



New South Wales

Electronic Conveyancing (Adoption of National Law) Amendment Bill 2022

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the Electronic Conveyancing National Law (*ECNL*) set out in the Appendix to the *Electronic Conveyancing (Adoption of National Law) Act 2012*. The ECNL provides the basis for a national scheme for the electronic lodgment and processing of conveyancing transactions. The proposed amendments to the ECNL include amendments to—

- (a) require Electronic Lodgment Network Operators (*ELNOs*) to ensure an Electronic Lodgment Network (*ELN*) operated by the ELNO is interoperable, meaning it may be used—
 - (i) by a subscriber to complete conveyancing transactions involving a subscriber to an ELN operated by another ELNO without requiring the subscriber to be authorised to use both ELNs, and
 - (ii) to prepare documents in electronic form using data from different ELNs, and
- (b) enable the Registrar to waive the requirement specified in paragraph (a) (the *interoperability requirement*) in certain circumstances, and
- (c) enable ELNOs and financial institutions to rely on digital signatures created for a registry instrument or other document in certain circumstances, and
- (d) provide that certain matters, including matters relating to the interoperability requirement, may be included in requirements determined by the Registrar relating to the operation of ELNOs and the provision and operation of ELNs (*operating requirements*), and
- (e) allow the Registrar to conduct an investigation to determine compliance with the interoperability requirement.

Outline of provisions

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 on the date of assent to the proposed Act.

Schedule 1 Amendment of Electronic Conveyancing (Adoption of National Law) Act 2012 No 88

Schedule 1[1] defines certain words and expressions for the purposes of the ECNL.

Schedule 1[2] provides that the Registrar may rely on the Registrar's power to approve forms conferred by proposed section 44 for the purposes of approving a form to enable documents to be lodged electronically.

Schedules 1[4] and [5] provide that the following may rely on a digitally signed document created in connection with a conveyancing transaction—

- (a) each ELNO whose ELN is used in connection with the conveyancing transaction,
- (b) in relation to a document that directs the payment of money as part of the conveyancing transaction—each financial institution that pays or receives money in accordance with the direction.

Schedule 1[3] makes a consequential amendment.

Schedule 1[6] requires an ELNO to establish and maintain interoperability between the ELN operated by the ELNO and each ELN operated by another ELNO. Interoperability must be established and maintained in accordance with the operating requirements. The Registrar may waive compliance with the interoperability requirement if a waiver is reasonably necessary in the circumstances. A waiver may be total or partial, apply to an individual ELNO or a specified class of ELNOs, apply generally or be limited to specified exceptions or factors, apply indefinitely or for a specified period and may be unconditional or subject to conditions or restrictions.

Schedule 1[7] provides that the Registrar may renew a person's approval as an ELNO if the Registrar is satisfied the person meets the qualifications for renewal of approval, as specified in the operating requirements.

Schedule 1[8] and [10] provide that the Registrar may determine operating requirements about the following matters—

- (a) changes in the control of an ELNO,
- (b) interoperability,
- (c) the technical and operational requirements for an ELN, including data standards relating to interoperability,
- (d) the integration of an ELN with other electronic systems,
- (e) the separation of services provided by an ELN from other services provided by the ELNO,
- (f) fees and charges payable to an ELNO,
- (g) the resolution of disputes between certain parties,
- (h) an ELNO's participation and compliance in a scheme for an industry code relating to associated financial transactions.

Schedule 1[9] clarifies that a reference to an ELN is to a reference to the ELN operated by the ELNO.

Schedule 1[12] enables the Registrar to conduct an investigation (a *compliance examination*) for the purpose of ascertaining an ELNO's compliance with the interoperability requirement. **Schedule 1[11]** makes a consequential amendment.

Schedule 1[13] enables the Registrar to refer a matter to another Registrar, instead of conducting a compliance examination, at any time during a compliance examination or after completing a compliance examination.

Schedule 1[14] makes it clear the Registrar may refer a matter to another person, body or organisation despite a law relating to privacy or confidentiality.

Schedule 1[15] enables the Registrar to delegate the Registrar's power to approve forms conferred by proposed section 44.

Schedule 1[16] permits the Registrar to authorise, in an instrument of delegation, a delegate to subdelegate a power or function.

