

National Mortgage Form (NMF) Smart Form Feedback

Feedback		Comment
General		
1	The suitability of the proposed form has been considered and we have no objections or alterations.	Noted
2	We have reviewed the attachments and believe that a single mortgage document is an excellent step forward. The details outlined in the documentation appear to be fairly straight forward.	
ACT participation		
3	Will ACT participate in the National Mortgage?	ACT is open to using the National Mortgage Form as long as it provides for the collection of information required by legislation and their systems. ACT requirements will be included in the NMF.
4	Land identification – ACT ACT currently requires the following information on a mortgage which is not available in the national form. Will the requirement for this additional information be removed? a. district/division b. section c. block d. unit	
Witnessing/Verification of Identity		
5	NT witnessing requirements on Flyer	NT witnessing details will be included in the NMF.
6	TAS witnessing requirements on Flyer	TAS witnessing details will be included in the NMF. The requirements are that the witness is over 18 and not a party to the mortgage. The full name and address are required.
7	Some idea of what the Tas Flyer LTO guide will have in it would be handy in relation to the mortgage witnessing requirements. We continue to see value in having this attached to the actual mortgage document itself as an “all encompassing” document rather than a separate flyer.	
8	Witness details space when printed is not large enough in SA we currently require address and telephone number to fit in. However, SA is moving towards	Extra lines will be added to the witness details.

	removing witnessing for the mortgage lodged with the Land Registry.	The order of the witness details and signature will be changed. A title will be added for the mortgagor signature.
9	It would be beneficial for the QLD witnessing execution section of the mortgagor to show more details about execution. E.g (signature, full name & qualification - Witnessing officer must be in accordance with Schedule 1 of Land Title Act 1994 (eg Legal Practitioner, JP, C.Dec) as the current mortgage shows. Having this extra wording will avoid future requisitions as the person witnessing the mortgage will know he/she has to be qualified, otherwise anyone will witness the document should the last page with the witnessing information go missing.	Labels identifying what details are required for each jurisdiction will be included. "Full name of witness" will be included.
10	"Mortgagor Execution" section There is a reference to "Witness Details". This heading is not self-explanatory and there is a very high risk of Mortgagors not providing the correct information. Whilst I understand the reasoning behind providing Mortgagors with a 'flyer' on how to complete the form and who acceptable witnesses are, the feedback we have received from debtors/mortgagors is that they already receive too many documents to read, and in my experience the more paperwork they receive the higher the likelihood of them not reading that paperwork. Our aim should be to reduce and simplify home loan documentation, so if "witness details" mean witness address, then it should say "witness address".	
11	What "details" do you need for the witness? If you need occupation and address, these should be separately stated and separate spaces to write these should be provided. Further, if you want the full name of the witness, I suggest "Full name of witness" be replaced for "Name of Witness".	
12	Name of witness – does this need to be FULL NAME OF WITNESS?	
13	Witness details – What does this mean.... Occupation, address ??? if both required, more room is needed.	
14	Witnessing mortgagee's solicitor's signatures – NSW and Qld Provision should be made for signing by mortgagee's solicitors without a witness. Alternatively, execution by the mortgagee should be unnecessary.	The smart form already caters for execution by a lawyer/conveyancer representing the mortgagee. If this option is chosen, no witness details are required.
15	Currently, in Queensland, witnessing is not required when a mortgage is executed by a bank as the mortgagee. Can the panel be amended so that it is clear this is not required e.g. the witnessing panel not appearing in the same way	The NMF will be amended to remove witnessing when it is not required for particular circumstances.

	it does when the form is executed by a legal practitioner?	
16	<p>Witnessing mortgagor’s signatures</p> <p>Supplementary material should make it clear that the mortgagor’s signature on a mortgage is not required if mortgages will be registered either through PEXA or after alignment by the mortgagee certifying that it holds a signed mortgage.</p> <p>In respect of NSW, we note that s117(4) Real Property Act 1900 (NSW) relating to witnesses only applies to paper mortgages. The notice at the below link will require amendment.</p> <p>http://rgdirections.lpi.nsw.gov.au/e-ealings/elodgment_requirements/signing_electronic_documents</p> <p>In any event, s9(3)(b) of the Electronic Conveyancing National Law provides that if a registry instrument is digitally signed in accordance with the participation rules applicable to the instrument, the requirements of any other law relating to the execution, signing, witnessing, attestation or sealing of documents must be regarded as having been fully satisfied.</p> <p>The note regarding s162 Land Title Act 1994 (Qld) should be deleted as witnessing will not be required for mortgages registered either through PEXA or after alignment by the mortgagee certifying that it holds a signed mortgage. If the note is retained for paper mortgages, it would more appropriately appear in the mortgagor execution box under the ‘Witness Signature’.</p>	<p>In all cases there will need to be a mortgage granted by the mortgagor – the mortgagee will need to satisfy itself that it has a validly executed mortgage granted by the mortgagor, which might include witnessing in those jurisdictions that require it.</p> <p>Whether the mortgage form signed by the mortgagor is lodged with the Land Registry will depend on which scenario is used. For example, if the mortgagee is a Subscriber to PEXA, the mortgage form signed by the mortgagor will be retained by mortgagee and the mortgagee will complete and lodge the mortgage in PEXA certifying that they hold a mortgage on the same terms and conditions signed by the mortgagor.</p>
17	<p>Method of identifying mortgagors - Qld</p> <p>The Queensland Land Titles Practice Manual was most recently updated in July 2014. Mortgage Form 2 (p 84) in the Manual does not contain the ‘Read this before signing’ statement attached to the proposed PEXA mortgage for Queensland.</p> <p>The Manual states (at 2-2005) revised guidelines will be published separately and replace the current guidelines. These still aren’t available on the QLD website.</p> <p>Therefore, the guidance remains as follows (2-2005).</p> <ul style="list-style-type: none"> • A mortgagee takes reasonable steps if they comply with the Manual practices. In essence, these reflect the ‘100 points of verification’ provisions under the old Commonwealth legislation. • However, the guidelines do not prescribe the only way of taking reasonable steps. • Equally, mere compliance with the ‘100 point check’ for identification without attention to detail is not sufficient. 	<p>The Queensland Land Titles Practice Manual will be reviewed and changed as required.</p> <p>Witnessing and VOI requirements will be reviewed when the alignment of paper and electronic processes are considered in Queensland.</p>

