

Australian Capital Territory

Electronic Conveyancing National Law (ACT) Operating Requirements 2024

Disallowable instrument DI2024–28

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 7 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:

- Interoperability of ELNOs
- 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 proposed disallowable instrument introduces changes to the Operating Requirements of the ELN by ELNOs. As the ELN contains individual's personal information for the purpose of lodging land title registry instruments and other documents, the changes engage the right to privacy under section 12.

The proposed change to the Operating Requirements is primarily future focused, regarding the obligation of ELNOs capacity to perform interoperable transactions from late 2025, and as such neither limit nor positively engage these rights at this time.

Detail

This Explanatory Statement deals specifically with the interoperability provisions of the Operating Requirements being amended, as the other amendments are considered to be either consequential to these or otherwise not controversial.

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 understand what is expected in complying with the requirements. ARNECC has also undertaken considerable consultation and information sharing activities with ELNOs and their subscribers over 2022 and 2023 to confirm these changes.

Unless otherwise defined in this document, each capitalised word has the meaning given to it in the Operating Requirements.

Interoperation of ELNOs

5.2 - National system and electronic Registry Instrument and other electronic Document capability

Of particular importance are amendments to this section and the insertion of a new section 5.2.2 as follows:

Subject to the Interoperable Lodgment Case being capable of Lodgment in the Jurisdiction, an ELNO that obtained Approval prior to Operating Requirements Version 7 taking effect must:

- on or before 31 July 2025, design, build and test all technical and functional capability for, and implement:

- Release 1 – being Lodgment of an Interoperable Lodgment Case that includes a Mortgage and Discharge of Mortgage by a limited group of ADIs acting on their own behalf as approved by the Registrar; and
- on or before 31 December 2025, design, build and test all technical and functional capability for:
 - Release 2 – being Lodgment of an Interoperable Lodgment Case that includes a Mortgage and Discharge of Mortgage by any Subscriber; and
 - Release 3 – being Lodgment of all available electronic Registry Instruments and other electronic Documents required under Operating Requirement 5.2.1 as part of an Interoperable Lodgment Case by any Subscriber.
- If an event occurs, which is determined by the Registrar (acting reasonably) to be outside an ELNO's control and which prevents that ELNO from complying with Operating Requirement 5.2.2, the Registrar may by written notice extend the date for compliance with any part of Operating Requirement 5.2.2.

In effect, 5.2.2 provides a legislated date by which ELNOs must be able to offer interoperable transactions between themselves, and mandates milestone progress toward this date.

Definitions

To support these changes, a number of new terms have been added to the Operating Requirements. Of particular significance are the new terms to describe the interoperation of ELNOs.

Interoperability has the meaning given to it in the ECNL.

Interoperability Agreement means an agreement between two or more ELNOs or Potential Interoperable ELNOs to facilitate Interoperability between them.

Interoperability Agreement Matters means the matters that must be dealt with in an Interoperability Agreement as set out in Schedule 8, as amended from time to time.

Interoperable Electronic Workspace means an Electronic Workspace containing at least one Interoperable Lodgment Case.

Interoperable Lodgment Case means an electronic Registry Instrument or other electronic Document or related electronic Registry Instruments or other electronic Documents, conducted by means of Interoperability, which are or will be presented for Lodgment at the same time, together with the relevant Lodgment Instructions.

Interoperability has been a key focus of national electronic conveyancing reforms for two years and is a central pillar in ARNECC's policy and regulatory attempts to increase competition.

Following its announcement of the interoperability release timetable in July 2023, ARNECC conducted a series of stakeholder consultation workshops, where it continued to work closely with ELNOs Property Exchange Australia Limited (PEXA) and Sympli Australia Pty Ltd (Sympli), as well as industry more broadly, to determine the appropriate scope for the interoperability releases. ARNECC has now concluded this process. Specific details of the data elements constituting the scope have been shared with the ELNOs and will be shared with other integrating parties as necessary. Via its website, ARNECC on 16 November 2023 announced that the scope for the interoperability releases has now been settled. The scope refers to the data elements that must be shared by ELNOs in an interoperable transaction in order for each ELNO to offer services to its customers. A guiding principle of the interoperability project is that it must maintain or enhance the customer experience in keeping with the capability and experience of the ELN chosen by the customer.

These actions, combined with the publication of these Operating Requirements, will provide certainty and clarity to ELNOs and Subscribers of the regulatory and legislative obligations required to maintain compliance with the ECNL and subordinate instruments.