Schedule 1[18] provides that the mere fact the operating requirements include provisions in relation to the following does not make the Registrar responsible for the regulation or conduct of financial transactions associated with conveyancing transactions (*associated financial transactions*)—

- (a) data standards relating to associated financial transactions,
- (b) an ELNO's participation and compliance in a scheme for an industry code relating to associated financial transactions.

Schedule 1[17] makes a consequential amendment.

Schedule 1[19] provides that the Registrar—

- (a) is authorised to disclose certain information to the Australian Registrars' National Electronic Conveyancing Council, a Registrar of another jurisdiction or another entity with responsibility for the ECNL despite any law of this jurisdiction that may relate to privacy or confidentiality, and
- (b) may approve forms for use under the ECNL.



New South Wales

Electronic Conveyancing (Adoption of National Law) Amendment Bill 2022

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New South Wales

Electronic Conveyancing (Adoption of National Law) Amendment Bill 2022

No. , 2022

A Bill for

An Act to amend the *Electronic Conveyancing (Adoption of National Law) Act 2012* to make miscellaneous amendments to the Electronic Conveyancing National Law, including to regulate the operation of electronic lodgment networks operated by different electronic lodgment network operators.

The Legislature of New South Wales enacts—

1

1 Name of Act

2

This Act is the *Electronic Conveyancing (Adoption of National Law) Amendment Act 2022*.

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2 Commencement

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This Act commences on the date of assent to this Act.

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Schedule 1	Amendment of Electronic Conveyancing (Adoption of National Law) Act 2012 No 88	1 2
[1] Appendix Electronic Conveyancing National Law		3
Insert in alphabetical order in section 3(1)—		4
<i>another registrar</i> means a person who is a Registrar as defined in the application law of another participating jurisdiction.		5 6
<i>interoperability</i> means the interworking of ELNs operated by ELNOs in a way that enables—		7 8
(a) a subscriber using an ELN (the <i>first subscriber</i>) to complete a conveyancing transaction that involves a subscriber using another ELN without the first subscriber having to be a subscriber to the other ELN, and		9 10 11 12
(b) the preparation of a registry instrument or other document in electronic form using data from different ELNs.		13 14
<i>interoperability requirement</i> means the requirement set out in section 18A(1).		15
[2] Appendix, section 7		16
Insert “section 44 or” after “under” in section 7(2).		17
[3] Appendix, section 12		18
Insert before section 12(1)—		19
(1A) In this section—		20
<i>financial institution</i> means—		21
(a) an authorised deposit-taking institution as defined in the <i>Banking Act 1959</i> of the Commonwealth, section 5(1), or		22 23
(b) a bank constituted by a law of this jurisdiction or of another State or the Commonwealth.		24 25
[4] Appendix, section 12(1)(c)(iia)		26
Insert after section 12(1)(c)(ii)—		27
(iia) each ELNO whose ELN is used in connection with that conveyancing transaction, and		28 29
[5] Appendix, section 12(1)(c)(v)		30
Insert after section 12(1)(c)(iv)—		31
(v) in the case of a document that contains a direction for the payment of money as part of that conveyancing transaction, each financial institution that pays or receives money in accordance with that direction, and		32 33 34 35
[6] Appendix, section 18A		36
Insert after section 18—		37
18A ELNO required to establish and maintain interoperability		38
(1) A person approved as an ELNO under section 15 must, in accordance with the operating requirements, establish and maintain interoperability between the ELN operated by the person and each ELN operated by another ELNO.		39 40 41

