



OPERATING REQUIREMENTS

WAIVER

SOUTH AUSTRALIA

Section 27 *Electronic Conveyancing National Law (South Australia) Act 2013*

Title

This instrument is South Australian Operating Requirements Waiver OR 2/2020 – (ELNO Service Fees).

Enabling Provisions

1. Under sections 22 and 25 of the *Electronic Conveyancing National Law (South Australia) Act 2013* (the National Law) the Registrar-General (Registrar) has determined and published Version 5 of the Operating Requirements which came into effect on and from 25 February 2019 (Operating Requirements). Capitalised terms used in this instrument and not defined have the meaning given to those terms in the National Law or the Operating Requirements.
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 Operating Requirements

Operating Requirements 5.4.2(a), 5.4.3 and 5.4.6.

Explanatory Statement

Under Operating Requirement 5.4.2, an ELNO that intends to charge ELNO Service Fees must prepare and publish on its website a Pricing Table for each year, commencing on 1 July. ELNOs must not charge ELNO Service Fees greater than the amount specified in the Pricing Table, except as provided for in Operating Requirement 5.4.4. Under Operating Requirement 5.4.3, ELNOs may increase ELNO Service Fees as listed in the Pricing Table by CPI once every year on 1 July.

If an ELNO increases its ELNO Service Fees under Operating Requirement 5.4.3, the percentage increase in the revised ELNO Service Fees must not exceed the percentage increase in the CPI for the immediately preceding March quarter when compared to the CPI for the March quarter of the previous year.

The escalation of the COVID-19 (coronavirus) pandemic and resultant restrictions has resulted in disruptive impacts on all businesses including ELNOs, Subscribers and their clients. An ELNO has requested relief from the requirement that any CPI increase in ELNO Service Fees take effect from 1 July 2020, for the 2020/21 Financial Year. Instead that ELNO would like to delay any CPI increase to later in the Financial Year.



The Registrar has determined that it is reasonable in the circumstances to grant a partial waiver.

Waiver

Subject to the Conditions, the Registrar grants a partial waiver of an ELNO's obligation to comply with Operating Requirements 5.4.2(a), 5.4.3 and 5.4.6.

Conditions

The partial waiver of Operating Requirements 5.4.2(a), 5.4.3 and 5.4.6 is granted on the condition that the following revised provisions are complied with:

5.4 ELNO Service Fees

5.4.1 The ELNO may charge ELNO Service Fees in accordance with its pricing policy.

5.4.2 If the ELNO charges ELNO Service Fees, the ELNO must:

- (a) have published on its website its Pricing Table; and
- (b) not charge a fee greater than the amount specified in the published Pricing Table.

5.4.3 The ELNO may increase the ELNO Service Fees as listed in its Pricing Table, once only during the Financial Year from 1 July 2020 to 30 June 2021, provided that the percentage increase in the revised ELNO Service Fees does not exceed the percentage increase in the CPI for the March 2020 quarter when compared with the CPI for the March 2019 quarter.

5.4.4 Notwithstanding Operating Requirement 5.4.3, the ELNO may, at any time, request the Registrar's approval, which may not be unreasonably withheld, for proposed changes to its Pricing Table, including but, not limited to, in the event:

- (a) of any change to the amount of any insurance premium payable by the ELNO in respect of any insurance policy the ELNO is required to hold under Operating Requirement 4.7.2; or
- (b) that a change in any law gives rise to a change in the ELNO's operating costs; or
- (c) that additional fees, charges or costs are imposed on the ELNO by the Registrar, Land Registry or any other government agency.

5.4.5 If the ELNO Service Fees include Information Fees, following a change in Information Fees, the ELNO may re-calculate the ELNO Service Fees and change the Pricing Table to reflect the re-calculated ELNO Service Fees.



5.4.6 The Pricing Table, and any changes to it, must be published at least 20 Business Days, or as soon as reasonably practicable, before the Pricing Table, or the changes to it, take effect.

Commencement

This waiver will commence on 1 July 2020.

Period during which this waiver applies

This waiver operates for the period 1 July 2020 to 30 June 2021.

Dated: 9 June 2020

Signed by:

A handwritten signature in black ink that reads 'Jenny Cottnam'.

**Jenny Cottnam
Registrar-General**