers who know a lot of people might think the legislation goes a little too far and despite the likely failing eyesight of some older lawyers this seems to add unnecessary attention and costs to the simple act of signing. What is wrong with using "reasonable steps" as the rule in many cases, rather than the exception?

If ☒ could mark the spot, perhaps even they would be content? But we doubt here would get a ☒.

If you would like to discuss this article further, please contact:

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