

Electronic Conveyancing National Law (ACT) Operating Requirements 2025

Disallowable instrument DI2025–38

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 the Model Operating Requirements Version 7.1 developed and approved by the Australian Registrars' National Electronic Conveyancing Council (**ARNECC**), subject to a minor change to the commencement date of the application of interoperability fees and ELNO Service Fees so that these provisions in the ACT commences from the date of commencement of this instrument, rather than from 1 July 2024 and 1 July 2019 respectively. 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 amended operating requirements incorporate new topics, including:

- the fee charging model for ELNO interoperability
- use of national electronic data interoperability standards related to future ELNO Interoperability
- an obligation on ELNOs to be members of the Industry Code for e-Conveyancing Payments (**the Code**) prepared by the Australian Payments Network Limited (AusPayNet); and

- reporting requirements placed on ELNOs, including reporting requirements that must be met before an ELNO can have their approval to operate renewed.

ARNECC publish Guidance Notes on the Operating Requirements on the ARNECC website, <https://www.arnecc.gov.au/>, 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 to confirm these changes.

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

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 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 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 ELNOs 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 Explanatory Statement deals specifically with the two key changes to the Operating Requirements being amended: the introduction of provision to set fees for interoperability, and the introduction of the Code. Other changes to the Operating Requirements are considered to be either consequential to these changes or are otherwise minor and technical in nature.

Interoperability

Interoperability has been a key focus of national electronic conveyancing reforms for many 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, to determine the appropriate scope for the interoperability releases. 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.

On 20 September 2024 ARNECC announced that work progressing Interoperability would be paused until matters relating to financial institutions could be resolved.

On 19 February 2025 ARNECC announced that it is undertaking the following immediate steps to inform future direction regarding Interoperability:

- an in-depth review of the functional requirements for interoperability. This will involve an independent consultant engaging with ELNOs and Subscribers to develop a functional scope for interoperability that are necessary to maintain an equivalent subscriber experience for interoperable and noninteroperable transactions
- an updated cost benefit analysis to test whether the direct connect interoperability model continues to be the most appropriate model. This review will take place at the same time as the functional requirements review; and
- the creation of a new governance structure to oversee the review program of work.

These actions, combined with the publication of these Operating Requirements which outline a proposed future state of Interoperability fee schedules and methods, 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 at the point that Interoperability is able to commence.

Interoperability Fees

Part 5 of the Operating Requirements deals with how ELNs are operated. To support interoperability, Part 5 has been amended to insert new Part 5.9 which creates a framework around what fees can be charged between ELNOs that interoperate as well as setting limits on the amount of fees that can be charged.

Currently, only one ELNO is approved to operate in the ACT, and therefore there is no ability for interoperability between ELNO's to occur for conveyancing transactions on ACT land.

This is recognised in the *Electronic Conveyancing National Law (ACT) Waiver OR 1/2024 – Operating Requirements*, under which the Registrar has granted all ELNOs approved under section 15 of the National Law a total waiver of their obligation to comply with the Interoperability Requirement

Change to the MOR made to the ACT's Operating requirements

At 5.9.1 of version 7.1 of the MORs, fees are described as being applicable from 1 July 2024. Although interoperability does not currently occur in the ACT, to avoid any suggestion of the retrospective application of laws, 5.9.1 in the ACT's Operating Requirements as introduced by the Disallowable Instrument, clarifies that the applicable interoperability fee applies from the commencement of the Disallowable Instrument rather than 1 July 2024.

A similar clarification is provided at 5.4.3 for the avoidance of any doubt that the ELNO Service Fees are retrospective to 1 July 2019.

The Code

The ECNL (at Section 40) and the Operating Requirements (at clause 10.3.2) specifies that the land title Registrars are not responsible for regulating 'Associated Financial Transactions,' the payment-related financial settlement which forms part of an overall eConveyancing transaction.

Linked to the changes in ECNL to support interoperability, the Australian Payments Network Limited (**AusPayNet**) was asked by the Council of Financial Regulators (**CFR**) to create an industry framework covering the regulation of the financial settlement aspects of eConveyancing transactions.

The Code, as developed by AusPayNet, has been the subject of ongoing consultation and subject to iterative updates with ELNOs, financial institutions and ARNECC.

The Code will provide for the standardisation of relevant parts of the financial settlement process for both interoperable (multiple ELNO) and single-ELNO eConveyancing transactions.

Changes to the Operating Requirements introduced in 7.1 of the MORs is the introduction of a new general obligation on all ELNOs to obtain and maintain approval as a Code Operatory member and to comply with the Code once it has taken effect.

The Code implementation will be staggered across a period of months in work lead by AusPayNet once the Operating Requirements have been updated to obligate ELNOs to become members, and ARNECC (and individual State and Territory Registrar-Generals) will have only a limited role in its ongoing functions.

Members of the Code will have the opportunity to participate in the Management Committee responsible for overseeing the administration and ongoing development of the Industry Code. The Industry Code Regulations and Operating Procedures will be published, and the Industry Code will be effective, once reviewed by the Management Committee.

For the avoidance of doubt, ARNECC (and individual State and Territory Registrar-Generals) will only require certification of ELNO membership and compliance with the Code for the purposes of regulatory approval as an ELNO.

Definitions

To support these changes and the understanding of the impacts of the amendments, several terms have been added to the Operating Requirements over previous versions.

The below are new definitions inserted in Version 7.1 of the Operating Requirements:

Code Operator Member has the meaning given to it in the Industry Code for e-Conveyancing Payments.

Default Responsible ELNO Surcharge means a fee payable to the Responsible ELNO by a Participating ELNO for an Interoperable Lodgment Case where at Lodgment, the Participating ELNO should have been the Responsible ELNO but does not perform the Responsible ELNO role.

Industry Code for e-Conveyancing Payments has the meaning given to it in the industry code for electronic conveyancing payments prepared by Australian Payments Network Limited, as amended from time to time.

Interoperability Fees means a Responsible ELNO Fee or a Default Responsible ELNO Surcharge.

Interoperability Fees Pricing Table means the table of Interoperability Fees prepared by the ELNO in accordance with the requirements set out in Operating Requirement 5.9, as amended from time to time.

Responsible ELNO Fee means the fee payable to the Responsible ELNO by a Participating ELNO for each Subscriber that used the ELN of the Participating ELNO in a Lodged Interoperable Electronic Workspace.