



New South Wales

Electronic Conveyancing (Adoption of National Law) Bill 2012

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to enact the Electronic Conveyancing National Law (the *National Law*). The National Law forms the basis for a national scheme for the electronic lodgment and processing of conveyancing transactions. The object of the National Law is to promote efficiency throughout Australia in property conveyancing by providing a common legal framework that:

- (a) enables documents in electronic form to be lodged and processed under the land titles legislation of each participating jurisdiction, but
- (b) does not derogate from the fundamental principles of the Torrens system of land title as incorporated in the land titles legislation of each participating jurisdiction, such as indefeasibility of title.

In order to achieve this object, the National Law, among other things, authorises the Registrar in each participating jurisdiction to operate or authorise the operation of an Electronic Lodgment Network, and provides for the making of rules relating to the operation of the Electronic Lodgment Network.

The National Law is set out in the Appendix to this Bill.

The jurisdictions proposed to be participating jurisdictions under the National Law are New South Wales, Victoria, Queensland, Western Australia, South Australia, Tasmania and the Northern Territory.

In addition to applying the National Law as a law of this State, the Bill contains application provisions that provide for the meaning of various terms used in the National Law, and for the application of other laws of this State in relation to the National Law.

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act.

Clause 3 defines certain words and expressions used in the provisions of the proposed Act (other than the National Law).

Part 2 Application of Electronic Conveyancing National Law

Clause 4 applies the National Law as a law of this State.

Clause 5 sets out the meaning, for the purposes of New South Wales only, of certain generic terms used in the National Law. The Registrar is defined as the Registrar-General.

Clause 6 makes the Supreme Court the responsible tribunal for New South Wales under the National Law. The responsible tribunal has functions with respect to appeals under the National Law.

Clause 7 provides that the *Interpretation Act 1987* (apart from Part 6A relating to the NSW legislation website) does not apply in respect of the National Law. The National Law has its own interpretation provisions.

Part 3 Miscellaneous

Clause 8 enables the Governor to make regulations for the purposes of the proposed Act.

Clause 9 provides for a consequential amendment to the *Electronic Transactions Regulation 2012*.

Appendix Electronic Conveyancing National Law

The Appendix sets out the National Law.

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the National Law.

Clause 2 provides for the commencement of the National Law in a participating jurisdiction to be as provided for by an Act of that jurisdiction.

Clause 3 defines certain expressions used in the National Law.

Clause 4 gives effect to Schedule 1 to the National Law, which provides for the interpretation of the National Law.

Clause 5 provides for the object of the National Law, as set out in the Overview.

Clause 6 provides that the National Law binds the State.

Part 2 Electronic Conveyancing

Division 1 Electronic lodgment

Clause 7 allows a document to be lodged electronically for the purposes of land titles legislation if the document is lodged in a form approved by the Registrar and by means of an electronic lodgment network provided and operated under the National Law.

Clause 8 requires the Registrar to process a document lodged electronically.

Clause 9 provides that an instrument executed and lodged electronically under the National Law has the same effect as a paper document.

Division 2 Client authorisations and digital signatures

Subdivision 1 Client authorisations

Clause 10 provides for client authorisations. A client authorisation is a document by which a party to a conveyancing transaction authorises a subscriber to complete a conveyancing transaction electronically.

Clause 11 gives effect to client authorisations.

Subdivision 2 Digital signatures

Clause 12 provides for the digital signing of documents by subscribers and the effect of documents that are digitally signed. The clause sets out the circumstances in which a digital signature may be repudiated, namely, that the digital signature was not created by the subscriber or by a person authorised to create digital signatures on behalf of the subscriber, and the subscriber did not fail to comply with the participation rules or to take reasonable care with respect to the creation of the digital signature. The clause does not prevent the unsigned of a document, which may occur prior to settlement.

Part 3 Electronic Lodgment Networks

Division 1 Preliminary

Clause 13 explains what is meant by an Electronic Lodgment Network or *ELN*. An ELN is an electronic system that enables the lodging of registry instruments and other documents in electronic form for the purposes of land titles legislation.

