

# Proposed Electronic Conveyancing National Law



SYDNEY  
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# Proposed Electronic Conveyancing National Law

- Legal Framework Documents are in draft and need to be approved by Governments
- Substantially based on Legal Framework Development Final Report
- Legal Framework relies on statutory provisions in a few key areas to provide the additional certainty required for confidence by all parties in National Electronic Conveyancing

# Legal Framework elements

## Governance

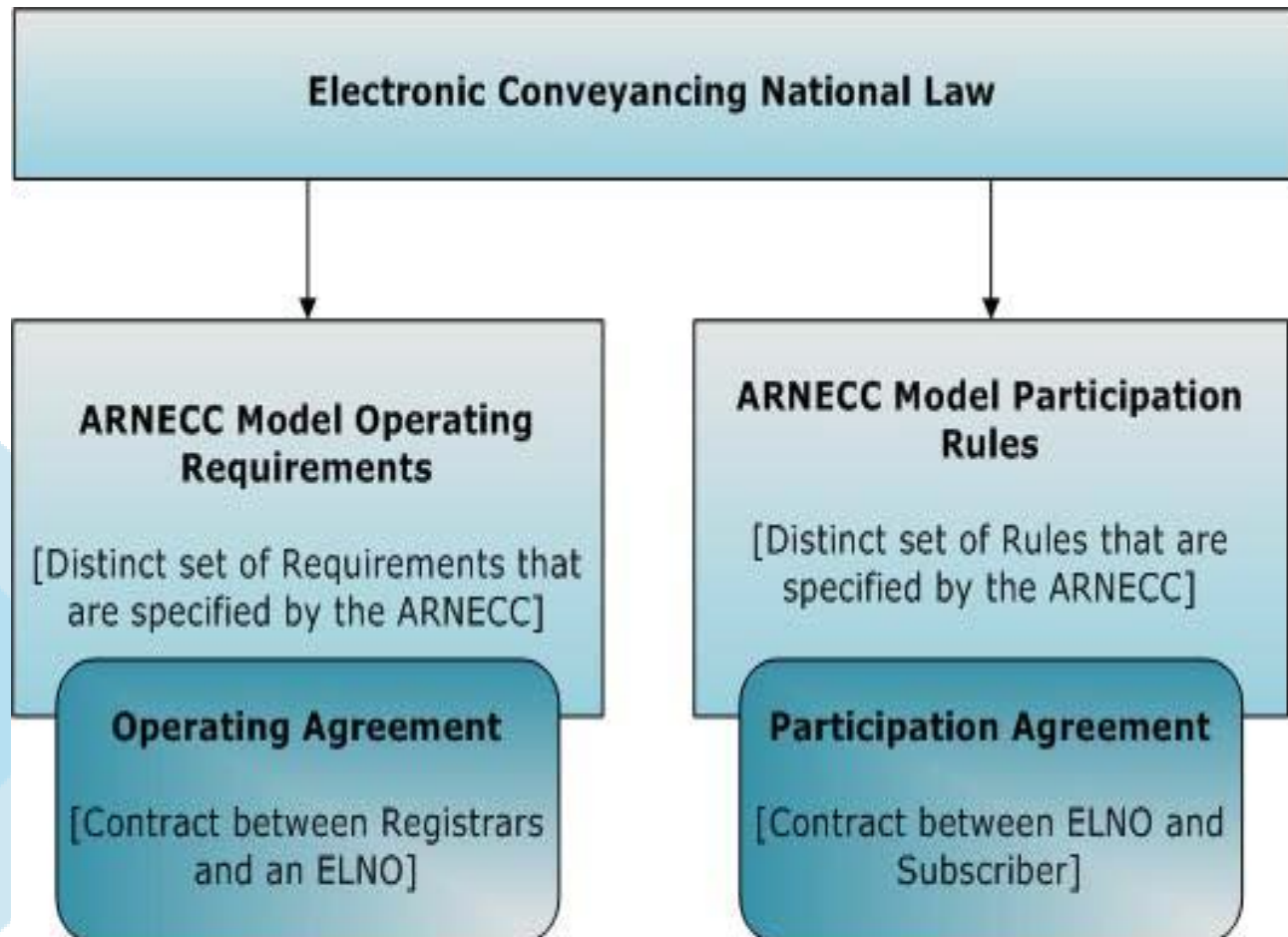


# Intergovernmental Agreement for an Electronic Conveyancing National Law (IGA)

- Agreement to cooperate on implementation of National Electronic Conveyancing
- Framework for managing and amending the ECNL
- Formally establishes ARNECC to facilitate the implementation and ongoing management of the regulatory framework for National E-Conveyancing.
- Agreement to apply Model Operating Requirements and Model Participation Rules set by ARNECC