	<ul style="list-style-type: none"> The key issue is whether, from the steps taken, a prudent lender would be satisfied that the person who executes the mortgage is, or is about to become, the registered owner or holder of the interest to be mortgaged. <p>This is at odds with the statement on the proposed national mortgage.</p> <p>The Queensland mortgage states that the person who witnesses the signature must take reasonable steps to ensure the person signing the form is entitled to do so. This accords with s162 Land Titles Act. This section should be amended to recognise that VOI may be conducted separately, electronic mortgages may not be witnessed, and Client Authorities (if used) may be obtained separately.</p> <p>Requiring the witness as well as the mortgagee to identify the mortgagor is an unnecessary duplication.</p>	
18	I assume the form will automatically update to change the name of the law under which the witness must identify the signatory – after all, the Land Title Act 1994 is not law in WA.	<p>This “statement” is only present on QLD mortgages. Other jurisdictions may have different statements on the mortgage.</p> <p>This did highlight a bug (when jurisdiction starts as QLD, changes to WA, then back to QLD) where statement is missing. The bug has now been fixed.</p>
19	In the notes on the last page, I suggest “only refinancing” be replaced with “granting a mortgage” and “financing the purchase” be replaced with “taking a mortgage”, because not every mortgage is a refinance or finance of a purchase.	<p>This wording is contained in the flyer for QLD. QLD will review the wording in it’s flyer.</p> <p>The flyer for WA does not contain this wording.</p>
20	If one of the parties is a company, then the document will need to be signed by a company director. Yet there is nothing in the notes that requires the witness to prove that he is a director of the company. Maybe some requirement of proof should be there, such as needing to provide a copy of an ASIC company search no more than 2 months old?	<p>This wording is contained in the flyer for QLD. QLD will review the wording in it’s flyer.</p> <p>The flyer for WA does not contain this wording.</p>
21	<p>SA mortgage – scenario 1</p> <p>The SA mortgage provides a ‘Scenario 1’ dealing with paper lodgement. Is a second scenario dealing with electronic lodgement envisaged?</p>	<p>Scenario 1 refers to the National Mortgage Acceptance & Lodgement Scenarios from the Electronic Mortgages Working Group.</p> <p>Scenario 1 involves a mortgage being signed within the existing legislative requirements and then being lodged through the paper channel at the Land Registry. Alternatively, in scenario 2 the mortgage is signed by the mortgagor and held by the mortgagee and the mortgagee completes and lodges the mortgage through PEXA.</p>
22	Verification of Identify - Will VOI requirements come into force in Tasmania with	It is anticipated that the legislative amendments required to introduce VOI of a mortgagor by a

	implementation of the uniform mortgage?	mortgagee will be in force by the end of the 2015 calendar year. Accordingly, it is anticipated that VOI requirements will be in force before implementation of the NMF.
23	<p>Ideally State specific legislation regarding witness requirements would be standardised nationally and the requirement to sign the mortgage in the presence of a qualified professional would be removed. However in meantime, when a qualified witness is required then a separate "Witness Qualification* " line should appear with a note alerting the mortgagor to the fact that special witness requirements apply. Lenders or their solicitors should then address those special witness requirements in their covering letter / checklist.</p>	<p>There are moves underway to align paper and electronic processes in some jurisdictions and these will involve removing the need for witnessing for most mortgages.</p> <p>The NMF has to cover all situations, not just those where an ADI is the mortgagee therefore it may not be possible to remove witnessing in every instance.</p>
24	<p>Will consideration be given to aligning nationally the requirements for the witness to a mortgagor's execution as currently the requirements are different from state to state for example in Queensland the requirement is that the witness must be:</p> <ul style="list-style-type: none"> • a justice of the peace • commissioner for declarations • Australian lawyer • notary public • licensed conveyancer • other person approved by the Registrar of Titles. <p>When I have enquired in the past I was advised that an Australian Post Office employee was not a person approved by the Registrar of Titles, has this changed with the new VOI requirements?</p>	
25	<p>Clarification is requested regarding whether requirements relating to the witnesses signature for the mortgagor's signature(s) will be standardised across jurisdictions in line with the introduction of a national mortgage form. These rules are currently different for each state (e.g. requirement for documents to be witnessed by Justice of the Peace).</p> <p>If these requirements are not going to be standardised, perhaps the requirement for a witness for the mortgagor's signature(s) be removed altogether if possible given the requirements for VOI.</p>	
26	<p>In respect to witnesses to Mortgagors' signatures, we agree that the Mortgage itself should be kept as simple as possible, and a separate signing instruction sheet provided in respect to each jurisdiction.</p> <p>In this regard we note that, should there be any move to include a single list of</p>	Noted.

