



New South Wales

Electronic Conveyancing Enforcement 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 establish mechanisms for the enforcement of 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. In particular, the Bill authorises the Registrar-General to take the following action in relation to an Electronic Lodgment Network Operator (*ELNO*) approved to operate an Electronic Lodgment Network under the ECNL—

- (a) to accept an enforceable undertaking given by an ELNO in relation to a contravention of the ECNL, an operating requirement made under the ECNL or a condition of an approval,
- (b) to give a remedial direction or an interim remedial direction to an ELNO in relation to a contravention of a requirement imposed by or under the ECNL,
- (c) to apply to the Supreme Court for an order requiring payment of a monetary amount for a contravention of certain requirements of the ECNL or a remedial direction or interim remedial direction.

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 on the date of assent to the proposed Act.

Clause 3 sets out the object of the proposed Act.

Clause 4 defines words and expressions used in the proposed Act.

Part 2 Enforcement of Electronic Conveyancing National Law (NSW)

Part 2 contains provisions for the enforcement of the *Electronic Conveyancing National Law (NSW)*.

Division 1 (clauses 5–9) allows the Registrar-General to accept a written undertaking (an *enforceable undertaking*) given by an ELNO in relation to a contravention of the ECNL, the operating requirements determined under the ECNL or a condition of the approval of the ELNO under the ECNL. The Division also provides for—

- (a) the content of an enforceable undertaking, and
- (b) when an enforceable undertaking takes effect, and
- (c) the withdrawal or variation of an enforceable undertaking, and
- (d) the enforcement of an enforceable undertaking by order of the Supreme Court.

Division 2 (clauses 10–15) authorises the Registrar-General to give a direction (a *remedial direction*) to an ELNO if the Registrar-General reasonably believes the ELNO has contravened or is contravening a requirement imposed by or under the ECNL. The Registrar-General must give the ELNO the opportunity to make submissions in relation to the proposed remedial direction. In an emergency situation, the Registrar may give a direction to the ELNO without first giving the ELNO an opportunity to make submissions (an *interim remedial direction*). The Division also provides for—

- (a) the content of a remedial direction or interim remedial direction, and
- (b) the revocation of a remedial direction or interim remedial direction, and
- (c) the effect of an enforceable undertaking or the commencement of proceedings under proposed Division 3 on the power to give a remedial direction or interim remedial direction, and
- (d) the right of an ELNO to appeal against a decision of the Registrar-General to give a remedial direction or interim remedial direction.

Division 3 (clauses 16–18) authorises the Registrar-General to apply to the Supreme Court for an order (an *enforcement order*) requiring an ELNO to pay to the State a monetary amount not exceeding a specified maximum amount if an ELNO contravenes section 18A or 34 of the ECNL or a requirement of a remedial direction or interim remedial direction. Section 18A of the ECNL requires an ELNO to establish and maintain interoperability between the Electronic Lodgment Network operated by the ELNO and each Electronic Lodgment Network operated by another ELNO. Section 34 of the ECNL requires an ELNO in relation to whom a compliance examination is being conducted to cooperate fully with the person conducting the examination. The Division also provides for—

- (a) the time for commencing proceedings, and
- (b) the effect of enforceable undertakings on proceedings under the Division.

Part 3 Miscellaneous

Clause 19 provides that the proposed Act binds the Crown.

Clause 20 limits personal liability for things done or omitted in good faith and for the purpose of exercising a function under the proposed Act.

Clause 21 provides for the making of regulations for the purposes of the proposed Act.

Schedule 1 Savings, transitional and other provisions

Schedule 1 contains savings and transitional provisions consequent on the enactment of the proposed Act.