# Legal Framework elements

## National Law



# Electronic Conveyancing National Law

- **Host NSW**
- **NSW Bill that includes ECNL as a Schedule**
- **Requires Govt approval in all jurisdictions**
- **Introduced in NSW by March 2012**
- **Introduced in remaining jurisdictions once passed in NSW**

# Electronic Conveyancing National Law

## Outline of the ECNL

- **Part 1 — Preliminary**
- **Part 2 — Electronic Conveyancing**
- **Part 3 — Electronic Lodgment Networks**
- **Part 4 — Miscellaneous**
- **Schedule 1 — Miscellaneous provisions relating to interpretation**

# Electronic Conveyancing National Law

## Part 1 — Preliminary

1. Short title
2. Commencement
3. Definitions
4. Interpretation generally
5. Object of this Law



# Electronic Conveyancing National Law

## Part 1 — Preliminary

### 3. Definitions

**ARNECC** means the Australian Registrars' National Electronic Conveyancing Council established by the Intergovernmental Agreement (separately defined)

**conveyancing transaction** means a transaction the purpose of which is to:

- (a) deal with an estate or interest in land, or
- (b) get something registered, noted or recorded, or
- (c) effect a change, withdrawal or removal of an interest.

**digital signature** means encrypted electronic data intended for the exclusive use of a particular person as a means of identifying that person as the sender of an electronic communication or the signer of a document.

**subscriber** means a person who is authorised under a participation agreement to use an ELN to complete conveyancing transactions on behalf of another person or on their own behalf.

# Electronic Conveyancing National Law

## Part 1 — Preliminary

### Cl 5 Object of the ECNL

- to promote efficiency throughout Australia in property conveyancing by providing a common legal framework that enables documents in electronic form to be lodged and dealt with under the land titles legislation of each jurisdiction that applies this Law.

# Electronic Conveyancing National Law

## Part 2 — Electronic Conveyancing

### Division 1 — Electronic lodgment

6. Documents may be lodged electronically
  - If in form and lodged by means approved by the Registrar
7. Registrar to process documents lodged Electronically
8. Status of electronic registry instruments
  - A registry instrument that is in a form approved for lodgment electronically has the same effect as if that instrument were in the form of a paper document

# **Electronic Conveyancing National Law**

## **Part 2 — Electronic Conveyancing**

### **Division 2 — Client authorisations and digital signatures**

#### **Subdivision 1 — Client authorisations**

9. Client authorisations

10. Effect of client authorisation

#### **Subdivision 2 — Digital signatures**

11. Reliance on digital signatures

# Electronic Conveyancing National Law

## Part 2 — Electronic Conveyancing

9. Client authorisation may authorise Subscriber to:

- digitally sign electronic Registry Instruments and other electronic documents;
- lodge electronically with the relevant Land Registry;
- authorise any financial settlement involved in the transaction; and
- do anything necessary to complete the transaction electronically.

10. Effect of client authorisation

- Has effect upon its terms
- Is not a power of attorney

# Electronic Conveyancing National Law

## Part 2 — Electronic Conveyancing

### 11. Reliance on digital signatures

- Owner of a digital signature cannot repudiate except in limited circumstances
- Not signed by holder of digital signature; and
- Used without the authority of the subscriber; and
- Obtained by stealing and hacking the key; and
- Subscriber and employees complied with security requirements for digital signatures.

# Electronic Conveyancing National Law

## Part 3 — Electronic Lodgment Networks

### Division 1 — Preliminary

#### 12. Electronic Lodgment Network

An Electronic Lodgment Network (ELN) is an electronic system that enables the lodging of registry instruments and other documents in electronic form for the purposes of the land titles legislation.

