

Passed by both Houses



New South Wales

# Electronic Conveyancing (Adoption of National Law) Amendment Bill 2022

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*I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.*

*Clerk of the Legislative Assembly.  
Legislative Assembly,  
Sydney,*

*, 2022*



New South Wales

## **Electronic Conveyancing (Adoption of National Law) Amendment Bill 2022**

Act No \_\_\_\_\_, 2022

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An Act to amend the *Electronic Conveyancing (Adoption of National Law) Act 2012* to make miscellaneous amendments to the Electronic Conveyancing National Law, including to regulate the operation of electronic lodgment networks operated by different electronic lodgment network operators.

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*I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.*

*Assistant Speaker of the Legislative Assembly.*

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**The Legislature of New South Wales enacts—**

**1 Name of Act**

This Act is the *Electronic Conveyancing (Adoption of National Law) Amendment Act 2022*.

**2 Commencement**

This Act commences on the date of assent to this Act.

## Schedule 1 Amendment of Electronic Conveyancing (Adoption of National Law) Act 2012 No 88

### [1] Appendix Electronic Conveyancing National Law

Insert in alphabetical order in section 3(1)—

*another registrar* means a person who is a Registrar as defined in the application law of another participating jurisdiction.

*interoperability* means the interworking of ELNs operated by ELNOs in a way that enables—

- (a) a subscriber using an ELN (the *first subscriber*) to complete a conveyancing transaction that involves a subscriber using another ELN without the first subscriber having to be a subscriber to the other ELN, and
- (b) the preparation of a registry instrument or other document in electronic form using data from different ELNs.

*interoperability requirement* means the requirement set out in section 18A(1).

### [2] Appendix, section 7

Insert “section 44 or” after “under” in section 7(2).

### [3] Appendix, section 12

Insert before section 12(1)—

(1A) In this section—

*financial institution* means—

- (a) an authorised deposit-taking institution as defined in the *Banking Act 1959* of the Commonwealth, section 5(1), or
- (b) a bank constituted by a law of this jurisdiction or of another State or the Commonwealth.

### [4] Appendix, section 12(1)(c)(iia)

Insert after section 12(1)(c)(ii)—

- (iia) each ELNO whose ELN is used in connection with that conveyancing transaction, and

### [5] Appendix, section 12(1)(c)(v)

Insert after section 12(1)(c)(iv)—

- (v) in the case of a document that contains a direction for the payment of money as part of that conveyancing transaction, each financial institution that pays or receives money in accordance with that direction, and

### [6] Appendix, section 18A

Insert after section 18—

#### 18A ELNO required to establish and maintain interoperability

- (1) A person approved as an ELNO under section 15 must, in accordance with the operating requirements, establish and maintain interoperability between the ELN operated by the person and each ELN operated by another ELNO.

- (2) The Registrar may waive compliance with the interoperability requirement if the Registrar is satisfied that granting the waiver is reasonably necessary in all the circumstances.
- (3) A waiver under subsection (2) may—
  - (a) be total or partial, and
  - (b) apply to particular persons approved as an ELNO under section 15 or particular classes of those persons, and
  - (c) apply generally or be limited in its application by reference to specified exceptions or factors, and
  - (d) apply indefinitely or for a specified period, and
  - (e) be unconditional or subject to conditions or restrictions.

**[7] Appendix, section 19**

Omit “continues to meet the qualifications for approval” from section 19(1).

Insert instead “meets the qualifications for renewal of approval”.

**[8] Appendix, section 22**

Insert after section 22(2)(a)—

- (a1) changes in the control of an ELNO,

**[9] Appendix, section 22(2)(b)(i) and (f)**

Omit “an ELN” wherever occurring. Insert instead “the ELN operated by the ELNO”.

**[10] Appendix, section 22(2)(c)**

Omit the paragraph. Insert instead—

- (c) interoperability, including, without limitation—
  - (i) requiring an ELNO to enter into agreements with other ELNOs with respect to interoperability, and
  - (ii) specifying matters to be dealt with, and standard provisions to be included, in those agreements, and
  - (iii) the resolution of disputes between an ELNO and other ELNOs relating to interoperability,
- (c1) the technical and operational requirements for an ELN, including, without limitation, data standards and other requirements relating to interoperability, for example, data standards with respect to associated financial transactions,
- (c2) the integration of an ELN with other electronic systems,
- (c3) the separation of services provided by the ELN operated by an ELNO from other services provided by the ELNO,
- (c4) fees and charges payable to an ELNO, including, without limitation, principles relating to—
  - (i) the setting and publication of fees and charges, and
  - (ii) the apportionment of liability to pay fees and charges, and
  - (iii) the circumstances in which fees and charges are not payable,
- (c5) the resolution of disputes between an ELNO and subscribers to the ELN operated by the ELNO or clients of those subscribers,

- (c6) participation by an ELNO in a scheme for an industry code relating to associated financial transactions and compliance by an ELNO with that code,

**[11] Appendix, section 33**

Omit “either or both” from section 33(a). Insert instead “any”.

**[12] Appendix, section 33(a)(ia)**

Insert after section 33(a)(i)—

- (ia) ascertaining whether or not the interoperability requirement is being, or has been, complied with,

**[13] Appendix, section 35**

Insert at the end of section 35(1)(b)(ii)—

, and

- (iii) another registrar.

**[14] Appendix, section 35(4)**

Insert after section 35(3)—

- (4) The Registrar may refer a matter to an appropriate authority despite any law of this jurisdiction relating to privacy or confidentiality.

**[15] Appendix, section 37**

Insert after section 37(b)—

- (c) the power conferred by section 44 to approve forms.

**[16] Appendix, section 37(2)**

Insert at the end of section 37—

- (2) The Registrar may, in an instrument of delegation, authorise the person to whom a power or function is delegated to subdelegate that power or function.

**[17] Appendix, section 40**

Insert “or associated financial transactions” after “ELNO” in the heading to the section.

**[18] Appendix, section 40(2)**

Insert at the end of section 40—

- (2) The mere fact that the operating requirements include provisions relating to the following matters does not make the Registrar responsible for the regulation or conduct of associated financial transactions—
  - (a) data standards relating to those transactions,
  - (b) participation by an ELNO in a scheme for an industry code relating to those transactions and compliance by an ELNO with that code.

**[19] Appendix, Part 4 Division 4**

Insert after section 42—

## **Division 4 Other matters**

### **43 Registrar authorised to disclose certain information**

- (1) The Registrar may disclose information about the following matters to ARNECC, another registrar or a person or body who or which has functions under, or responsibility for the administration or oversight of, this Law or the land titles legislation—
  - (a) an ELNO's compliance with the operating requirements or the interoperability requirement,
  - (b) a subscriber's compliance with the participation rules,
  - (c) a compliance examination conducted under Part 3, Division 5,
  - (d) any other matter relating to the performance of the Registrar's functions under this Law.
- (2) The Registrar may disclose the information despite any law of this jurisdiction relating to privacy or confidentiality.
- (3) This section does not limit or affect section 35 or any power or duty of the Registrar under the land titles legislation or any other law of this jurisdiction to disclose the information.

### **44 Forms**

The Registrar may approve forms for use under this Law.