Division 2 Operation of Electronic Lodgment Networks

Clause 14 gives the Registrar power to provide and operate an ELN.

Clause 15 gives the Registrar power to approve a person to provide and operate an ELN. Such a person is an Electronic Lodgment Network Operator (*ELNO*).

Clause 16 permits the Registrar to attach conditions to an approval to operate an ELN.

Clause 17 permits a person approved as an ELNO to provide an ELN in accordance with the approval.

Clause 18 requires a person approved as an ELNO to comply with the operating requirements.

Clause 19 provides for renewal of approval as an ELNO.

Clause 20 permits the Registrar to revoke or suspend the approval of a person as an ELNO.

Clause 21 permits the Registrar to monitor activities in an ELN.

Division 3 Operating requirements and participation rules

Clause 22 enables the Registrar to determine requirements in relation to the operation of an ELNO and the provision and operation, by an ELNO, of an ELN (*operating requirements*).

Clause 23 enables the Registrar to determine rules relating to the use of an ELN (*participation rules*).

Clause 24 requires the Registrar to have regard to any model operating requirements or model participation rules published by the Australian Registrars' National Electronic Conveyancing Council in determining the operating requirements and participation rules.

Clause 25 requires the Registrar to ensure that copies of the current operating requirements and participation rules, and superseded versions, are publicly available.

Clause 26 requires subscribers who are authorised to use an ELN to comply with the participation rules relating to the ELN.

Clause 27 allows the Registrar to waive compliance with all or any provisions of the operating requirements or participation rules.

Division 4 Appeals

Clause 28 provides for appeals against decisions of the Registrar made under the National Law.

Clause 29 provides for the determination of appeals by the responsible tribunal (in New South Wales, the Supreme Court).

Clause 30 provides for the awarding of costs on appeals.

Clause 31 makes it clear that the proposed Division applies despite any Act that establishes or continues the responsible tribunal, but does not otherwise limit such an Act.

Division 5 Compliance examinations

Clause 32 makes it clear that the Division extends to former ELNOs and former subscribers.

Clause 33 enables the Registrar to conduct investigations (*compliance examinations*) in relation to an ELNO or subscriber for the purpose of ascertaining whether or not the operating requirements and participation rules are being complied with, or investigating any suspected misconduct with respect to the use of an ELN.

Clause 34 requires an ELNO or subscriber to cooperate with a compliance examination.

Clause 35 allows the Registrar, instead of conducting a compliance examination or during or after the conduct of a compliance examination, to refer a matter to an investigatory, disciplinary or other appropriate authority.

Clause 36 makes it clear that the Division does not limit any provision of the land titles legislation that also authorises investigations, inquiries or examinations.

Part 4 Miscellaneous

Division 1 Delegation

Clause 37 permits the Registrar to delegate functions under the National Law.

Division 2 Liability of Registrar

Clause 38 makes it clear that the Registrar is not obliged to monitor activities in an ELN or to conduct compliance examinations.

Clause 39 provides that no compensation is payable for things done or omitted in good faith in connection with the monitoring of activities in an ELN or the conduct of compliance examinations.

Clause 40 makes it clear that the Registrar is not responsible for the regulation or operation of any services provided by an ELNO that are additional to the ELN.

Division 3 Relationship with other laws

Clause 41 makes it clear that the National Law is in addition to and not in substitution for the laws of the State relating to electronic transactions or the use of electronic documents.

Clause 42 provides that a power conferred by the land titles legislation to make an instrument of a legislative or administrative character, or to do any other thing, extends to making instruments, or doing other things, for the purposes of the National Law.

Schedule 1 Miscellaneous provisions relating to interpretation

Schedule 1 sets out the general interpretation provisions that have effect in relation to the National Law. The provisions have effect in substitution for the provisions of the *Interpretation Act 1987*.