

Action Point Checklist: Checklist for remote verification of identity (VOI)

This checklist has been authored by the *LexisNexis Legal Writer team*.

Introductory note:

This checklist can be used by a legal practitioner who wants to **remotely** verify the identity of a client for an electronic conveyancing transaction (or to whom the legal practitioner wants to provide a paper or duplicate certificate of title).

Under cl 6.5 of ARNECC's [Model Participation Rules](#), a legal practitioner (being a "subscriber") must take **reasonable steps** to verify the identity of a client by **either**:

- applying the "Verification of Identity Standard" (**VOI Standard**) (which requires a face-to-face in-person meeting); or
- verifying the client's identity in some other way which constitutes the taking of reasonable steps.

A legal practitioner does not need to verify a client's identity if the legal practitioner verified the client's identity within the previous 2 years.

VOI Standard

The easiest way for a legal practitioner to satisfy his/her VOI obligations under cl 6.5 of ARNECC's [Model Participation Rules](#) is to apply the VOI Standard (set out in Sch 8 of [Model Participation Rules](#)). If carried out properly, the legal practitioner will be deemed to have taken reasonable steps in verifying the identity of his/her client; however, it requires a face-to-face in-person meeting.

A legal practitioner may also use an **identity agent** to carry out a VOI check on behalf of the legal practitioner using the VOI standard, eg [Australia Post](#) or [ZipID](#). If this is the case, the legal practitioner should require from the identity agent the required identity agent certification and copies of the identity documents relied on by the identity agent (signed, dated and endorsed as true copies) so that the legal practitioner can make the required VOI certification when digitally signing the electronic land registry document. See the precedent [Electronic conveyancing — Identity agent certification](#).

For a checklist to use when applying the VOI Standard, see [Checklist for face to face verification of identity \(VOI\)](#).





Other means of taking reasonable steps to verify the identity of a client

As noted above, a legal practitioner can also verify the identity of a client in some other way which constitutes the taking of reasonable steps and this was confirmed by ARNECC in its [position statement](#) on 19 March 2020. But ARNECC also stated that:

- it is a matter for the legal practitioner to determine what constitutes reasonable steps specific to the circumstances (eg by using audio-visual technology during the COVID-19 pandemic when physical distancing is recommended by public health authorities and people are self-isolating); and
- evidence supporting the reasonable steps taken to verify the client's identity must still be retained by the legal practitioner (in accordance with cl 6.6(d) of ARNECC's [Model Participation Rules](#)).

In effect, what are “reasonable steps” is a question of fact depending on the circumstances of each case. It would be determined by a court on an objective basis.

Legal practitioners should note that some of the approved [information brokers](#) are also offering remote VOI checks using online verification and facial recognition technology.

This checklist – remote VOI using audio-visual technology

This checklist sets out a possible method of verifying the identity of a client completely remotely using audio-visual video technology, eg by using platforms such as Skype, FaceTime, Microsoft Teams or Zoom. But, as with the VOI Standard, it is not exhaustive. A legal practitioner may still need to carry out additional verification or other steps if it would be reasonable to do so in the circumstances (eg if the WIFI signal is weak and the legal practitioner cannot see the client's face clearly or if an identification document does not appear to be genuine). As noted above, it is a matter for the legal practitioner to determine what constitutes “reasonable steps” specific to the circumstances.

Client Authorisation

A legal practitioner also requires a client to provide a signed Client Authorisation before the legal practitioner can digitally sign any electronic land registry document on behalf of the client and a legal practitioner is required to certify that he/she took reasonable steps to ensure that the Client Authorisation was signed by the client. Ideally, a legal practitioner should arrange for a client to sign a Client Authorisation at the same time as a VOI check is being carried out so that he/she can ensure that it is signed by the client. If this is not possible, then the legal practitioner must take reasonable steps to ensure that the Client Authorisation is signed by the client whose identity was verified. ARNECC also advised in its [position statement](#) on 19 March 2020 that a Client Authorisation may be signed electronically if it complies with the relevant Electronic Transactions Act in the jurisdiction in which the property is situated. See the precedent [Electronic Conveyancing – Client Authorisation](#).

Mortgagees

This checklist also applies to legal practitioners representing mortgagees; however, in addition to verifying the identity of the mortgagee and any person to whom a paper certificate of title is provided (if relevant), a legal practitioner representing a mortgagee in a conveyancing transaction must also verify the identity of the mortgagor unless the legal practitioner is reasonably satisfied that the mortgagee has taken reasonable steps to verify the identity of the mortgagor.