	witnesses in the future for all jurisdictions, we believe there are other groups that would be most suitable witnesses and should be included in that list.	
Party		
27	Are “Individual” and “Corporation” the right options, or should this be “Individual” and “Organisation”? E.g. for government agencies.	An additional party type of “Other Organisation” will be added with the signing options being “Power Of Attorney” and “Leave blank.”
28	For the Mortgagor group box: a. What is the workaround if the mortgagor is not an individual or a company? Is there a workaround? If so what? b. Can we add another option for “Incorporated Entities”?	
General Formatting/System Issues		
29	Change version of form to say “version” rather than “v”	NMF header changed to say “version.”
30	Separate ACN and ARBN	The NMF needs to specifically state whether the number entered is an ACN or an ARBN.
31	Flyer should not have a page number or be included in page count	Page number has been removed from flyers.
32	Terms and conditions should allow rich text	Terms and Conditions now allows rich text. However the NMF must always be printed in black in accordance with existing requirements.
33	Make form available in Word format	The NMF will not be able to be made available in a word format. Land Registries will consider how organisations can use Word format in their own systems and the approval process that will need to be undertaken. A detailed specification for the NMF is currently under development so that organisations can develop their own Word format of the NMF.
34	PDF and Word Format The LIV considers that the NMF should be able to be completed in either Word format or PDF.	
35	Word Versions Although the discussion version is a PDF smart form, we presume word versions can be created by Subscribers and used. Will it be necessary to obtain a license to create word versions of the form?	
36	Automation	

	It is absolutely critical for financial institutions/solicitors/companies involved in high volume mortgage processing that the final Mortgage form precedent be provided to us in a format that allows us to populate the form using the information already stored in our database. It is not feasible for us to manually type in names and addresses etc on every single mortgage document.	
37	Will the smart form be available in a way that it can be built into a system as a precent in Microsoft Word Form?	
38	Legal practitioners and conveyancers almost universally work using Word format word processing, so it is highly desirable that their existing Word documents and precedents can be simply pasted directly into the free form box in the form. The current mortgage smart form used in Victoria results in major formatting difficulties with many versions of Word and PDF.	Cut and paste is allowed on the smart form. Some formatting options available in Word are not available on the smart form. Practitioners will need to prepare their Word documents using only features supported by the PDF smart form. Commonly used mortgage standard terms were successfully cut and pasted into the NMF (after some formatting changes).
39	Scope to copy and paste text directly into the NMF's text fields. Legal practitioners are often required to prepare novel mortgage forms with specific amendments for particular circumstances, and almost universally process their documents using Microsoft Word. It is therefore important to facilitate easy preparation of the NMF by allowing a cut and paste function. It is noted that the current mortgage smart form used in Victoria has often been difficult to complete as it does not readily permit cutting and pasting of content into the form.	
40	Allow "Print to File"	This is a function provided by the PC, not the smart form. A print driver needs to be installed on the PC that allows "printing" of the document to a file in the required format (e.g. pdf). A large number of such print drivers are available (either free or for a charge).
41	Currently we insert the mortgage document for the required state into our loan contracts which entails us creating our own template, we have been supplied with specifications such as margin allowances, fonts size and style etc. Will this be issued for the paper version of the National mortgage form?	A national set of requirements will be provided.
42	Confirmation is requested of the character limits for the fields within the National Mortgage Form (unable to fully test this and see the output from the smart form).	Advice will be provided. Each Jurisdiction will provide character limits for each field which will be included in the specification. The smart form to be modified to reflect these limits.
43	Lodgement of mortgages in duplicate Some jurisdictions require paper mortgages to be lodged in duplicate. Will this	There is no requirement to lodge mortgages in duplicate in any jurisdiction.

