

APPLYING TO BECOME AN ELECTRONIC LODGMET NETWORK OPERATOR (ELNO) FACT SHEET

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The information contained in this Fact Sheet does not constitute, nor should it be treated as, legal advice. The information is current as at the date of this publication and is based on the Electronic Conveyancing National Law (ECNL), Operating Requirements and Participation Rules (of which an ELNO needs to ensure subscribers comply with) as at that date.

KEY CONSIDERATIONS

- **Becoming an ELNO will take time and will require extensive resources before you can begin to operate.**
- **There are substantial legislative and contractual obligations which you must comply with, failure of which can result in your being unsuccessful in gaining approval to operate or should you be operational, result in suspension of operations.**
- **The regulatory environment is changing hence an ELNO needs to be flexible and adaptable to the changing environment.**
- **Take the time to understand the ELNO market.**

Overview

Becoming an ELNO takes time, resources and funding. It requires a solid understanding of the various complexities of the electronic conveyancing market and the legal framework for lodging electronic conveyancing transactions across jurisdictions. This Fact Sheet has been developed to assist potential applicants by providing an overview of what should be considered prior to commencing the application process to become an ELNO.

While all information provided below is correct as at date of publication, it is subject to change pending the outcome and recommendations of the current Intergovernmental Agreement (IGA) review, which may recommend significant changes to the regulatory framework and regulation of the market. This review has been commissioned by the Australian Registrars' National Electronic Conveyancing Council (ARNECC), in accordance with the IGA requirement to review the operation and terms of the IGA after seven years. The final report is expected in September 2019.

What is an ELNO?

An Electronic Lodgment Network Operator (ELNO) is an entity which has been approved by the relevant Registrar to provide and operate an Electronic Lodgment Network (ELN). An ELN is an electronic system that enables the lodging of registry instruments and other documents in an electronic form (as data) for the purposes of the land titles legislation.

Being an ELNO will involve building an ELN system that complies with extensive requirements e.g. amongst other regulatory and compliance functions, the ELN must facilitate the lodging of registry instruments in electronic form. The ELNO system will need to provide for:

- data entry in electronic workspaces
- functionality for digital signatures (signing and unsigned)
- secure collection and payment of land registry fees
- complying with document templates and business rules
- presentation of electronic registry instruments and documents as data for lodgment in a way that permits them to be processed by land registries
- indefinite recordkeeping (audit records etc.)
- only submitting Registry Instruments and other electronic documents to a Land Registry when financial settlement is irrevocable and a Duty Authority's requirements relating to payment of duty are complied with
- functionality to exchange system messages with Land Registries generally

Model Operating Requirements and Guidance Notes

In each jurisdiction the security and integrity of the Titles Register is paramount. Rigorous operating requirements are therefore applied to all ELNOs. This version of the Fact Sheet is aligned with the [Model Operating Requirements](#) Version 5 effective from 25 February 2019. Schedule 3 of the [Model Operating Requirements](#) contains a list of requirements for applicant ELNOs (Category 1 assessment) and commencing ELNOs (Category 2 assessment). These requirements can be used to easily identify requirements which need to be satisfied at each stage of the approval process. The [Model Operating Requirements Guidance Notes](#) provide greater detail of the expected compliance with each Operating Requirement.

Have you considered the electronic conveyancing market?

When considering entering the electronic conveyancing market, it is important to have an understanding of the distinctive characteristics which define it. The market itself is not infinite and is influenced heavily by the rise and fall of the property market, which in turn often results in increased or decreased transactions reflective of that market's trends. As the electronic conveyancing market is influenced by external factors, careful consideration should be given as to how you plan to enter it and how you may grow your share of it.

Have you considered the cost and time required to enter the market? ([Category 1 requirement](#))

There are substantial costs and timelines that arise between the time of application to operation in the electronic conveyancing market. It is likely that this process will take 12 months or more.

The Business Plan which is required for Category 1 Approval should allow for the following:

- indicative costs that will be incurred to access information to build the system and to connect to other participating systems. These costs include but are not limited to:
 - Land Registry connection fees in each jurisdiction
 - Revenue Office connection fees in each jurisdiction
 - National Electronic Conveyancing Data Standard (NECDS) licence fee
- appointment of an Independent Expert to provide certification to ARNECC that the ELNO's internal systems meet industry standards
- considerable internal system development by the applicant ELNO. The ELNO must consider the NECDS and Land Registry and Revenue Office Interface requirements and the ELN must be flexible enough to handle the different data requirements and business rules needed to support all of the jurisdictions
- substantial insurance requirements
- time to get to the market – a minimum of 12 months to develop the ELN and to obtain the necessary approvals which include:
 - individual Land Registry and Revenue Office approvals and licences following initial testing
 - Reserve Bank approval
 - agreements with the major banks for clearing funds
- the costs of subscriber engagement
- the plan to train subscribers

Have you considered lawful requirements at both a national and state level?

