

# NSW Participation Rules for Electronic Conveyancing

Version 7

**Determined by the NSW Registrar General**

Pursuant to section 23 of the Electronic Conveyancing  
National Law (NSW)

**Effective: 28 March 2024**



# Electronic Conveyancing National Law (NSW)

## Section 23

These are the Participation Rules (Version 7) for electronic conveyancing in NSW determined pursuant to section 23 of the Electronic Conveyancing National Law (NSW) to be effective on and from 28 March 2024.

In determining these Participation Rules, I have adopted the Model Participation Rules Version 7 developed and approved by the Australian Registrars' National Electronic Conveyancing Council (ARNECC).

A handwritten signature in black ink that reads "Danusia Cameron".

Danusia Cameron

Registrar General

23 February 2024



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# PARTICIPATION RULES

## 1 PRELIMINARY

These Participation Rules constitute the Participation Rules determined by the Registrar pursuant to section 23 of the ECNL.

## 2 DEFINITIONS AND INTERPRETATION

### 2.1 Definitions

2.1.1 A term used in these Participation Rules and also in the ECNL has the same meaning in these Participation Rules as it has in that legislation (unless the term is defined in these Participation Rules).

2.1.2 In these Participation Rules capitalised terms have the meanings set out below:

**ABN** means an Australian Business Number and has the meaning given to it in the *A New Tax System (Australian Business Number) Act 1999* (Cth).

**Access Credentials** means a User identification and password, and any other details, required for a Person to access an ELN.

**Additional Participation Rules** means the additional Participation Rules specific to the Registrar's Jurisdiction, if any, set out in Schedule 1, as amended from time to time.

**ADI** (authorised deposit-taking institution) has the meaning given to it in the *Banking Act 1959* (Cth).

**Amendment to Participation Rules Procedure** means the procedure set out in Schedule 2, as amended from time to time.

**Application Law** has the meaning given to it in the ECNL and in South Australia is the *Electronic Conveyancing National Law (South Australia) Act 2013* (SA) and in Western Australia is the *Electronic Conveyancing Act 2014* (WA).

**Approved Insurer** means:

- (a) a general insurer within the meaning of the Insurance Act; or
- (b) a Lloyd's underwriter within the meaning of the Insurance Act and to which section 93 of the Insurance Act continues to have effect; or
- (c) a person to whom a determination is in force under section 7(1) of the Insurance Act that sections 9(1) or 10(1) or 10(2) of the Insurance Act do not apply.

**Australian Credit Licence** has the meaning given to it in the NCCP Act.

**Australian Legal Practitioner** has the meaning given to it in the relevant legislation of the Jurisdiction in which the land the subject of the Conveyancing Transaction is situated and in South Australia is a legal practitioner for the purposes of the *Legal Practitioners Act 1981* (SA).

**Business Day** has the meaning given to it in the ECNL.

**Caveat** means a Document under the Land Titles Legislation giving notice of a claim to an interest in land that may have the effect of an injunction to stop the registration of a Registry Instrument or other Document in the Titles Register.

**Certification Authority** means a Gatekeeper Accredited Service Provider that issues Digital Certificates that have been Digitally Signed using the Certification Authority's Private Key and provides certificate verification and revocation services for the Digital Certificates it issues.

**Certification Rules** means the rules set out in Schedule 3, as amended from time to time.

**Certifier** means the Subscriber providing the certifications set out in the Certification Rules.

**Client** means a Person who has, or Persons who have, appointed a Subscriber as their Representative pursuant to a Client Authorisation and caveators and applicants in a Priority Notice, extension of Priority Notice and withdrawal of Priority Notice who have appointed a Subscriber as their Representative but have not provided a Client Authorisation.

**Client Agent** means a Person authorised to act as the Client's agent but does not include the Subscriber acting solely as the Client's Representative.

**Client Authorisation**, as amended from time to time, has the meaning given to it in the ECNL.

**Commonwealth** has the meaning given to it in the ECNL.

**Compliance Examination** has the meaning given to it in the ECNL.

**Compliance Examination Procedure** means the obligations and procedures set out in Schedule 5, as amended from time to time.

**Compromised** means lost or stolen, or reproduced, modified, disclosed or used without proper authority.

**Contact Details** means a Subscriber's:

- (a) physical address, registered office or principal place of business (as applicable); and
- (b) postal address, phone number(s), fax number and email address, as recorded by an ELNO.