	requirement be removed?	
44	Printing of mortgages double sided Some jurisdictions require paper mortgages to be printed double sided. Will this requirement be removed?	QLD, TAS, VIC and NSW require mortgages to be printed single sided for optimum scanning. WA, SA and NT currently require mortgages to be printed double sided. SA and NT will change to single sided printing when the NMF is implemented. WA will continue to require double sided printing.
45	Clarification is requested as to whether there are any requirements from a single/double sided form perspective as this is currently different in some states.	
46	Smart form doesn't work on mobile devices	This is a shortfall of the way that mobile devices treat pdf files with imbedded javascript.
47	Clarification is requested as to whether there will be alignment of upper/lower case character requirements across jurisdictions in line with introduction of the new national mortgage form? (e.g. Victoria currently requires all upper case characters)	The key fields on the smart form are automatically capitalised.
48	Are there any field validations in the NMF?	There is currently minimal validation: <ul style="list-style-type: none"> - ACN or ARBN must be blank or 9 digits - Jurisdiction must be selected. Validation will be added to make the following fields mandatory: <ul style="list-style-type: none"> - Title Reference - Mortgagor Name - Mortgagee Name
49	Should there be a reference number (or title reference) on each page?	Client reference will be added to footer of each page.
50	Problems when a previously saved form is re-opened	There was a minor bug in the previous version which has been fixed.
Execution		
51	The Company execution option will need the following execution clauses added: <ul style="list-style-type: none"> • Sole director/secretary • Sole director/no secretary 	The executions for Mortgagor and Mortgagee for both using the common seal and without the common seal have been changed to: <ul style="list-style-type: none"> • Multi-person Company: Director & Director or Director & Secretary sign • Multi-person Company: One Director only signs • Sole Person Company: Sole Director/Secretary signs

		<ul style="list-style-type: none"> • Sole Person Company: Sole Director signs • Authorised Officer <p>Sole Director/Secretary will be changed to Sole Director & Secretary in drop down and execution block.</p>
52	<p>Attestation Clauses</p> <p>There needs to be provision to include attestation clauses by covenantors and guarantors in the mortgage if the words in the MCP allows for this to be done.</p> <p>Unless there are specific jurisdictional statutory requirements, we are of the view that the attestation clauses for the parties need not refer to them explicitly as mortgagor, mortgagee, covenantor or guarantor. We consider that it should be clear who the parties are without specifying their roles again in any attestation clauses.</p>	<p>The mortgage should only need to be signed by the mortgagee(s) and registered owners, not any additional guarantors or covenantors.</p> <p>The loan agreement would be the place for other parties to sign.</p> <p>The labels are to assist those completing the smart form.</p>
53	<p>It is desirable that covenantors and guarantors are able to be included in the mortgage if the words in the incorporated memorandum of common provisions ("MCP") would allow this to be done. This means that there needs to be provision to have attestation clauses by covenantors and guarantors.</p>	
54	<p>There is no reason why there should not simply be attestation clauses for the parties without necessarily referring to them as mortgagor, mortgagee, covenantor or guarantor, unless there is specific jurisdictional statutory requirement otherwise. It is simply obvious who the parties are without needing to repeat specifying their role in the attestation clauses.</p>	
55	<p>Mortgages often consist of multiple pages. We suggest that, in the event that an NMF spans multiple pages, an addendum could be included directing mortgagors to sign each page.</p>	<p>This is not a current practice or a Land Registry requirement.</p>
56	<p>Should a requirement to sign or initial every page be introduced to prevent the last page being executed in isolation?</p>	
57	<p>For a corporate mortgagor or mortgagee not executing under common seal, the Committee suggests the execution block be amended to include an option to note that the execution is in accordance with Section 127(1) of the Corporations Act 2001. This is a common form of execution and providing the option in the form itself will save the relevant company officer(s) having to write this in by hand.</p>	<p>The Land Registries do not believe that this needs to be stated as it is clear from the execution whether s127 applies.</p>

58	I notice that the execution for a company on the National mortgage form is more simplified than the paper version; no mention of Authority (section 127 of the Corporations Act 2001) for example.	
59	In the dropdown for who will be signing (both Mortgagor and Mortgagee), it should say "attorney" rather than "Power of attorney"	The NMF will be updated to "Attorney (under power of attorney)" and an option added to allow multiple attorneys
60	QLD don't need Conveyancer in the list of people that can sign.	This is a national form. Separate items will be included in the drop down menu for Licensed Conveyancer and Australian Legal Practitioner.
61	Mortgagee execution – spelling should be Australian Practising Lawyer, as in the relevant legislation and licensed conveyancer	Separate items will be included in the drop down menu for Licensed Conveyancer and Australian Legal Practitioner.
Tenancy		
62	If multiple mortgagees & tenancy is joint, the 'tenancy shares' should be disabled	The tenancy remains on the screen view in case of a situation where multiple mortgagees hold jointly but as tenants in common with one or more other mortgagees. E.g. John Smith Joint Tenants inter-se 1/2 Anne Smith and Mary Smith Tenants in Common 1/2 The shares do not print when they are not specified.
63	Should the tenancy heading appear on the printed form if no tenancy is input ie only one mortgagee?	Tenancy heading no longer appears on the printed smart form if there is only one mortgagee.
64	If there are 2 (or more) mortgagees, and the first is deleted, the "Joint with previous" text is not removed for the new first mortgagee in the list.	This was a bug in the previous version which has now been fixed.
65	For the Mortgagee group box: a. Please clarify the "Tenancy" in relation to "shares". b. Does this relate to an instance where the property belongs to for example 3 individuals with 40:30:30 and where the financial institution is taking only 4/10 shares of the property as security?	The tenancy is for where there is more than one mortgagee. In this situation, the manner that the mortgagees hold the mortgage needs to be specified (e.g. tenants in common, joint tenants etc.)