An ELNO is required to comply with the Electronic Conveyancing National Law (ECNL) and each jurisdiction's Operating Agreement/Approvals. The ECNL details the national requirements of operators and participants within the electronic conveyancing market, that is, how you are required to operate as an ELNO and how you are required to subscribe to and use an ELNO/s.

More information about the requirements of subscribers can be found in ARNECC's [Model Participation Rules](#) and associated [Guidance Notes](#).

These regulatory requirements are subject to change as a result of recommendations from the IGA review.

Have you considered the ELNO eligibility criteria? ([Category 1 requirement](#))

The criteria for applying to become an ELNO is detailed in [Model Operating Requirement 4](#). They include, but are not limited to:

- ABN
- status
- character
- financial resources
- technical resources
- organisational resources
- insurance

Have you considered the Model Operating Requirements? ([Category 1 and 2 requirement](#))

All ELNOs are required to satisfy [Model Operating Requirements](#) as determined by ARNECC. These requirements align with the ECNL. The [Model Operating Requirements Guidance Notes](#), as published by ARNECC, can assist you to confirm that you meet all requirements ahead of lodging an application to ARNECC to become an ELNO. Minimum requirements are detailed within the [Model Operating Requirements](#) and include, but are not limited to: system functionality, performance levels, security requirements, document capability, fees and digital certificates.

- NECDS.

NECDS means the national electronic conveyancing data standard specified by the Registrar. Under [Model Operating Requirement 10.3](#), the ELNO is required to use the NECDS to send data to or receive data from Land Registries.

ARNECC is currently establishing a new body to own and maintain the NECDS needed to build an ELN. Until that time, a new ELNO will need to enter an agreement with the NSW Government and Property Exchange Australia Ltd (PEXA) to access the NECDS. This includes a cost sharing arrangement with PEXA and other ELNOs to fund the maintenance and curation of the NECDS. Once the new body is established there will be an ongoing annual licence fee set to cover the costs of curating and maintaining the NECDS.

You will also need to obtain relevant NECDS to connect to each Revenue Office. In some instances, this will involve a formal agreement.

- Operation in all States/Territories ([Category 1 and 2 requirement](#)).

[Model Operating Requirement 5.2](#) states that “the ELNO must ensure that the ELN is available to each Land Registry in Australia and to subscribers in all States and Territories in Australia”.

Prospective ELNOs should factor in the necessity to operate across all jurisdictions prior to applying to become an ELNO

- Minimum document capability currently required ([Category 1 and 2 requirement](#)) is:
 - transfer
 - mortgage
 - discharge/release of mortgage
 - caveat
 - withdrawal of caveat
 - priority notice
 - extension of priority notice
 - withdrawal of priority notice
 - associated duty authority notices
 - administrative notices required to manage certificates of title

- Integration ([Category 2 requirement](#))

[Model Operating Requirement 5.5](#) details how an ELNO must publish its integration terms and conditions and treat all who may wish to integrate, if it intends to integrate with any other entity’s systems.

- Separation ([Category 1 and 2 requirement](#))

[Model Operating Requirement 5.6](#) details how an ELNO must separate downstream or upstream services.

- Pricing ([Category 1 and 2 requirement](#))

[Model Operating Requirement 5.4](#) details your obligation to determine any ELNO Service Fees according to a publicly available, equitable and transparent Pricing Policy and publish a Pricing Table.

Be aware that individual jurisdictions are responsible for the implementation of the regulatory framework and operations of the Land Registry. Prior to applying to ARNECC to become an ELNO, it is considered wise to establish contacts within all jurisdictions. Engagement will be required with each jurisdiction’s Registrar and operator (which in some cases is a private service provider) and Revenue Office.

Who are ‘subscribers’ and what is an ELNO’s responsibilities (on boarding, training, support, and reviewing)? ([Category 2 requirement](#))

Subscribers are those who may utilise your ELN to conduct conveyancing transactions. These may be registered conveyancers, lawyers and financial institutions. An ELNO must establish, implement, review and keep current a Subscriber Registration Process. The ELNO must only register a subscriber in line with requirements laid out in [Model Operating Requirement 14.1](#).