(2)	The Registrar may waive compliance with the interoperability requirement if the Registrar is satisfied that granting the waiver is reasonably necessary in all the circumstances.	1 2 3
(3)	A waiver under subsection (2) may—	4
(a)	be total or partial, and	5
(b)	apply to particular persons approved as an ELNO under section 15 or particular classes of those persons, and	6 7
(c)	apply generally or be limited in its application by reference to specified exceptions or factors, and	8 9
(d)	apply indefinitely or for a specified period, and	10
(e)	be unconditional or subject to conditions or restrictions.	11
[7]	Appendix, section 19	12
	Omit “continues to meet the qualifications for approval” from section 19(1).	13
	Insert instead “meets the qualifications for renewal of approval”.	14
[8]	Appendix, section 22	15
	Insert after section 22(2)(a)—	16
(a1)	changes in the control of an ELNO,	17
[9]	Appendix, section 22(2)(b)(i) and (f)	18
	Omit “an ELN” wherever occurring. Insert instead “the ELN operated by the ELNO”.	19
[10]	Appendix, section 22(2)(c)	20
	Omit the paragraph. Insert instead—	21
(c)	interoperability, including, without limitation—	22
(i)	requiring an ELNO to enter into agreements with other ELNOs with respect to interoperability, and	23 24
(ii)	specifying matters to be dealt with, and standard provisions to be included, in those agreements, and	25 26
(iii)	the resolution of disputes between an ELNO and other ELNOs relating to interoperability,	27 28
(c1)	the technical and operational requirements for an ELN, including, without limitation, data standards and other requirements relating to interoperability, for example, data standards with respect to associated financial transactions,	29 30 31 32
(c2)	the integration of an ELN with other electronic systems,	33
(c3)	the separation of services provided by the ELN operated by an ELNO from other services provided by the ELNO,	34 35
(c4)	fees and charges payable to an ELNO, including, without limitation, principles relating to—	36 37
(i)	the setting and publication of fees and charges, and	38
(ii)	the apportionment of liability to pay fees and charges, and	39
(iii)	the circumstances in which fees and charges are not payable,	40
(c5)	the resolution of disputes between an ELNO and subscribers to the ELN operated by the ELNO or clients of those subscribers,	41 42

(c6)	participation by an ELNO in a scheme for an industry code relating to associated financial transactions and compliance by an ELNO with that code,	1 2 3
[11]	Appendix, section 33	4
	Omit “either or both” from section 33(a). Insert instead “any”.	5
[12]	Appendix, section 33(a)(ia)	6
	Insert after section 33(a)(i)—	7
	(ia) ascertaining whether or not the interoperability requirement is being, or has been, complied with,	8 9
[13]	Appendix, section 35	10
	Insert at the end of section 35(1)(b)(ii)—	11
	, and	12
	(iii) another registrar.	13
[14]	Appendix, section 35(4)	14
	Insert after section 35(3)—	15
	(4) The Registrar may refer a matter to an appropriate authority despite any law of this jurisdiction relating to privacy or confidentiality.	16 17
[15]	Appendix, section 37	18
	Insert after section 37(b)—	19
	(c) the power conferred by section 44 to approve forms.	20
[16]	Appendix, section 37(2)	21
	Insert at the end of section 37—	22
	(2) The Registrar may, in an instrument of delegation, authorise the person to whom a power or function is delegated to subdelegate that power or function.	23 24
[17]	Appendix, section 40	25
	Insert “or associated financial transactions” after “ELNO” in the heading to the section.	26
[18]	Appendix, section 40(2)	27
	Insert at the end of section 40—	28
	(2) The mere fact that the operating requirements include provisions relating to the following matters does not make the Registrar responsible for the regulation or conduct of associated financial transactions—	29 30 31
	(a) data standards relating to those transactions,	32
	(b) participation by an ELNO in a scheme for an industry code relating to those transactions and compliance by an ELNO with that code.	33 34
[19]	Appendix, Part 4 Division 4	35
	Insert after section 42—	36

Division 4	Other matters	1
43	Registrar authorised to disclose certain information	2
(1)	The Registrar may disclose information about the following matters to ARNECC, another registrar or a person or body who or which has functions under, or responsibility for the administration or oversight of, this Law or the land titles legislation—	3 4 5 6
(a)	an ELNO’s compliance with the operating requirements or the interoperability requirement,	7 8
(b)	a subscriber’s compliance with the participation rules,	9
(c)	a compliance examination conducted under Part 3, Division 5,	10
(d)	any other matter relating to the performance of the Registrar’s functions under this Law.	11 12
(2)	The Registrar may disclose the information despite any law of this jurisdiction relating to privacy or confidentiality.	13 14
(3)	This section does not limit or affect section 35 or any power or duty of the Registrar under the land titles legislation or any other law of this jurisdiction to disclose the information.	15 16 17
44	Forms	18
	The Registrar may approve forms for use under this Law.	19