**Conveyancing Transaction** has the meaning given to it in the ECNL.

**Corporations Act** means the *Corporations Act 2001* (Cth).

**Costs** include costs, charges and expenses, including those incurred in connection with advisers.

**Credit Representative** has the meaning given to it in the NCCP Act.

**Credit Service** has the meaning given to it in the NCCP Act and extends to a service with respect to credit secured or to be secured by real property whether or not it is regulated by that Act.

**Crown** means the government, a minister of the Crown, a statutory corporation representing the Crown or another entity representing the Crown.

**Digital Certificate** means an electronic certificate Digitally Signed by the Certification Authority which:

- (a) identifies either a Key Holder and/or the business entity that he/she represents; or a device or application owned, operated or controlled by the business entity; and
- (b) binds the Key Holder to a Key Pair by specifying the Public Key of that Key Pair; and
- (c) contains the specification of the fields to be included in a Digital Certificate and the contents of each.

**Digital Signature** has the meaning given to it in the ECNL.

**Digitally Sign** has the meaning given to it in the ECNL.

**Document** has the meaning given to it in the ECNL.

**Duty** means, for an electronic Registry Instrument or other electronic Document, any taxes, levies, imposts, charges and duties in connection with the electronic Registry Instrument or other electronic Document payable to the Duty Authority.

**Duty Authority** means the State Revenue Office of the Jurisdiction in which the land the subject of the Conveyancing Transaction is situated.

**ECNL** means the Electronic Conveyancing National Law as adopted or implemented in a Jurisdiction by the Application Law, as amended from time to time.

**Electronic Workspace** means a shared electronic workspace generated by an ELN, and includes an Interoperable Electronic Workspace.

**ELN** has the meaning given to it in the ECNL.

**ELN Administrator** means the Person appointed by an ELNO from time to time to perform administrative functions within the ELN.

**ELNO** has the meaning given to it in the ECNL.

**Gatekeeper** means the Commonwealth government strategy to develop PKI to facilitate government online service delivery and e-procurement.

**Gatekeeper Accredited Service Provider** means a service provider accredited by the Gatekeeper Competent Authority.

**Gatekeeper Competent Authority** means the entity which approves an application for Gatekeeper accreditation. The Gatekeeper Competent Authority for PKI is the Australian Government Chief Digital Officer, Digital Transformation Agency.

**Hardship Notice** has the meaning given to it in section 72(1) of the National Credit Code.

**Identifier Declaration** means the declaration set out in Verification of Identity Standard paragraph 4.

**Identity Agent** means a Person appointed in writing by either a Subscriber, or a mortgagee represented by a Subscriber, to act as the agent of the Subscriber or mortgagee, and who:

- (a) the Subscriber or mortgagee reasonably believes is reputable, competent and insured in compliance with Insurance Rule 2; and
- (b) is authorised by the Subscriber or mortgagee to conduct verification of identity on behalf of the Subscriber or mortgagee in accordance with the Verification of Identity Standard.

**Identity Agent Certification** means a certification in substantial compliance with the certification set out in Schedule 9, as amended from time to time.

**Identity Declarant** means a Person providing an Identifier Declaration.

**Identity Verifier** means the Person conducting a verification of identity in accordance with the Verification of Identity Standard.

**Individual** has the meaning given to it in the ECNL.

**Information Fees** means fees for data provided by the Land Registry through an ELN.

**Insolvency Event** means, in relation to a Person, any of the following events:

- (a) the Person is, or states that they are, unable to pay all the Person's debts, as and when they become due and payable, excluding a Hardship Notice; or
- (b) the entrance into an arrangement, composition or compromise with, or assignment for the benefit of, all or any class of the Person's creditors or members or a moratorium involving any of them, excluding any changes made to a credit contract as a result of a Hardship Notice or a temporary arrangement to postpone a debt; or



- (c) the appointment of a receiver, receiver and manager, controller, administrator, provisional liquidator or liquidator or the taking of any action to make such an appointment; or
- (d) an order is made for the winding up or dissolution of the Person or a resolution is passed or any steps are taken to pass a resolution for its winding up or dissolution; or
- (e) something having a substantially similar effect to (a) to (d) happens in connection with the Person under the law of any Jurisdiction.