Registered subscribers will require on boarding to assist them to gain an understanding of your ELN and the platform interface and functionality.

Registered subscribers will also require training under [Model Operating Requirement 14.6](#) as they continue with your ELN and as new features and transactions are made available. Support is also crucial to ensure registered subscribers feel secure in utilising your ELN and can gain assistance should they have any queries or concerns.

[Model Operating Requirement 14.7](#) outlines the process required by an ELNO to review subscribers and user access to the ELN.

What is an ELNO's responsibilities with regards to duty on a dealing?

For an electronic Registry Instrument or other electronic Document, there may be taxes, levies, imposts, charges and duties in connection with the electronic Registry Instrument or other electronic Document payable to the Duty Authority (State Revenue Office). Duty requirements vary in each jurisdiction in which the land the subject of the Conveyancing Transaction is situated. Some jurisdictions may require that payment of duty is conducted within the ELN, others may not. Applying ELNOs should familiarise themselves with [Model Operating Requirement 10.9](#) and the individual requirements of each jurisdiction.

Demonstrating ELNOs have technical and organisational resources ([Category 1 and 2 requirement](#))

Establishing an ELN is a complex undertaking, as such you may require advisors or technical experts to assist with certain aspects of operating an ELN at different stages. These may be experts in areas such as accounting, insurance, law (business, privacy and competition), technical, technology and independent experts.

Under [Model Operating Requirements 4.5 and 4.6](#) an ELNO is required to demonstrate that they have all necessary technical and organisational resources required.

What does an ELNO need to do about digital signing certificates? ([Category 2 requirement](#))

Digital signatures provide assurances about the validity and authenticity of digital documents.

An ELNO must use Gatekeeper compliant Public Key Infrastructure (PKI) digital certificates. The current Gatekeeper Competent Authority is the Australian Government's Chief Information Officer, Australian Government Information Management Office. See [Model Operating Requirement 7.6](#).

What security, including cyber security and data protection, do you need to consider?

System security (including cyber security), data protection and privacy obligations are crucial.

You have an obligation to establish, implement, operate, monitor, review, maintain and keep current a documented Information Security Management System (ISMS).

Your compliance with this requirement must be demonstrated by 'Independent Certifications' that your ISMS is 'Fit for Purpose'. This is required by each jurisdictional Registrar before you can start operating. It is then required each year while you remain approved as an ELNO and prior to any material change being made to your ISMS.

The ISMS must take into account all of your relevant obligations under the [Model Operating Requirements](#). For a summarised list of those relevant obligations, please refer to 7.1 of the [Model Operating Requirements Guidance Notes](#).

Have you considered your technical capabilities including testing to connect with each jurisdiction?

The design, provision and maintenance of your ELN must comply with contemporary expectations amongst others of being reliable, scalable and flexible and have architecturally sound industry standard code, usability and accessibility. In these regards, AS25010:2013 provides relevant guidance.

An independent certification must be provided when first commencing to certify that it meets all the technical and design requirements of an ELN.

You are also expected to have an extensive and comprehensively documented Test Plan for the initial testing and certification of all aspects of your ELN which is to apply to each jurisdiction. See [Model Operating Requirement 10](#) for Minimum System Requirements.

What are your compliance and reporting obligations?

Should you be approved to operate as an ELNO, you will have to comply with the various reporting and compliance obligations under the [Model Operating Requirements](#).

In particular you will have an ongoing obligation to publish a Monthly Report of your performance as an ELNO. This report covers areas such as the performance of your ELNO System against the Performance Levels set out in Schedule 2 of the [Model Operating Requirements](#); the complaints you have received and dealt with about your services; and performance as set out in Category 4 of Schedule 3 of the [Model Operating Requirements](#). You are also obligated to provide to the Registrar an Annual Report covering all those matters under Schedule 3, Category 3.

Have you considered financial settlement? ([Category 1 and 2 requirement](#))

In addition to ARNECC endorsement, you may require further regulatory approvals and memberships to enable financial settlement of transactions.

These memberships/approvals may be, but are not limited to:

- Australian Securities and Investments Commission (ASIC) approval
Detail regarding requirements for an Australian Financial Services (ASF) Licence and exemptions can be found via the [ASIC website](#).
- Reserve Bank of Australia (RBA) approval/membership
The Reserve Bank Information and Transfer System (RITS) is Australia's high-value settlement system, used by banks and other approved institutions to settle their payment obligations on a real-time gross settlement (RTGS) basis. Further detail regarding membership and approvals can be found via the [RBA Website](#).