Land Title Reference		
66	The Land fields do not ensure the mortgage will provide a sufficiently detailed title reference. The Land fields should specifically require the title components: Volume and Folio details, as specified in the existing Certificate of Title or equivalent electronic title record.	This is a national form – not all jurisdictions have volume and folio. The term “Land Title Reference” has been used as a standard national term. This is consistent with the terminology used in electronic conveyancing.
67	What is the format for the title reference?	The format for the land title reference is the same as currently used in each jurisdiction.
Terms and Conditions		
68	We understand that, should the mortgagee's additional terms and conditions exceed the character limit in the space provided, the lodger should lodge an additional annexure or memorandum with the mortgage. An inability to include additional terms and conditions within the mortgage document will cause delay, additional cost to the parties and an increased risk of error. We submit that there should be effectively no character limit in the additional terms and conditions field, so that additional terms and conditions can be included in the mortgage form in all cases.	As the fields in the smart form expand an additional annexure will not be required. The Land Registries encourage the use of standard terms (or MCP) documents, which can be referenced in the document reference field. Sufficient space is available in the additional terms field (which expands as required) for additional terms and specific covenants or variations to the standard terms.
69	Automatic expansion of the text field under “(b) Additional terms and conditions”. Also, in order to accommodate for very complex Memorandum of Common Provisions (MCP), this field should have the ability to expand infinitely.	
70	Need to ensure practitioners are able to place a large amount of material in the terms and conditions section of the document	
71	Ample provisions needs to be made in the free form box to insert a generous amount of material. A good size of what would be the equivalent of a complex registered MCP. It is expected that all the space in the free form box would not be required except in special circumstances but the ability to be able to use it in special complex cases is required.	
72	The Additional terms and conditions field needs to be made larger. My clients have a Mortgage Memorandum permanently lodged and then have a schedule in their loan and security documents (including the mortgage) which adds or varies the specific terms and conditions for that loan. This schedule is usually 1 to 2 pages with the largest so far being 3 pages long. My submission is that the field be increased to being large enough to incorporate a maximum of 3 pages. This is the same as one additional double-sided page being incorporated in the current	

	mortgages which would cater for most of the different commercial and private mortgages I have come across where the full mortgage memorandum is not being included in the documents.	
73	Please allow up to 40 pages for the Additional Terms and Conditions to be included.	
74	In relation to '(b) additional terms and conditions' which can be added if necessary, it may be of assistance to include some guidance in a separate instruction sheet.	There will be a completion guide for the NMF.
75	The standard terms document reference and the additional terms and conditions fields should say "NIL" when printed if the screen field was left blank.	The smart form has been updated to cater for this.
76	Will cross referencing still work in the Terms and Conditions section of the smart form?	Cross referencing and hypertext links will not work, however incorporation by reference is fine.
Incorporation of Loan Agreement		
77	<p>Incorporation of loan agreements</p> <p>Case law indicates that practitioners are exposed to the risk of negligence claims if they use a mortgage which does not incorporate a loan agreement and do not advise the client that the client will not have the benefit of the Torrens system protections in the event of fraud.</p> <p>As a result, mortgages often incorporate loan agreements between parties. We submit that the NMF should provide the option to incorporate these agreements, which contain information in relation to the amount of the loan and other necessary details regarding payments and interest. Alternatively, there should be options to manually input the aforementioned information.</p>	<p>The amount of the loan and other necessary details regarding payments and interest can be set out in the additional terms and conditions.</p> <p>It is not a Land Registry requirement for the full loan agreement to be duplicated in the mortgage however if required it can be incorporated by reference.</p>
78	Legal practitioners generally prepare the more unusual forms of mortgage and have requirements to make specific amendments for particular circumstances. Furthermore, they often employ mortgages which incorporate the loan agreement between the parties.	
Inclusion of ABN		
79	<p>Identification of Corporations</p> <p>We submit that under the fields 'Mortgagor' and 'Mortgagee', upon indicating</p>	<p>The Land Registries are only concerned with the legal entity.</p> <p>A mortgage is not a business or taxation document. The ABN is not appropriate as it could give the</p>

