RPA Certification and “personal knowledge”: What do YOU need to “know”?  
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The certification of documents to be lodged with the Registrar-General now requires the certifier to have “personal knowledge” of what is certified. Great care therefore needs to be taken when providing such certification, especially in light of the additional requirements regarding Verification of Identity.

Practitioners will be aware that the Real Property Act 1886 (SA) (“RPA”) requires the Registrar-General to refuse to receive any instrument dealing with land unless the instrument contains an endorsement signed by the applicant, the party claiming under it, a solicitor or a registered conveyancer, that the instrument is correct for the purposes of the RPA (s.273 (1) RPA). From 27 April 2015, however, the RPA has also contained s.273 (1a) which requires that certification under s.273 (1) may only be provided by a “natural person who has personal knowledge as to the matters to which he or she is certifying.” (Emphasis added).

The RPA also states that it is an offence (Maximum Penalty $10,000.00) for a person to falsely or negligently provide a certification under s.273 (1). It is also an offence for an employee of a corporate mortgagee to provide a certificate under s.273 (1) if that person does not, at the time of providing the certificate, have “personal knowledge of the matters to which he or she is certifying” (s.232 RPA). (Emphasis added).

The Property Committee of the Law Society (“the Committee”) considers that there is a fundamental problem with these requirements for “personal knowledge” because of the absence of any definition of “the matters to which he or she is certifying”.

A certification under s.273 (1) is in the terms that the instrument is “correct for the purposes of the [RPA]”.
There has been ongoing uncertainty and debate for many years as to the meaning and effect of this certification. One view is that it may merely be regarded as a statement that the instrument is in registrable form. At the other extreme is the view that the certification comprises a statement that the instrument relates to *bona fide* transaction, that the parties are who they purport to be, that they have the right and capacity to deal with the land and that their signatures are authentic.

The lack of a clear definition of the meaning and effect of the certification means that a certifying party cannot even be confident as to extent of “the matters to which he or she is certifying”, let alone determine whether he or she has “personal knowledge” of them.

The regime concerning Verification of Identity adds to this already complex area. These certification requirements seem to be inconsistent with the Registrar General’s Verification of Identity Policy (“VOI Policy”), for example, where:

- an agent undertakes the verification of Identity under item 7.8 of the VOI Policy; or
- an officer described in item 7.0 of the VOI Policy undertakes the certification of identity in a foreign country.

In those situations, it cannot be said that the practitioner certifying the relevant instrument has “*personal knowledge*” as to the matters to which he or she is certifying, as he or she has not conducted the face-to-face in-person interview and is relying upon copies of documents and statements made by a third party, in accordance with the Policy.

One of the issues raised by the Committee during the introduction of the VOI Policy was whether a solicitor/conveyancer of a particular firm could rely upon a verification of identity conducted by another practitioner of the firm if, for example, the practitioner who had conducted the original VOI was on leave. The response [from the Registrar-General] was that this could be done if the firm considered that “*reasonable steps*”, in accordance with the VOI Policy, had been taken, noting that this might need to be justified if there were a subsequent challenge.

The requirement for there to be “*personal knowledge*” casts doubt on this process, and suggests that it would be an offence for a solicitor or conveyancer of a firm to certify a document where the certification of identity had been conducted by another solicitor or conveyancer within the firm. The impracticality of this result was pointed out by the Committee to the Registrar-General and the Attorney-General when the proposed RPA amendments were still before Parliament.

Unfortunately, the Committee’s comments were not acted upon before the legislation was passed, leaving the current situation both complex and impractical. It is suggested that practitioners pay great attention to these issues and requirements when certifying and at all times take “*reasonable steps*” in accordance with the VOI Policy.