**Insurance Act** means the *Insurance Act 1973* (Cth).

**Insurance Rules** means the rules set out in Schedule 6, as amended from time to time.

**Interoperability** has the meaning given to it in the ECNL.

**Interoperable Electronic Workspace** means an Electronic Workspace containing at least one Interoperable Lodgment Case.

**Interoperable Lodgment Case** means an electronic Registry Instrument or other electronic Document or related electronic Registry Instruments or other electronic Documents, conducted by means of Interoperability, which are or will be presented for Lodgment at the same time, together with the relevant Lodgment Instructions.

**Jeopardised** means put at risk the integrity of the Titles Register by fraud or other means.

**Jurisdiction** has the meaning given to it in the ECNL.

**Key** means a string of characters used with a cryptographic algorithm to encrypt and decrypt.

**Key Holder** means an Individual who holds and uses Keys and Digital Certificates on behalf of a Subscriber, or in his/her own right in the case of a Key Holder who is also a Subscriber.

**Key Pair** means a pair of asymmetric cryptographic Keys (one decrypting messages which have been encrypted using the other) consisting of a Private Key and a Public Key.

**Land Registry** means the agency of a State or Territory responsible for maintaining the Jurisdiction's Titles Register and, where the responsibility has been delegated, it includes the delegate.

**Land Registry Fees** means Information Fees and Lodgment Fees.

**Land Titles Legislation** has the meaning given to it in the ECNL.

**Law Practice** has the meaning given to it in the relevant legislation of the Jurisdiction in which the land the subject of the Conveyancing Transaction is situated.

**Licensed Conveyancer** (however described) has the meaning given to it in the relevant legislation of the Jurisdiction in which the land the subject of the Conveyancing Transaction

is situated and includes a real estate settlement agent under the *Settlement Agents Act 1981* (WA).

**Local Government Officeholder** means an employee or Officer of a Local Government Organisation.

**Local Government Organisation** means a local government council (however described) established under any Commonwealth, State or Territory law.

**Lodge** has the meaning given to it in the ECNL.

**Lodgment Case** means an electronic Registry Instrument or other electronic Document or related electronic Registry Instruments or other electronic Documents which are or will be presented for Lodgment at the same time, together with the relevant Lodgment Instructions, and may include an Interoperable Lodgment Case.

**Lodgment Fees** means fees due to a Land Registry for an electronic Registry Instrument or other electronic Document Lodged with the Land Registry by an ELNO on behalf of the Participating Subscribers.

**Lodgment Instructions** means a statement in electronic form which sets out the information required by the Registrar to accept an electronic Registry Instrument or other electronic Document for Lodgment.

**Mortgage Broker** means an Individual who is:

- (a) the holder of an Australian Credit Licence; or
- (b) an employee or director of the holder of an Australian Credit Licence or of a related body corporate of a holder of an Australian Credit Licence engaging in the Credit Service on behalf of that licensee; or
- (c) a Credit Representative of the holder of an Australian Credit Licence,

who provides a Credit Service which relates to credit secured or to be secured by real property owned or to be owned by the person to whom the Credit Service is provided.

**NCCP Act** means the *National Consumer Credit Protection Act 2009* (Cth).

**National Credit Code** has the meaning given to it in section 3 of the NCCP Act.

**Officer** means an Officer of a corporation as defined in the Corporations Act or an Officer of an entity as defined in the Corporations Act or a Person who makes, or participates in making, decisions that affect the whole, or a substantial part, of a government entity of the Commonwealth, a State or Territory, a Local Government Organisation or a Statutory Body.

**Operating Requirements**, as amended from time to time, has the meaning given to it in the ECNL.

**Outstanding Conveyancing Transaction** means a Conveyancing Transaction for which an Electronic Workspace has been created in an ELN but the Lodgment Case for which has not been Lodged.

**Participating Subscriber** means, for a Conveyancing Transaction, each Subscriber who is involved in the Conveyancing Transaction either directly because it is a Party or indirectly because it is a Representative of a Party.

**Participation Rules**, as amended from time to time, has the meaning given to it in the ECNL.

**Party** means each Person who is a party to an electronic Registry Instrument or other electronic Document in the Electronic Workspace for the Conveyancing Transaction, but does not include a Representative.