	<p>that a party to the mortgage is a corporation, there should be an option available to input the corporation's ABN in addition to its ACN or ARBN.</p> <p>It is appreciated that registrars are primarily concerned about the identity of the registered proprietor. However, from a business and taxation perspective, it is highly desirable that an ABN is able to be specified, rather than only an ACN or ARBN, especially when there are underlying superannuation entities, trusts, joint ventures, managed investment schemes, agency arrangements, or partnerships even if there is no reference to them in the mortgage. The issue of recording the business registration attributes of a corporation, as part of its identity on a Torrens register, applies to all registered proprietors and not just parties to a mortgage.</p> <p>For the same business and taxation reasons outlined above, we submit that it is also preferable for individuals to be given the option of inputting an ABN.</p>	<p>impression that non-legal entities can grant a mortgage.</p>
80	<p>The name boxes allow more than an "ACN/ARBN" is inserted as a descriptor for a corporation. It is appreciated that the registrar is only concerned about the identity of the registered proprietor. However, from a business and taxation perspective, it is highly desirable that an ABN is able to be used rather than just an ACN or ARBN, especially when there are underlying:</p> <ul style="list-style-type: none"> a) Superannuation entities b) Trusts; c) Joint ventures; d) Managed investment schemes; e) Agency arrangements; or f) Partnerships, <p>even if there is no reference to them in the mortgage. Ideally the smart mortgage form should allow either and ACN/ ARBN or an ABN, or both.</p>	
81	<p>From a business and tax perspective, it is desirable that individuals are given the option of inserting an ABN for the same reason as set out in clause 8,</p>	
82	<p>The Mortgagee section only provides for ACN/ARBN numbers to be entered. Clarification is requested as to whether ABN can be included/used.</p>	
83	<p>There used to be circumstances when corporations constituted outside Australia were able to purchase land and were not required to be registered as a foreign corporation if they were considered not to be carrying on business because they merely held the land as a passive investor. I am not sure if that still applies or if</p>	<p>The smart form does not force an ACN or ARBN to be added.</p>

	there are other circumstances may allow a corporation to hold land without being registered, If so, the inclusion of an ACV,ARBN or ABN should not be a mandatory requirement.	
84	The issue of recording the registration attributes of corporations as part of the identity of a corporation on a Torrens register is an issue that applies to all registered proprietors and not just parties to a mortgage.	Noted.
Operative Words		
85	<p>We submit that the operative words should explicitly tie the mortgage interest to a mortgaged amount specified in the terms and conditions. It is inadequate to tie the interest to the "debt or liability" described in the terms and conditions.</p> <p>In addition, we submit that the operative words need to specify that the mortgagor:</p> <ul style="list-style-type: none"> • agrees that the mortgage terms and conditions form part of the mortgage, and • covenants with the mortgagee to comply with those terms and conditions. 	<p>The specific debt or liability can be set out in the additional terms and conditions section (e.g. all monies or a principal amount). This would include the mortgage interest and mortgage amount. As the additional terms and conditions form part of the mortgage, the operative words include these items.</p> <p>A standard terms document/MCP can also be referenced (using the document reference) for this purpose.</p> <p>The heading has been changed from "Terms and Conditions" to "Terms and Conditions of this Mortgage" (on both the screen and printed form).</p>
86	<p>Operative Words</p> <p>It is suggested that the words "and covenants with the mortgagee to comply with those terms and conditions" should be deleted from the Operative Words and replaced with "and the parties covenant with each other to comply with those terms and conditions". This is because there are obligations on both parties.</p> <p>For example, there is the express or implied obligation on the mortgagee to discharge or release the mortgage on repayment in accordance with its terms. The obligations on a mortgagee will be more extensive where the mortgage incorporates a loan agreement; for example, where the loan agreement provides for drawdowns or other payments of the principal sum or capital on certain events such as a nominated quantity surveyor certifying that construction has reached a specified stage. Furthermore, subsequent second mortgagees may be very concerned to ensure that the mortgagor has a legal right to require first mortgagee drawdowns and a discharge of the mortgage if the mortgagor complies with the terms of the mortgage.</p> <p>An alternative would be to remove the words "and covenants with the</p>	<p>Any obligations on the mortgagee should, as they are today, be placed in the loan agreement. Current mortgage forms do not provide for covenants by both parties..</p>

	<p>mortgagee to comply with these terms and conditions" from the Operative Words as redundant and ensure that the covenants are contained in the MCP. However, that means that the personal covenants are not included in the operative part of the registered mortgage document itself and has the potential to result in the mortgagor's rights being lost. It is also likely to result in the rewriting of many MCPs especially if financial institutions are seeking to ensure compliance with consumer and competition law. We suggest that the former course of action should be taken.</p>	
87	<p>The operative words should delete the words "and covenants with the mortgagee to comply with those terms and conditions" and be replaced with "and the parties covenant with each other to comply with those terms and conditions". This is because there are obligations on both parties. For example, there is the express or implicit obligation on the mortgagee to discharge or release the mortgage on repayment in accordance with its terms. The obligations on a mortgagee will be more extensive where the mortgage incorporates a loan agreement; for example, where the loan agreement provides for draw downs of other payments of the principal sum or capital on certain events such as a nominated quantity surveyor certifying that construction has reached a specified stage. Furthermore, subsequent second mortgagees may be very concerned to ensure that the mortgagor has a legal right to require first mortgagee drawdowns and a discharge of the mortgage if the mortgagor complies with the terms of the mortgage.</p>	
88	<p>An alternative would be to simply remove from the operate clause, the words "and covenants with the mortgagee to comply with these terms and conditions" as redundant and ensure that the covenants are contained in the MCP. However, that means that the personal covenants are not included in the operative part of the registered mortgage document itself and has the potential to result in the mortgagors rights being loss. It is also likely to result in the rewriting of many MCPs especially if financiers are seeking to ensure compliance with consumer and competition law. I suggest and recommend the former.</p>	
89	<p>We suggest the operative words be amended to refer to "all the estate and interest in land specified in this mortgage", reflecting more closely the wording in the NSW Land and Property Information dealing Form 05M</p>	<p>The smart form has been amended to estate and/or interest.</p>
<p>Land Description</p>		
90	<p>We were unsure whether "Land Description" only required completion when</p>	<p>This is jurisdiction dependent.</p>

