

OPERATING REQUIREMENTS WAIVER

New South Wales Section 27 *Electronic Conveyancing National Law (NSW)*

Title

This instrument is Operating Requirements Waiver OR1/2015 – ELNO Insurance.

Enabling Provisions

1. Under sections 22 and 25 of the Electronic Conveyancing National Law (NSW) (the National Law) the Registrar General (“Registrar”) has determined and published Version 2 of the Operating Requirements (Operating Requirements) which came into effect on and from 1 October 2014.
2. Section 27 of the National Law permits the Registrar to waive compliance with all or any provisions of the Operating Requirements if the Registrar is satisfied that granting the waiver is reasonable in all the circumstances.

Affected Requirement

Operating Requirement 14.1(b)(i) and clauses 9(a) and (b) of Schedule 7.

Explanatory Statement

Under Operating Requirement 4.7, an Electronic Lodgment Network Operator (“ELNO”) must maintain specified policies of insurance in amounts not less than set out in Item 1 in Schedule 1.

Under clause 9(a) and (b) of Schedule 7 of the Operating Requirements, where an ELNO engages an ELNO Agent to verify the identity of a Potential Subscriber, the ELNO Agent must maintain professional indemnity insurance and fidelity insurance and must not limit its liability for negligence or fraud to less than \$1.5 million per claim. An annual (or any other) aggregated cap on liability is not permitted.

It is understood that the required level of insurance is not readily available to entities seeking to become ELNO Agents for the purpose of verifying the identity of a Potential Subscriber.

The Registrar is of the view that the Operating Requirements should be amended to allow ELNO Agents verifying the identity of a Potential Subscriber to maintain professional indemnity insurance and fidelity insurance policies equivalent to those insurance policies maintained by the ELNO.

These requirements will be reviewed periodically.

The Registrar has determined that a waiver should be granted pending formal amendment of the Operating Requirements.

Waiver

Subject to the Conditions, the Registrar grants the ELNO a partial waiver of the ELNO's obligation to comply with Operating Requirement 14.1(b)(i) and clauses 9(a) and (b) of Schedule 7.

Conditions

Partial waiver of Operating Requirement 14.1(b)(i) and clauses 9(a) and (b) of Schedule 7 is granted on the condition that the following revised provisions are complied with:

"4.7. Insurance

- 4.7.1. The ELNO must obtain the insurance policies required under these Operating Requirements on terms satisfactory to the Registrar in accordance with the following sub-clauses.
- 4.7.2. The ELNO must maintain a policy of:
 - (a) professional indemnity insurance in an **annual aggregate** amount of not less than that set out in Item 1 in Schedule 1;
 - (b) fidelity insurance in an **annual aggregate** amount of not less than that set out in Item 2 in Schedule 1;
 - (c) public and product liability insurance in an **annual aggregate** amount of not less than that set out in Item 3 in Schedule 1; and
 - (d) asset insurance in an **annual aggregate** amount of not less than that set out in Item 4 in Schedule 1.
- 4.7.3. The ELNO must obtain its insurance policies from insurers approved by APRA to offer general insurance in Australia.
- 4.7.4. The ELNO must obtain policies of professional indemnity and fidelity insurance that cover the acts and omissions of its principals, officers and employees.
- 4.7.5. The ELNO must ensure that any contractors to the ELNO maintain relevant and appropriate policies of insurance to adequately cover the services provided by the contractor.
- 4.7.6. The ELNO must, as soon as practicable, inform the Registrar in writing of the occurrence of an event that may give rise to a claim under a policy of insurance required to be maintained under these Operating Requirements and must ensure that the Registrar is kept fully informed of subsequent action and developments concerning the claim."

Schedule 7

"9. Use of ELNO Agent

Where the ELNO engages an ELNO Agent to verify the identity of a Potential Subscriber the ELNO must:

- a) appoint **an** ELNO Agent who the ELNO reasonably believes is reputable, competent and adequately insured and, without limitation, who maintains policies of professional indemnity insurance and fidelity insurance **equivalent to that required of the ELNO pursuant to clauses 4.7.2 (a) and (b) respectively and that comply with 4.7.3, 4.7.4 and 4.7.5 of these Requirements (amended to refer to the ELNO Agent in place of the ELNO); and**
- b) **[Deleted]**
- c) direct the ELNO Agent to conduct the verification of identity in accordance with this Standard; and
- c) receive from the ELNO Agent copies of the Documents produced to verify the identity of the Potential Subscriber, signed, dated and endorsed as a true copy of the original by the ELNO Agent."

Commencement

This waiver commenced on 31 May 2014.

Period during which this waiver applies

This waiver operates until the earlier of:

- (a) an amended version of the Operating Requirements which contains the above revised provisions comes into effect; or
- (b) the publication of a revocation of the waiver by the Registrar.

Dated: 3 July 2015

Signed by:



**Des Mooney
Registrar General**