**Person** has the meaning given to it in the ECNL.

**Person Being Identified** means the Person whose identity is being verified.

**Personal Information** has the meaning given to it in the *Privacy Act 1988* (Cth).

**PKI** (Public Key Infrastructure) means Gatekeeper compliant technology, policies and procedures based on public key cryptography used to create, validate, manage, store, distribute and revoke Digital Certificates.

**Prescribed Requirement** means any Published requirement of the Registrar that Subscribers are required to comply with.

**Priority Notice** has the meaning given to it in the Land Titles Legislation of the Jurisdiction in which the land the subject of the Conveyancing Transaction is situated.

**Privacy Laws** means all legislation, principles and industry codes relating to the collection, use, disclosure, storage or granting of access rights to Personal Information, including the *Privacy Act 1988* (Cth) and any State or Territory privacy legislation.

**Private Key** means the Key in an asymmetric Key Pair that must be kept secret to ensure confidentiality, integrity, authenticity and non-repudiation.

**Promptly** means without delay in light of the facts and circumstances.

**Public Key** means the Key in an asymmetric Key Pair which may be made public.

**Public Servant** means an employee or Officer of the Commonwealth, a State or a Territory.

**Publish** means, for any information, to make publicly available in any manner the Registrar considers appropriate, including (without limitation) by means of a website.

**Registrar** has the meaning given to it in the ECNL.

**Registration Authority means a Gatekeeper Accredited Service Provider that:**

- (a) is responsible for the registration of applicants for Digital Certificates by checking evidence of identity Documentation submitted by the applicant; and
- (b) is responsible for the provision of a completed and authorised application form including copies of the submitted evidence of identity Documents to the relevant Certification Authority; and
- (c) may be responsible for the secure distribution of signed Digital Certificates to Subscribers.

**Registry Information** means the data supplied in a Registry Information Supply.

**Registry Information Supply** means a service to supply data from the Titles Register or Land Registry.

**Registry Instrument** has the meaning given to it in the ECNL.

**Representative** means a Subscriber who acts on behalf of a Client.

**Responsible Subscriber** means a Subscriber that, following Lodgment, is liable for Lodgment Fees incurred and is responsible for the resolution of requisitions issued by the Registrar for a Lodgment Case.

**Security Item** means User Access Credentials, passphrases, Private Keys, Digital Certificates, Electronic Workspace identifiers and other items as specified from time to time.

**Signer** means a User authorised by the Subscriber to Digitally Sign electronic Registry Instruments and other electronic Documents on behalf of the Subscriber.

**State** means New South Wales, Queensland, South Australia, Tasmania, Victoria and Western Australia.

**Statutory Body** means a statutory authority, body or corporation including a State or Territory owned corporation (however described) established under any Commonwealth, State or Territory law.

**Statutory Body Officeholder** means an employee or Officer of a Statutory Body.

**Subscriber** has the meaning given to it in the ECNL.

**Subscriber Administrator** means a User authorised by the Subscriber to make the changes permitted under Participation Rule 7.3.3 on behalf of the Subscriber.

**Subscriber's Systems** means the information technology systems (both hardware and software) used by the Subscriber.

**Subscriber Review Process** has the meaning given to it in the Operating Requirements.

**Suspension Event** means any ground pursuant to which a Subscriber may be suspended as set out in Schedule 7, as amended from time to time.

**Suspension and Termination Procedure** means the procedure set out in Schedule 7, as amended from time to time.

**System Details** means, for a Subscriber, its System Name, Contact Details and any other information relating to the Subscriber held in an ELN.

**System Name** means, for a Subscriber, the name selected by the Subscriber to identify it in an ELN, for example, its name or its registered business name.

**Termination Event** means any ground pursuant to which a Subscriber may be terminated as set out in Schedule 7, as amended from time to time.

**Territory** means the Australian Capital Territory and the Northern Territory of Australia.

**Title Activity Check** means, for a Conveyancing Transaction, the notification of any change to the information in the Titles Register relating to the land the subject of the Conveyancing Transaction.

**Titles Register** has the meaning given to it in the ECNL.

**Unrelated Third Party** means, for a Subscriber, a Person who is not a principal, an Officer, employee, agent or contractor of the Subscriber.