	part of the land is affected. If so, we suggest inserting the words” (where Part Land Affected)”, after “Land Description”. If not, then “Land Description” may be better placed next to “Land Title Reference” and “Part Land Affected” moved to the far right.	Some jurisdictions always require the Land Description, others only when the part land indicator is checked. The smart form will prevent entry of this field if it is not allowed in a jurisdiction.
91	<p>Land identification – NT</p> <p>Northern Territory currently requires the following information on a mortgage which is not available in the national form. Will the requirement for this additional information be removed?</p> <ul style="list-style-type: none"> a. register b. location c. lot description d. plan e. unit 	<p>The Vol/Fol reference will be entered in the land title reference field.</p> <p>The other items would be entered in the Land Description field (required in all cases).</p>
92	<p>Land identification – Qld</p> <p>Queensland currently requires the following information on a mortgage which is not available in the national form. Will the requirement for this additional information be removed?</p> <ul style="list-style-type: none"> a. lot on plan description b. county c. parish 	<p>Lot on Plan description should be entered in “Land Description” in all cases in QLD.</p> <p>County and Parish are not required on the new NMF.</p>
Capacity		
93	When you add another Mortgagor under address there is an input box for ‘capacity’ can you explain what this will be used for?	<p>This is a bug – if capacity is “hidden” for a jurisdiction on the first mortgagor/mortgagee, it should also be hidden for subsequent ones.</p> <p>Smart form fixed so that capacity is hidden for a new mortgagor/mortgagee in NSW.</p>

94	<p>“Mortgagor” and “Mortgagee” sections</p> <p>For some jurisdictions there is an optional “capacity” field appears, which is not on current Mortgage forms. If this new field is not completed on the screen, then it does not appear on the printed form, which means the information must be completed by the lender or the lender’s solicitor when the form is prepared. As the heading ‘capacity’ is not self explanatory, the LPI guidance notes for completion will need to explain when mortgagees must complete that field, and what types of ‘capacity’ will be acceptable.</p>	<p>Additional information added to “hint” text that appears when field is hovered over.</p> <p>Text now says:</p> <p style="padding-left: 40px;">Enter the capacity of the mortgagor (for example, TRUSTEE)</p> <p>or</p> <p style="padding-left: 40px;">Enter the capacity of the mortgagee (for example, TRUSTEE)</p>
Transitional Arrangements		
95	<p>We agree with the FAQ that state a lead in time of 6 months will be required for us to roll out this document with our contracts, we would like to know that we have time to implement all necessary changes</p>	<p>Noted. Sufficient time will be provided for the roll out of the NMF.</p> <p>In accordance with normal Land Registry practice across Australia, transition arrangements will be put in place.</p>
96	<p>With the 6 month lead in time, what are you anticipating that the acceptance of the current paper mortgages will be. I would like to suggest that they be acceptable for at least 6 months after the commencement date of the new National mortgage document.</p>	
Mortgages securing obligations other than a debt		
97	<p>Mortgages securing obligations other than a debt – NSW</p> <p>Section 56 Real Property Act 1900 (NSW) provides that a mortgage can only secure a debt, not any other kind of liability. Section 56 should be amended so that mortgages can be used as charges (like other jurisdictions).</p>	<p>A mortgage is a type of charge used to secure a debt.</p> <p>If any other type of liability is to be secured, the charge form must be used.</p>
Stamp Duty		
98	<p>Stamp duty notation – NSW</p> <p>There is a space for ‘Transaction ID’ which relates to stamp duty. At the time the mortgage is prepared this information will not be known. This can be hand written onto paper mortgages when known. In the electronic world, please confirm that the number is just entered into the work space before settlement can be confirmed. In this sense the PEXA mortgage may not be identical to the mortgage signed by the mortgagor.</p>	<p>The certification states that the mortgage must be on the same terms. The duty notation is not part of the terms of the mortgage.</p>
Certifications		

