

Proposed Electronic Conveyancing National Law

Stakeholder Consultation Briefing

30 March 2012

Proposed Electronic Conveyancing National Law (ECNL)

The draft ECNL Bill is to be introduced in the NSW Parliament (as the host jurisdiction for the Law) in the 3rd quarter of 2012

Subsequently, other jurisdictions will either enact application bills OR enact “mirror” legislation

Purpose of ECNL

The purpose of the ECNL is to facilitate National Electronic Conveyancing. Its key provisions are related to:

- Electronic Lodgment
- Client Authorisations
- Reliance on Digital Signatures
- Electronic Lodgment Networks (and Operators)
- Operating Requirements and Participation Rules
- Appeals
- Compliance Examination
- Interpretation

Electronic Lodgment

The Electronic Transactions Acts of each Jurisdiction are not sufficient for conveyancing transactions.

The ECNL provides that:

- documents may be lodged electronically
- the Registrar must receive and deal with documents lodged electronically if
 - in a form approved by the Registrar, and
 - through an ELN provided and operated under this Law
- electronic documents have the same status as the equivalent paper documents
- documents signed digitally (by a Subscriber) have the same effect as if they had been executed by the relevant party.

Client Authorisations (1)

In Electronic Conveyancing vendors and purchasers will not sign Registry Instruments themselves, but will engage a Subscriber to represent them, and digitally sign documents on their behalf.

A *Client Authorisation Agreement* will be entered into by the purchaser and by the vendor.

The Client Authorisation is NOT a Power of Attorney, and the ECNL makes this explicit.

Client Authorisations (2)

The ECNL provides that by entering into a Client Authorisation Agreement, a Party may authorise a Subscriber to:

- digitally sign electronic Registry Instruments and other electronic documents on the Transacting Party's behalf
- lodge electronic Registry Instruments and other electronic documents with the relevant Land Registry
- Authorise or complete any financial settlement involved in the transaction
- do anything else necessary to complete the transaction electronically

Reliance on Digital Signatures

It is vital that all signatories to documents in a transaction are able to rely on the validity of the signatures of everyone else

The ECNL includes a strong attribution rule providing that a Subscriber is liable for the use of their digital signature, except in very specific circumstances



Electronic Lodgment Networks (and Operators)

An Electronic Lodgment Network (ELN) is a system or platform that enables the preparation and Lodgment of Registry Instruments in electronic form

The ECNL

- empowers the Registrar to approve an operator of an ELN, or to operate an ELN
- enables the Registrar to set conditions for the operation of an ELN and for the subscribers that use it. These are set out in the *Operating Requirements* and *Participation Rules* respectively

Operating Requirements and Participation Rules

ARNECC will develop model Operating Requirements and Participation Rules.

Registrars are to have regard to the model Requirements and Rules when setting the Operating Requirements and Participation Rules in their jurisdiction.

The ECNL provides that

- Operators of an Electronic Lodgment Network must comply with the Operating Requirements
- Subscribers (users) of an Electronic Lodgment Network must comply with the Participation Rules

Compliance Examination

The ECNL empowers the Registrar (or their agent/delegate) to conduct an examination of compliance with the conditions for operation, access to or use of an ELN. i.e. to ensure:

- an ELNO is complying with the Operating Requirements
- A Subscriber is complying with the Participation Rules

A compliance examination can be carried out on a random basis, or to investigate a suspected or reported irregularity

There is no obligation for the Registrar to conduct such examinations and no person is entitled to receive compensation for matters related to compliance examination carried out in good faith.

Appeals

The ECNL provides a right of appeal against the decision of a Registrar to:

- refuse to approve the person as an ELNO
- refuse to renew the person's approval as an ELNO
- suspend the person's approval as an ELNO
- revoke the person's approval as an ELNO
- restrict, suspend or terminate a subscriber's use of an ELN
- direct an ELNO to restrict, suspend or terminate a subscriber's use of an ELN

Interpretation

To ensure consistency in interpretation nationally, the ECNL excludes the operation of each jurisdiction's usual interpretation laws and instead includes a standard schedule of interpretation provisions to ensure consistent interpretation in all jurisdictions applying the ECNL.