# Electronic Conveyancing National Law

## Part 3 — Electronic Lodgment Networks

### Division 2 — Operation of Electronic Lodgment Networks

13. Registrar may provide and operate ELN
14. Registrar may approve ELNO to provide and operate ELN
15. Effect of approval as ELNO
16. ELNO required to comply with operating requirements
17. Renewal of approval as ELNO
18. Revocation or suspension of approval as ELNO
19. Monitoring of activities in ELN



# Electronic Conveyancing National Law

## Part 3 — Electronic Lodgment Networks

### Division 3 — Operating requirements and participation rules

#### 20. Operating requirements for ELNOs

- Determined by Registrar (subject to section 22)
- Set out requirements for ELNOs

# Electronic Conveyancing National Law

## Part 3 — Electronic Lodgment Networks

### Division 3 — Operating requirements and participation rules

#### 21. Participation rules

- Determined by Registrar (subject to section 22)
- Set out requirements for Subscribers
- Pursuant to section 24 must be complied with by Subscribers

# Electronic Conveyancing National Law

## Part 3 — Electronic Lodgment Networks

### Division 3 — Operating requirements and participation rules

- 22. Registrar to have regard to nationally agreed model operating requirements and participation rules
- 23. Publication of operating requirements and participation rules
- 24. Subscribers required to comply with participation rules

# Electronic Conveyancing National Law

## Part 3 — Electronic Lodgment Networks

### Division 4 — Appeals

#### 25. Appeal against decisions of 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 the person's use, as a subscriber, of an ELN operated by the Registrar,
- direct an ELNO to restrict, suspend or terminate the person's use, as a subscriber, of the ELN operated by the ELNO.

# Electronic Conveyancing National Law

## Part 3 — Electronic Lodgment Networks

### Division 4 — Appeals

#### 26. Determination of appeal

- confirm the appellable decision, or
- amend the appellable decision, or
- substitute another decision for the appellable decision

#### 27. Costs

#### 28. Relationship with Act establishing responsible tribunal

# Electronic Conveyancing National Law

## Part 3 — Electronic Lodgment Networks

### Division 5 — Compliance examinations

#### 29. Compliance examinations

- Necessary to ensure efficacy and accuracy of land title transactions and the Register

#### 30. Obligation to cooperate with examination

#### 31. Registrar may refer matter to appropriate authority

#### 32. Registrar may delegate power to conduct compliance examination

#### 33. Land titles legislation not limited

# Electronic Conveyancing National Law

## Part 4 — Miscellaneous

### Division 1 — Liability of Registrar

- 34. Registrar not obliged to monitor ELN or conduct compliance examination
- 35. No compensation
- 36. Registrar not responsible for additional services provided by ELNO

# Electronic Conveyancing National Law

## Part 4 — Miscellaneous

### Division 2 — Relationship with other laws

- 37. Relationship with other laws
- 38. Other laws relating to electronic transactions not Affected
- 39. Powers may be exercised for purposes of this Law



# Electronic Conveyancing National Law

## Schedule 1 — Miscellaneous provisions relating to interpretation

- Schedule replaces Interpretation Act in each jurisdiction
- Can be displaced by contrary intention
- Includes some relevant definitions

# Electronic Conveyancing National Law

***document*** means any record of information however recorded, and includes:

- (a) anything on which there is writing, or
- (b) anything on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them, or
- (c) anything from which sounds, images or writings can be reproduced with or without the aid of anything else, or
- (d) a map, plan, drawing or photograph, or
- (e) any record of information that exists in a digital form and is capable of being reproduced, transmitted, stored and duplicated by electronic means.

# Next

- Consultation Regulatory Impact Statement to be released when approved by OBPR and Govts
- Introduction of ECNL into NSW Parliament once approved by other jurisdictions to be bound
- Introduction of application/corresponding laws in remaining jurisdictions in 2012
- Development and consultation on Model Operating Requirements Model Participation Rules and inputs (IC, CA, CIV)

# Questions?

## Further Information

Comments or questions to:

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