Retain supporting evidence for 7 years

A legal practitioner must retain:

- any evidence supporting the VOI;
- the Client Authorisation (and any evidence supporting the Client Authorisation);
- any evidence supporting a client's right to enter into the conveyancing transaction; and
- any evidence required by a duty/revenue authority,

for a period of **at least 7 years** from the date of lodgment of the relevant electronic land registry document. See [Model Participation Rules Guidance Note #5 Retention of Evidence](#).

Comply with privacy laws

In carrying out a VOI check and retaining the supporting evidence, a legal practitioner should ensure that he/she complies with any applicable privacy legislation, principles or industry codes relating to the collection, use, disclosure, storage or granting of access rights to personal information for the jurisdiction in which the property is situated, including the [Privacy Act 1988](#) (Cth) and any State or Territory privacy legislation.

Proposed change to Model Participation Rules

ARNECC stated in its [position statement](#) on 20 May 2020 that, given the impact of the COVID-19 pandemic, its proposed amendment to the [Model Participation Rules](#) requiring subscribers (eg legal practitioners) to apply the VOI standard **before** taking reasonable steps (which is **not** presently required) will no longer form part of proposed version 6 of the Model Participation Rules. This means that the current VOI regime under cl 6.5 (as set out above in the introductory note) will continue.

Paper conveyancing transactions

In most jurisdictions where e-conveyancing is operational, the VOI requirements for paper conveyancing transactions are similar to those in ARNECC's [Model Participation Rules](#). For example, for paper conveyancing transactions in New South Wales, cl 4.1 (VOI) and 4.2 (Use of the VOI Standard) of the [Conveyancing Rules](#) more or less mirror cl 6.5 of ARNECC's [Model Participation Rules](#). Therefore, depending on the jurisdiction, a legal practitioner may also be able to use this checklist for a paper conveyancing transaction.

Links to related content:

1. See the legal update [Does the COVID-19 outbreak affect e-conveyancing VOI checks?](#)
2. For further guidance on what legal practitioners need to do in e-conveyancing transactions, see [What do practitioners need to do in order to use PEXA in the first instance?](#)
3. For the current version of the Participation Rules applicable to your jurisdiction, see the [ARNECC website](#).
4. For further guidance on VOI generally (eg what are "reasonable steps"?), see [ARNECC Model Participation Rules Guidance Note #2 – Verification of Identity](#).
5. See the current version of the [NSW conveyancing rules](#).
6. For a precedent identifier declaration, see [Electronic conveyancing — Identifier declaration](#).
7. For a precedent identity agent certification, see [Electronic conveyancing — Identity agent certification](#).
8. For a precedent Client Authorisation, see [Electronic conveyancing — Client Authorisation](#).



Action Point Checklist: Checklist for remote verification of identity (VOI)

Before carrying out an electronic conveyancing transaction on behalf of a client, a legal practitioner must verify the identity of the client. The following is a possible method of verifying the identity of a client remotely (using audio-visual technology) if the VOI standard cannot be applied:

E-conveyancing: remote verification of identity (VOI) checklist ✓	
➤ Review and become familiar with the following documents:	
<ul style="list-style-type: none"> ▪ The Participation Rules for your jurisdiction, in particular cll 6.5 and 6.6. ▪ ARNECC Model Participation Rules Guidance Note #2 — Verification of Identity. 	
➤ Arrange a virtual meeting with the client using audio-visual video technology, eg using a platform such as Skype, FaceTime, Microsoft Teams or Zoom. Before the virtual meeting:	
<ul style="list-style-type: none"> ▪ Provide a copy of the “Minimum document requirements” table (at the end of this checklist) to the client. ▪ Ask the client to bring to the meeting original and current documents from one of the categories in the “Minimum document requirements” table (at the end of this checklist), starting with Category 1. Advise the client that, if Category 1 cannot be satisfied, he/she should bring documents from Category 2. If Category 2 cannot be satisfied, he/she should bring documents from Category 3, and so on. ▪ Ask the client if he/she has the technological means to be able to forward copies of the documents to you during the meeting, eg by scanning or photographing the documents and then emailing them to you. Alternatively, copies of the documents could be emailed to you before the meeting and, during the meeting, you could ask the client to hold up the documents in front of the camera so that you can sight them on the screen in real time. ▪ Seek the permission of the client to record the virtual meeting. 	
➤ During the virtual meeting (which should be recorded, if permission is granted):	
<ul style="list-style-type: none"> ▪ Ensure that the client shows you the original and current documents from one of the categories in the “Minimum document requirements” table (at the end of this checklist), starting with Category 1. ▪ If the client is not able to produce the required documents from Category 1, you can accept the required documents from Category 2 provided the client provides a genuine reason for not being able to provide the Category 1 documents. You must be reasonably satisfied that a prior category cannot be met before accepting a subsequent category. You should record the details of the reason. 	