**User** means an Individual who:

- (a) is a principal, Officer, employee, agent or contractor of the Subscriber and is authorised by a Subscriber to access and use an ELN on behalf of the Subscriber; or
- (b) has been appointed as the manager (however described) of the business of a Subscriber that is an Australian Legal Practitioner, Law Practice or Licensed Conveyancer, under any State or Territory law.

**Verification of Identity Standard** means the standard set out in Schedule 8, as amended from time to time.

## 2.2 Interpretation

In these Participation Rules, unless a contrary intention is evident:

2.2.1 A reference to these Participation Rules is a reference to these Participation Rules as amended, varied or substituted from time to time.

2.2.2 A reference to any legislation or to any provision of any legislation includes:

- (a) all legislation, regulations, proclamations, ordinances, by-laws and instruments issued under that legislation or provision; and
- (b) any modification, consolidation, amendment, re-enactment or substitution of that legislation or provision.

- 2.2.3 A word importing:
- (a) the singular includes the plural; and
  - (b) the plural includes the singular; and
  - (c) a gender includes every other gender.
- 2.2.4 A reference to a party includes that party's administrators, successors and permitted assigns.
- 2.2.5 If any act pursuant to these Participation Rules would otherwise be required to be done on a day which is not a Business Day then that act may be done on the next Business Day, and when an action is required by a party within a specified period of Business Days, the period will be deemed to commence on the Business Day immediately following the day on which the obligation is incurred.
- 2.2.6 Where a word or phrase is given a defined meaning, any other part of speech or grammatical form in respect of that word or phrase has a corresponding meaning.
- 2.2.7 A reference to two or more Persons is a reference to those Persons jointly and severally.
- 2.2.8 A reference to a rule or schedule is a reference to a rule of, or a schedule to, these Participation Rules.
- 2.2.9 A reference to a Participation Rule includes a reference to all of its sub-rules.
- 2.2.10 A reference to dollars is to Australian dollars.
- 2.2.11 Where general words are associated with specific words which define a class, the general words are not limited by reference to that class.
- 2.2.12 The Participation Rule headings are for convenience only and they do not form part of these Participation Rules.
- 2.2.13 The word "or" is not exclusive.
- 2.2.14 Where there is any inconsistency between the description of a Subscriber's obligations in a Participation Rule and in a schedule to these Participation Rules, the Participation Rule will prevail to the extent of the inconsistency.

### **3 COMPLIANCE WITH PARTICIPATION RULES**

The Subscriber must:

- (a) be able to comply with these Participation Rules at the time of applying to be a Subscriber; and
- (b) comply with these Participation Rules whilst being a Subscriber; and

- (c) continue to comply with Participation Rules 6.1.2, 6.6, 6.7 (where compliance with the Participation Rules is limited to this sub-rule), 6.9, 6.10, 6.11, 6.13.1(b), 7.7, 9.4, 9.5, 10 and 11 after ceasing to be a Subscriber,

unless the Registrar, in his or her absolute discretion, waives compliance by the Subscriber with any Participation Rule in accordance with section 27 of the ECNL.

## **4 ELIGIBILITY CRITERIA**

### **4.1 ABN**

The Subscriber must have an ABN.

### **4.2 Status**

4.2.1 The Subscriber must be a Person or a partnership.

4.2.2 If the Subscriber is a body corporate, the Subscriber must:

- (a) be incorporated, formed or constituted under the Corporations Act or under any other legislation; and
- (b) ensure that the constituting Documents of the Subscriber empower the Subscriber to assume the obligations set out in these Participation Rules and to do all things that it can reasonably contemplate will be required by these Participation Rules.

### **4.3 Character**

4.3.1 The Subscriber must be of good character and reputation and, without limitation, must:

- (a) not be and have not been subject to any of the matters listed below:
  - (i) an Insolvency Event within the last five years; or
  - (ii) a conviction for fraud or an indictable offence which may impact on the conduct of a Conveyancing Transaction or a conviction for any offence for dishonesty against any law in connection with business, professional or commercial activities; or
  - (iii) disqualification from managing a body corporate under the Corporations Act; or
  - (iv) any determination of a disciplinary action of any government or governmental authority or agency, or any regulatory authority of a financial market or a profession, which may impact on the conduct of a Conveyancing Transaction; or