99	<p>Certification of correctness – SA</p> <p>The execution notes state that the mortgage must be ‘certified correct for the purposes of the Real Property Act 1886’ and the initials and surname of the certifying party must be noted beneath his or her signature and their capacity for certifying must be specified, however the form does not provide for this. Will this be built into the national template for SA? It seems inappropriate for PEXA transactions.</p>	<p>This smart form currently reflects the scenario where a mortgage is being signed within the existing legislative requirements and is then lodged either through PEXA (where the form becomes the counterpart held by the mortgagee) or the form is lodged through the paper channel at the Land Registry.</p> <p>South Australia intends to implement the NMF at the same time as other jurisdictions implement the NMF which will be after its participation in PEXA. At that stage it is intended to have the legislative amendments in place to align the certifications required to be provided electronically and in paper (Scenario 1A).</p>
100	<p>Certification of correctness – NSW</p> <p>Section 117 of the Real Property Act 1900 (NSW) specifies that the Registrar-General may reject any dealing unless it has a certificate that the dealing is correct. Will the Act be updated to remove that requirement for paper transactions or will the national template be amended for NSW to show that information on the executions?</p>	<p>The legislation will be amended to accommodate certification requirements.</p>
101	<p>Clarification is requested as to requirements for attaching the Verification of Identity (VOI) form to SA and WA mortgage forms as is currently the case and the relevant timing.</p>	<p>The form will be updated to include a Verification of Identity certification to be given by the mortgagee or their representative in South Australia.</p> <p>A certification for the mortgagee will be added to the smart form for WA as part of the alignment of paper and electronic conveyancing processes.</p>
102	<p>The form does not include any VOI certification requirements for SA or WA. As a truly national form this must be included.</p>	
103	<p>Currently a verification of identity certification is required in Western Australia and South Australia. No certification appears on the smart form. Will this still be required?</p>	
<p>Reference to relevant Act in jurisdiction</p>		
104	<p>The reference to the TLA should auto populate when Western Australia is selected as the state in which the mortgage is to be registered. To not have this reference seriously undermines the rights that the lender has under the legislation and the common law.</p>	<p>The Registrars will approve the NMF under legislation. It does not need to have a reference to the legislation on it to be approved, or to be effective as a mortgage. The registration of the mortgage will provide the rights given under the legislation.</p>
105	<p>In Box Jurisdiction, beside WA, please make reference to the Transfer of Land Act</p>	

Double interest Mortgages		
106	Does the National Mortgage form allow for double interest Mortgages?	No, two mortgages will be needed.
Multiple mortgagees		
107	There does not appear to be sufficient room to insert details of multiple mortgagees (there are occasions where there are 2).	The smart form expands to allow multiple mortgagors and multiple mortgagees – use the add mortgagor or add mortgagee buttons.
Encumbrance Panel		
108	I am concerned about the lack of encumbrances. I understand that encumbrances have already been removed from the existing mortgage form. I still don't like it. It leaves the mortgagee open to risk that someone might have snuck an encumbrance onto the title subsequent to preparing the mortgage but prior to registration.	The NMF reflects the current practice in the majority of jurisdictions and the future practices of all jurisdictions.
Availability of form		
109	Clarification is requested as to whether the same licensing arrangements will remain across jurisdictions that will allow a mortgagee to continue generating the national mortgage form in-house.	Land Registries will be considering how organisations can use the form in their own systems and the approval process that will need to be undertaken. A specification for the NMF is currently being developed.
110	Can we integrate the NMF with our business software?	
111	Clarification is requested as to where the national mortgage form will be saved and how future updates will be communicated to relevant parties.	The smart form will be published on the ARNECC website and each of the Land Registry websites. Current notification processes will continue. Change processes will be coordinated between Land Registries.
Amendments		
112	Clarification is requested regarding whether requirements relating to Change of Name / Form Amendments will be standardised across jurisdictions in line with the introduction of a national mortgage form. These rules are currently different for each state (e.g. NSW accept hand written changes, QLD require a Form 20).	Outside the scope of the NMF.
113	Where a Form 20 Schedule would currently be used e.g. for making a statement about alterations after execution will a Form 20 still need to be deposited?	Yes, it will.

Future forms		
114	Is there an appetite to align other templates/forms across the jurisdictions? There are other high volume forms such as discharges of mortgage and transfers to optimise e-conveyancing or conveyancing on a national level as these forms are also required in most instances when registering a mortgage.	Outside the scope of the NMF.
Estate or Interest		
115	In relation to the Estate or interest being mortgaged: a. Can the “other” be expanded to have different options? b. Currently we have a drop down list to choose which estate/mortgage type to pick. By having just “fee simple” and “other” would require them to identify and enter the correct estate type. c. We understand that the estate on the title search has to match the one on the mortgage template. However, there are instances when they do not match. For example: In QLD, if the estate on the Title Search is “Leasehold Estate”, team members would pick “State Leasehold” while preparing the mortgage.	This was discussed at the Electronic Mortgages Working Group, but due to the large variation in terminology across jurisdictions, and the low volume of non-fee simple transactions, this option was not pursued. However, it may be considered in the future.
116	Can the NFM be used for a mortgage over a lease?	Yes, the Estate and/or interest should say “other” and for example “LEASE NUMBER 12345678” typed in.
Scenario 4		
117	Is legislative change required to enable scenario 4 shown on the national Mortgage Acceptance & Lodgement Scenarios presentation?	Legislative changes have been made in VIC to accommodate scenario 4. Legislative change is needed in other jurisdictions.
Mortgage user guide		
118	Will a user guide be developed for the NFM?	There will be a completion guide for the NMF.
119	In order for a mortgagee to comply with the legibility requirements of the national Credit Code, the NMF must be in PDF format (and not Word) with the integrity of the font size to address shrinkage in conversion to PDF.	The NFM will be enlarged to 11 point.