

Australian Capital Territory

Electronic Conveyancing National Law (ACT) Operating Requirements 2026

Disallowable instrument DI2026–63

made under the

Electronic Conveyancing National Law (ACT), s 22 (Operating Requirements for ELNOs) and s 25 (Publication of operating requirements and participation rules)

EXPLANATORY STATEMENT

Introduction

This explanatory statement relates to the *Electronic Conveyancing National Law (ACT) Operating Requirements 2026* as made by the Registrar-General (the *Registrar*) and presented to the Legislative Assembly. It has been prepared in order to assist the reader of the instrument. It does not form part of the instrument and has not been endorsed by the Assembly.

Overview

This explanatory statement describes the changes to the Electronic Conveyancing National Law (ACT) Operating Requirements (the **operating requirements**) relating to operation of an Electronic Lodgment Network (ELN) by Electronic Lodgment Network Operators (ELNO). The rules have been determined pursuant to section 22 of the *Electronic Conveyancing National Law (ACT)* (the **ECNL**).

Commencement of the *Electronic Conveyancing National Law (ACT) Operating Requirements 2026* (the **Instrument**) complies with section 25(1)(b) of ECNL.

The Operating Requirements made by this Instrument adopt the Model Operating Requirements Version 7.2 developed and approved by the Australian Registrars' National Electronic Conveyancing Council (ARNECC).

The Model Operating Requirements (the **MOR**) have been determined by ARNECC for endorsement and publication by each Registrar before coming into effect in that jurisdiction as Operating Requirements.

The amended operating requirements incorporate several new topics, including:

- Introducing requirements for an ELNO to undertake Continuous Improvement of the ELN by adopting new technology, methodologies and processes advantageous to Subscribers and other stakeholders. ELNO's will be required to prepare and implement a Continuous Improvement Plan

approved by the Registrar and certify compliance with the Continuous Improvement Plan in the periods specified in the MOR;

- Introducing amendments to allow ELNO's to increase ELNO Service Fees by consumer price index (CPI) for the next financial year;
- Amended the Implementation Plan requirements so that ELNO's are required to update and seek approval of changes to the Implementation Plan annually, substantiating how the Implementation Plan adheres with the requirements in the MOR's. ELNO's are additionally required to provide an update on their adherence with the Implementation Plan 6 months after the Implementation Plan is approved and during annual compliance. Registrars may consult an expert when reviewing an ELNO's Implementation Plan;
- Introducing additional information gathering requirements powers for the Registrar, including Observation powers which allows the Registrar to obtain information and access where the Registrar is investigating an issue with the ELNO System or an ELNO's compliance with MOR's; and
- Other minor updates.

ARNECC publish Guidance Notes on the Operating Requirements on the ARNECC website, <https://www.arnecc.gov.au/>, to assist ELNO's understand what is expected in complying with the requirements. ARNECC has also undertaken considerable consultation and information sharing activities with ELNO's and their subscribers to confirm these changes.

This instrument is a disallowable instrument and must be presented to the Assembly not later than 6 sitting days after its notification day, pursuant to section 64 of the *Legislation Act 2001* (the **Legislation Act**).

Regulatory Impact Statement – not required

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

Human Rights

During the development of this instrument due regard was given to rights under the *Human Rights Act 2004* (the *HRA*).

This instrument engages with the rights under section 12 of the HRA. Section 12 of the HRA provides that everyone has the right not to have their privacy, family, home or correspondence interfered with unlawfully or arbitrarily, and not to have their reputation unlawfully attacked

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.

This instrument introduces changes to the Operating Requirements of the ELN by ELNO's. As the ELN contains individual's personal information for the purpose of lodging land title registry instruments and other documents, the changes engage and may limit the right to privacy under section 12.

The legitimate purpose of including an individual's personal information in the ELN is to facilitate a property transaction by affecting a legal transfer of land or register interests in land and to ensure the integrity of the Land Titles Register.