- (v) any refusal of an application to subscribe to an electronic Lodgment service; or
  - (vi) any current suspension under Participation Rule 9.2 for Suspension Events (a)(i) to (v) in any Jurisdiction; or
  - (vii) any termination under Participation Rule 9.3 for Termination Events (a)(i) to (v) and (b) in any Jurisdiction; and
- (b) take reasonable steps to ensure that the Subscriber's principals and Officers who have access to an ELN or control over Persons who have access to an ELN and Subscriber Administrators are not and have not been subject to any of the matters listed below:
- (i) an Insolvency Event within the last five years; or
  - (ii) a conviction for fraud or an indictable offence which may impact on the conduct of a Conveyancing Transaction or a conviction for any offence for dishonesty against any law in connection with business, professional or commercial activities; or
  - (iii) disqualification from managing a body corporate under the Corporations Act; or
  - (iv) any determination of a disciplinary action of any government or governmental authority or agency, or any regulatory authority of a financial market or a profession, which may impact on the conduct of a Conveyancing Transaction; and
- (c) take reasonable steps to ensure that the Subscriber's principals and Officers who have access to an ELN or control over Persons who have access to an ELN and Subscriber Administrators are not and have not been a principal or Officer or Subscriber Administrator of a Subscriber that is or has been subject to any of the matters listed below:
- (i) any refusal of an application to subscribe to an electronic Lodgment service, unless that principal, Officer or Subscriber Administrator did not materially contribute to the refusal of the application; or
  - (ii) any current suspension under Participation Rule 9.2 for Suspension Events (a)(i) to (v) in any Jurisdiction, unless that principal, Officer or Subscriber Administrator did not materially contribute to the Suspension Event; or
  - (iii) termination under Participation Rule 9.3 for Termination Events (a)(i) to (v) and (b) in any Jurisdiction, unless that principal, Officer or Subscriber Administrator did not materially contribute to the Termination Event.



4.3.2 Where the Subscriber is:

- (a) an ADI; or
- (b) an Australian Legal Practitioner or a Law Practice; or
- (c) a Licensed Conveyancer; or
- (d) the Crown in right of the Commonwealth, a State or a Territory; or
- (e) a Public Servant acting on behalf of the Crown in right of the Commonwealth, a State or a Territory; or
- (f) a holder of an Australian Credit Licence; or
- (g) a Local Government Organisation; or
- (h) a Statutory Body,

the Subscriber is deemed to comply with Participation Rule 4.3.1(a).

4.3.3 Where the Subscriber's principal, Officer or Subscriber Administrator is:

- (a) an Officer or employee of an ADI; or
- (b) an Australian Legal Practitioner; or
- (c) a Licensed Conveyancer; or
- (d) a Public Servant acting on behalf of the Crown in right of the Commonwealth, a State or a Territory; or
- (e) a fit and proper Person for the purpose of performing duties in relation to the credit activities authorised by an Australian Credit Licence; or
- (f) a Local Government Officeholder acting on behalf of a Local Government Organisation; or
- (g) a Statutory Body Officeholder acting on behalf of a Statutory Body,

the Subscriber is deemed to comply with Participation Rules 4.3.1(b) and 4.3.1(c) for that principal, Officer or Subscriber Administrator.

4.3.4 Notwithstanding Participation Rule 4.3.2, if an ELNO or the Registrar knows or has reasonable grounds to suspect that the Subscriber does not meet the requirements in Participation Rule 4.3.1(a), the ELNO or Registrar can request the Subscriber to provide evidence that the Subscriber is not or has not been subject to any of the matters listed in Participation Rule 4.3.1(a).

4.3.5 Notwithstanding Participation Rule 4.3.3, if an ELNO or the Registrar knows or has reasonable grounds to suspect that the Subscriber's principal, Officer or Subscriber Administrator does not meet the requirements in Participation Rules 4.3.1(b) or 4.3.1(c), the ELNO or Registrar can request the Subscriber to provide evidence that the Subscriber's principal, Officer or Subscriber Administrator is not or has not been subject to any of the matters listed in Participation Rule 4.3.1(b) or 4.3.1(c).

#### **4.4 Insurance**

The Subscriber must comply with the Insurance Rules.

#### **4.5 Business name**

If a Subscriber wishes to use a business name as its System Name, the business name must:

- (a) be registered unless exempt by law; and
- (b) be registered to the Subscriber; and
- (c) not be used by another Subscriber.

