

Australian Capital Territory

Electronic Conveyancing National Law (ACT) Operating Requirements 2023

Disallowable instrument DI2023–62

made under the

Electronic Conveyancing National Law (ACT), s 22 (Operating Requirements for ELNOs) and s25 (Publication of operating requirements and participation rules)

EXPLANATORY STATEMENT

Overview

The purpose of this Explanatory Statement is to describe the changes to the Electronic Conveyancing National Law (ACT) Operating Requirements (Operating Requirements) relating to operation of an Electronic Lodgment Network (ELN) by Electronic Lodgment Network Operators (ELNOs). The rules have been determined pursuant to section 22 of the *Electronic Conveyancing National Law (ACT)* (ECNL). Commencement complies with section 25(1)(b) of *ECNL*.

The Operating Requirements made by this instrument have adopted in full the Model Operating Requirements Version 6.2 developed and approved by the Australian Registrars' National Electronic Conveyancing Council (ARNECC). The Model Operating Requirements (MOR) have been determined by ARNECC for promulgation by each Registrar before coming into effect in that jurisdiction as Operating Requirements.

The operating requirements cover topics such as:

- the financial standing of an ELNO
- operational and technical standards
- insurance cover to be held by an ELNO
- suspension or revocation of an ELNOs approval, and
- directions to an ELNO to restrict, suspend or terminate a subscriber's use of an ELN.

Pursuant to section 36(1)(g) of the *Legislation Act 2001* a regulatory impact statement is not required for these Participation Rules as they are part of a nationally uniform scheme of legislation.

Human Rights

Section 12 of the Human Rights Act 2004 (HRA) provides that everyone has the right not to have his or her privacy, family, home or correspondence interfered with unlawfully or arbitrarily and not to have his or her reputation unlawfully attacked. The ELN contains personal information of individuals for the purpose of lodging land title registry instruments and other documents. However, the proposed change to the Operating Requirements is minor and it provides solely for the existing fee setting rules for ELNOs to continue for a further 12 months. As such, it does not engage or limit the right to privacy in section 12 or other rights under the HRA.

Detail

This Explanatory Statement deals with the single provision of the Operating Requirements being amended.

The Operating Requirements are largely self-explanatory and will be well understood by ELNOs and subscribers, particularly those who are already involved in electronic conveyancing in other jurisdictions. ARNECC publish Guidance Notes on the Operating Requirements on the ARNECC website to assist ELNOs understanding what is expected in complying with the requirements.

Operation of ELN

Operating Requirement 5.4

Operating Requirement 5.4.3 currently states –

*“From 1 July 2019 to 30 June **2023** (emphasis added), the ELNO may increase the ELNO Service Fees as listed in its Pricing Table, once every Financial Year on 1 July, provided that the percentage increase in the revised ELNO Service Fees does not exceed the percentage increase in the CPI for the immediately preceding March quarter when compared with the CPI for the March quarter of the previous year.”*

The current restriction to limit fee increases in line with CPI ends on 30 June 2023. If the Operating Requirements are not updated prior to that date, the current ELNOs will be able to increase their fees above CPI as of 1 July 2023.

To enable the existing controls to continue, the amending of clause 5.4.3 of the Operating Requirements is changing the end date from “30 June 2023” to “30 June 2024”, to read as per below:

*“From 1 July 2019 to 30 June **2024** (emphasis added), the ELNO may increase the ELNO Service Fees as listed in its Pricing Table, once every Financial Year on 1 July, provided that the percentage increase in the revised ELNO Service Fees does*

not exceed the percentage increase in the CPI for the immediately preceding March quarter when compared with the CPI for the March quarter of the previous year.”

The intention of clause 5.4.3 is to restrict fee increases by the ELNOs until there is effective competition in the market. ARNECC have engaged the Independent Pricing and Regulatory Tribunal (IPART) to investigate and report on a pricing regulatory framework for interoperable transactions. IPART is considering the regulation of ELNO Service Fees as part of their review, which is not yet completed.