To the extent that the right to privacy is limited by this inclusion of personal information in the ELN, the limitation is considered proportionate on the basis that:

- the ECNL framework allows for the lawful collection and use of personal information, and imposes obligations on subscribers and ELNO's to protect that data; and
- interoperability does not require subscribers to provide any additional personal information to an ELN than that which is currently required for a land transaction and is publicly available from the Land Titles Register.

Detail

This Statement deals broadly with the key changes to the Operating Requirements being amended.

Information

Continuous Improvement requirements

ARNECC has included a requirement for ELNO's to invest a sufficient Capital Investment and report on the amount and what it contributed to annually in the Continuous Improvement Plan.

This new requirement of Continuous Improvement is designed to improve:

- the security, resilience, performance and functionality of the ELN including Back End Infrastructure Connections; and
- the rollout of electronic Registry Instruments and other electronic documents which are capable of Lodgment in the Jurisdiction and other functionality; and
- the ELN's quality, efficiency and effectiveness in the provision of services to all Customers, Subscribers, Users and their Clients, including addressing Subscriber feedback.

To ensure stakeholder interests are protected and considered, ELNO's will additionally be required to submit, with the continuous Improvement Plan, information about how they consulted with stakeholders and accounted for the feedback provided in their plan.

The Registrar can now offer an ELNO feedback and suggested changes, however the decision remains with the ELNO on whether to implement those changes, if any is in the Continuous Improvement Plan.

Capital Investment

ELNO's must make ongoing Capital Investments sufficient to deliver the Continuous Improvement Plan, approved by the Registrar-General from time to time.

There must evidence submitted to the Registrar-General that the monetary value of the capital investment accords with the needs identified in the Continuous Improvement Plan and further make those records available for inspection by the Registrar-General as required by after reasonable notice.

Implementation Plan requirements

The ELNO must establish an Implementation Plan covering at least the next two financial years and provide the Registrar-General with a copy of the Implementation Plan for approval.

An Implementation Plan must:

- detail proposed future releases of the ELN, including to expand the ELN's functionality, to improve the ELN's performance, to introduce new electronic Registry Instruments or other electronic Documents, or relating to Interoperability;
- specify when new Back End Infrastructure Connections or changes to existing Back End Infrastructure Connections are scheduled;
- specify the time at which each of those releases is scheduled for implementation;
- detail the changes proposed to be introduced as part of each of those releases

These clauses have been introduced to ensure that Registrar-Generals have better understanding of the ELNO's future projects; and that the projects either incorporate or are otherwise aligned with the Registrar-General's (and the relevant land registry) needs and capacity to develop and implement changes to the ELN ability to accept new instruments.

Additional information gathering requirements

When an ELNO submits an Implementation Plan for approval by the Registrar-General, the ELNO must:

- support the ELNO's submission with evidence of how the Implementation Plan aligns with the Implementation Plan Requirements;
- provide any additional information required by the Registrar-General;

Effectively, when an ELNO submits an Implementation Plan, they must provide evidence to the Registrar-General as to how their plan complies with the Operating Requirements. ELNO's may raise any concerns for the Registrar-General's review when submitting plans for approval; and likewise, the Registrar-General may with discretion seek further information from the ELNO to satisfy them of the ELNO's ability to meet the requirements of the plan.

Introducing CPI amendments

Section 22(2)(c4) of the ECNL provides that Operating Requirements may (without limitation) include provisions relating to the setting of fees and charges payable to an ELNO.

Section 5.4.3 of the Electronic Conveyancing National Law (ACT) Operating Requirements 2025 (DI2025–38) provided that an ELNO may increase their Service Fees once every financial year on 1 July, provided that the increase 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.

This provision only allowed for fee increases up to 30 June 2026.

Due to ongoing reviews of pricing mechanisms and an independent review of the broader electronic conveyancing pricing and costs that is not due to be complete until late 2026, the Registrar-General has agreed to extend the current CPI pricing increase allowed to ELNO's under the MOR until financial year 2027, at which time it is anticipated that a new fee setting structure will be finalised.