### **5 THE ROLE OF SUBSCRIBERS**

#### **5.1 Subscriber's roles**

5.1.1 The Subscriber may act:

- (a) on its own behalf; or
- (b) on behalf of its Clients,

when accessing and using an ELN.

5.1.2 To the extent that the Subscriber Digitally Signs electronic Registry Instruments or other electronic Documents on behalf of a Client, the Subscriber does so as agent for the Client.

#### **5.2 Subscriber as principal**

Subject to Participation Rule 5.1.2, the Subscriber incurs rights and obligations under these Participation Rules as principal despite any Client Authorisation, power of attorney or other agency relationship entered into by the Subscriber.

#### **5.3 (Deleted)**

## **5.4 Responsible Subscribers**

- 5.4.1 The Participating Subscribers must agree on the selection of a Responsible Subscriber for every Lodgment Case.
- 5.4.2 A Responsible Subscriber must take reasonable steps to ensure that it does not pass on information to the Registrar obtained from another Participating Subscriber that it knows or suspects is incorrect, incomplete, false or misleading.

## **5.5 Subscriber as trustee and partnerships**

- 5.5.1 If the Subscriber acts at any time in the capacity of a trustee, these Participation Rules bind the Subscriber in its personal capacity and in its capacity as trustee.
- 5.5.2 If the Subscriber is a partnership:
- (a) these Participation Rules bind the partnership; and
  - (b) these Participation Rules bind the Subscriber and each Person who is a partner of the partnership at any time despite any changes to the partners and any reconstitution of the partnership (whether by the death, incapacity or retirement of any partner or the admission of any new partner or otherwise); and
  - (c) the Subscriber must do anything required by an ELNO with which it has a current Participation Agreement or Registrar (such as obtaining consents, signing and producing Documents and getting Documents completed and signed) to give full effect to this Participation Rule.

## **5.6 (Deleted)**

# **6 GENERAL OBLIGATIONS**

## **6.1 Ensure User compliance**

- 6.1.1 The Subscriber must ensure that each of its Users is aware of the terms of these Participation Rules as appropriate to their use of an ELN.
- 6.1.2 The Subscriber is responsible for all use of an ELN by any of its Users.

## **6.2 Keep Subscriber System Details complete and up-to-date**

If any of the information which forms part of a Subscriber's System Details changes, the Subscriber must:

- (a) Promptly update its System Details accordingly; or
- (b) if the Subscriber does not have the level of access to an ELN required to make the necessary updates to the System Details, Promptly notify the ELN Administrator of the changes required.

## 6.3 Client Authorisation

If the Subscriber is a Representative, the Subscriber must:

- (a) for any Client Authorisation it enters into, use a form in substantial compliance with the form set out in Schedule 4 as at the date of signing the form; and
- (b) except for Caveats, Priority Notices, extensions of Priority Notices and withdrawals of Priority Notices, for which a Client Authorisation is optional, enter into a Client Authorisation with its Client before the Subscriber Digitally Signs any electronic Registry Instrument or other electronic Document in an ELN; and
- (c) comply with the Client Authorisation and act in accordance with its terms; and
- (d) take reasonable steps to verify the authority of each Person entering into a Client Authorisation on behalf of a Client to both bind the Client to the Client Authorisation and to the Conveyancing Transaction(s) the subject of the Client Authorisation; and
- (e) take reasonable steps to ensure that any Client Authorisation is signed by the Subscriber's Client or their Client Agent; and
- (f) for Caveats, Priority Notices, extensions of Priority Notices and withdrawals of Priority Notices, for which a Client Authorisation is not obtained, take reasonable steps to verify the authority of each Person providing instructions on behalf of a Client to bind the Client to the Caveat, Priority Notice, extension of Priority Notice or withdrawal of Priority Notice.

## 6.4 Right to deal

- 6.4.1 Where the Subscriber is a Representative, for each Conveyancing Transaction the Subscriber must take reasonable steps to verify that its Client is a legal Person and has the right to enter into the Conveyancing Transaction.
- 6.4.2 Where the Subscriber is a mortgagee, or the Subscriber represents a mortgagee, for each mortgage the Subscriber must take reasonable steps to verify that the mortgagor is a legal Person and has the right to enter into the mortgage - however, the Subscriber need not take reasonable steps to verify that the mortgagor is a legal Person and has the right to enter into the mortgage if the Subscriber is reasonably satisfied that the mortgagee it represents has taken reasonable steps to verify that the mortgagor is a legal Person and has the right to enter into the mortgage.