<ul style="list-style-type: none"> ▪ If the client is not able to produce the required documents from Category 2, you can accept the required documents from Category 3 provided the client provides a genuine reason for not being able to provide the Category 2 documents and so on. You must be reasonably satisfied that a prior category cannot be met before accepting a subsequent category. Again, you should record the details of the reason. You need to be satisfied that you have received the minimum required number of documents. 	
<ul style="list-style-type: none"> ▪ Request the client to send copies of the documents to you, eg by scanning or photographing them and then emailing them to you. Ensure that you clearly observe the client carrying out this process in real time. Alternatively, copies of the documents could be emailed to you before the meeting and, at the meeting, you could ask the client to hold up the documents in front of the camera so that you can sight them on the screen in real time. If copies of the documents cannot be sent to you electronically, you could ask the client to hold up the documents in front of the camera so that you can take screenshots of them or, if this is not possible, inspect them on the screen in real time. You need to be satisfied that the documents you receive/sight are provided by the client. 	
<ul style="list-style-type: none"> ▪ Request the client to take a photo of his/her face and to send it to you electronically. Ensure that you clearly observe the client carrying out this process in real time. Alternatively, if the audio-visual technology permits it, you could, with the client's consent, ask him/her to stand/sit in front of the camera so that you can take a screenshot of his/her face (the client could also hold up his/her photo ID in the photo). 	
<ul style="list-style-type: none"> ▪ Upon receipt of the documents/photo or while sighting in real time (or after taking screenshots of) the documents/the client's face: 	
<ul style="list-style-type: none"> ○ Carefully review the documents. 	
<ul style="list-style-type: none"> ○ Ensure that all of the required documents have been provided from the relevant category. 	
<ul style="list-style-type: none"> ○ Ensure that all of the documents are current (exception: an Australian passport can be expired provided that it has not been cancelled and was current within the preceding 2 years). 	
<ul style="list-style-type: none"> ○ Ensure that there are no typos, that the copies of the documents are not of poor quality, etc. 	
<ul style="list-style-type: none"> ○ If a document contains a photo, ensure that the client (as you observe on the video/screenshot or on the photo that he/she has sent to you) shows a reasonable likeness to the person depicted in the photo in the document (check the shape of his/her mouth, nose, eyes and the position of his/her cheek bones). If required, ask the client to move closer to the camera so that you have a clear, unobstructed view of the client's face. You need to be satisfied that the person on camera is the person in the photo(s) in the document(s). 	



<ul style="list-style-type: none"> ○ Compare the client’s signature on any document provided/sighted to that on any document(s) signed at the meeting, eg Client Authorisation (ensure that you observe the client signing the document in real time). If there is no document to be signed at the meeting, you could ask the client to sign his/her name on a blank piece of paper in front of the camera and to email it to you (ensure that you observe the client doing this in real time) Alternatively, the client could hold it up in front of the camera (alongside the identification document containing his/her signature, if you don’t have a copy) and, if possible, you could take a screenshot. You need to be satisfied that the signature in the document(s) matches the signature in the document/piece of paper signed at the meeting. 	
<ul style="list-style-type: none"> ○ If an Identifier Declaration is to be provided (under Categories 5(a) or 5(b)), refer to Sch 8, Pt 4 of the Participation Rules: <ul style="list-style-type: none"> ▪ The Identity Declarant must attend the same meeting. ▪ The Identity Declarant must provide the required statutory declaration. See the precedent Electronic conveyancing — Identifier declaration. ▪ The other documents in Categories 5(a) or 5(b) (whichever is applicable) must be provided. ▪ The Identity Declarant’s identity must be verified (as above) by requiring the Identity Declarant to produce the required documents from one of the categories in the “Minimum document requirements” table (at the end of this checklist), starting with Category 1; however Category 5 cannot be used. 	
<ul style="list-style-type: none"> ▪ Retain the copies of the documents and the photo(s) (or the screenshots, if applicable) and the recording of virtual meeting (if recorded). 	
<p>➤ If the client is a body corporate or incorporated association:</p>	
<ul style="list-style-type: none"> ▪ Confirm the existence and identity of the corporation by conducting a search of the records of the Australian Securities and Investments Commission (ASIC) or other regulatory body with whom the corporation is required to be registered. See the ASIC Registers. 	
<ul style="list-style-type: none"> ▪ Take reasonable steps to establish who is authorised to sign or witness the affixing of the seal on behalf of the corporation. 	
<ul style="list-style-type: none"> ▪ Verify the identity of the individual(s) signing or witnessing the affixing of the seal on behalf of the corporation in accordance with the above steps. 	
<p>➤ If the client is an attorney:</p>	
<ul style="list-style-type: none"> ▪ Request a copy of the power of attorney. If the power of attorney is not registered, determine if it should be registered (eg in NSW, it is required if it is being used as an authority to sign any deed or dealing 	



