



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.