	affecting land: s 52 , Power of Attorney Act 2003 (NSW)).	
	<ul style="list-style-type: none"> Confirm from the power of attorney — the details of the attorney and the principal. 	
	<ul style="list-style-type: none"> Review the power of attorney to determine what the attorney is authorised to do and if there are any limitations on the attorney’s authority. 	
	<ul style="list-style-type: none"> Take reasonable steps to establish that the conveyancing transaction is authorised by the power of attorney. 	
	<ul style="list-style-type: none"> Verify the identity of the attorney in accordance with the steps above. 	
➤	<p>Consider if further "reasonable steps" (ie further identity checks) are required. Further steps should be taken if there is doubt (or where doubt should reasonably have arisen) about the client’s identity. For example, if an identity document does not appear to be genuine, a photograph does not show a reasonable likeness of the client or the client does not appear to be the person in the identity documents. See Sch 8, Pt 10 of the Participation Rules. It will be a question of fact depending on the circumstances of each individual case and would be determined by a court on an objective basis. Examples of further steps:</p>	
	<ul style="list-style-type: none"> Request more identity documents. 	
	<ul style="list-style-type: none"> Make enquiries with the client or third parties. 	
	<ul style="list-style-type: none"> Use electronic verification services (if the identity documents are Australian). 	
➤	<p>Retain all VOI evidence for 7 years (ie all evidence demonstrating that reasonable steps were taken to verify the client’s identity). The evidence may be retained electronically. Ensure that you comply with any privacy obligations (see “Comply with privacy laws” above). See Model Participation Rules Guidance Note #5 Retention of Evidence.</p>	
	<ul style="list-style-type: none"> Record of the reasonable steps taken to verify the identity of the client. 	
	<ul style="list-style-type: none"> Copies/screenshots of the identity documents. 	
	<ul style="list-style-type: none"> Photo/screenshot of the client. 	
	<ul style="list-style-type: none"> Recording of the virtual meeting (if applicable). 	
	<ul style="list-style-type: none"> Copies of other documents provided to verify the identity of the client. 	
	<ul style="list-style-type: none"> Client Authorisation (and any evidence supporting the Client Authorisation), if signed at the same time as the VOI check (see the precedent Electronic Conveyancing – Client Authorisation) or copy/screenshot of the piece of paper signed by the client. 	



Category	Minimum document requirements
	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 plus Australian driver's licence or photo card plus change of name or marriage certificate, if necessary.
2	Australian passport or foreign passport or Australian evidence of immigration status ImmiCard or Australian migration status ImmiCard plus full birth certificate or citizenship certificate or descent certificate plus Medicare or Centrelink or Department of Veterans' Affairs card plus change of name or marriage certificate, if necessary.
3	Australian driver's licence or photo card plus full birth certificate or citizenship certificate or descent certificate plus Medicare or Centrelink or Department of Veterans' Affairs card plus change of name or marriage certificate, if necessary.
4	(a) Australian passport or foreign passport or Australian evidence of immigration status ImmiCard or Australian migration status ImmiCard plus another form of government issued photographic identity document plus change of name or marriage certificate, if necessary. (b) Australian passport or foreign passport or Australian evidence of immigration status ImmiCard or Australian migration status ImmiCard plus full birth certificate plus another form of government issued identity document plus change of name or marriage certificate, if necessary.
5	(a) Identifier Declaration plus full birth certificate or citizenship certificate or descent certificate plus Medicare or Centrelink or Department of Veterans' Affairs card plus change of name or marriage certificate, if necessary. (b) Identifier Declaration by a person specified in VOI Standard para 4.4(e) plus Medicare or Centrelink or Department of Veterans' Affairs card plus change of name or marriage certificate, if necessary. <i>Note: Refer to VOI Standard, para 4</i>
	For persons who are not Australian citizens or residents
6	(a) Foreign passport plus another form of government issued photographic identity document plus change of name or marriage certificate, if necessary (b) Foreign passport

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	<p>plus full birth certificate</p> <p>plus another form of government issued identity document</p> <p>plus change of name or marriage certificate, if necessary</p>
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