## 6.5 Verification of identity

6.5.1 The Subscriber must take reasonable steps to verify the identity of:

- (a) **Clients:** each Client or each of their Client Agents; and
- (b) Mortgagors:
  - (i) for a mortgage or an amendment or variation of mortgage, each mortgagor or each of their agents, where the Subscriber is the mortgagee; and
  - (ii) for a mortgage or an amendment or variation of mortgage, each mortgagor or each of their agents, where the Subscriber represents the mortgagee - however, the Subscriber need not take reasonable steps to verify the identity of each mortgagor or their agent if the Subscriber is reasonably satisfied that the mortgagee it represents has taken reasonable steps to verify the identity of each mortgagor or their agent; and
  - (iii) for a transfer of mortgage, by ensuring the transferee mortgagee has complied with the requirements under the Land Titles Legislation and any Prescribed Requirements of the Jurisdiction in which the land the subject of the Conveyancing Transaction is situated; and
- (c) Persons to whom certificates of title are provided:
  - (i) any Client or Client Agent, prior to the Subscriber providing a (duplicate/paper) certificate of title to that Client or Client Agent; and
  - (ii) any existing mortgagor, former mortgagor or their agent, prior to the Subscriber providing a (duplicate/paper) certificate of title to that existing mortgagor, former mortgagor or their agent - however, the Subscriber need not take reasonable steps to verify the identity of each mortgagor, former mortgagor or their agent if the Subscriber is reasonably satisfied that the mortgagee has taken reasonable steps to verify the identity of each mortgagor, former mortgagor or their agent; and
- (d) **Signers:** each of its Signers, prior to the initial allocation of a Digital Certificate to the Signer; and
- (e) **Subscriber Administrators:** each of its Subscriber Administrators, prior to their appointment as a Subscriber Administrator; and
- (f) **Users who are not Signers or Subscriber Administrators:** each of its other Users, prior to the User being given access to an ELN.

6.5.2 For the purposes of complying with Participation Rule 6.5.1, the Subscriber, or a mortgagee represented by the Subscriber, can either:

- (a) apply the Verification of Identity Standard; or
- (b) verify the identity of a Person in some other way that constitutes the taking of reasonable steps.

6.5.3 The Subscriber, or a mortgagee represented by the Subscriber, must undertake further steps to verify the identity of a Person Being Identified and/or any Identity Declarant where:

- (a) the Subscriber or mortgagee knows or ought reasonably to know that:
  - (i) any identity Document produced by the Person Being Identified and/or any Identity Declarant is not genuine; or
  - (ii) any photograph on an identity Document produced by the Person Being Identified and/or any Identity Declarant is not a reasonable likeness of the Person Being Identified or the Identity Declarant; or
  - (iii) the Person Being Identified and/or any Identity Declarant does not appear to be the Person to which the identity Document(s) relate; or
- (b) it would otherwise be reasonable to do so.

6.5.4 The Subscriber need not re-verify the identity of:

- (a) a Client or Client Agent if the Subscriber is acting on behalf of that Client under a current Client Authorisation and the Subscriber previously complied with Participation Rule 6.5.1(a) prior to the Subscriber Digitally Signing any electronic Registry Instrument or other electronic Document on behalf of the Client under that Client Authorisation; or
- (b) the Person Being Identified if the Subscriber complied with Participation Rule 6.5.1 within the previous two years and the Subscriber takes reasonable steps to ensure that it is dealing with the Person Being Identified.

6.5.5 If the Verification of Identity Standard is used:

- (a) the Subscriber, or a mortgagee represented by the Subscriber, may use an Identity Agent; and
- (b) where an Identity Agent is used, the Subscriber or the mortgagee must direct the Identity Agent to use the Verification of Identity Standard; and
- (c) the Identity Verifier must be:
  - (i) the Subscriber and/or the Subscriber's Identity Agent; or
  - (ii) where a Subscriber represents a mortgagee, that mortgagee and/or that mortgagee's Identity Agent; and
- (d) the Subscriber or the mortgagee must receive from any Identity Agent:
  - (i) copies of the Documents produced to verify the identity of the Person Being

Identified and/or any Identity Declarant signed, dated and endorsed as a true copy of the original by the Identity Agent; and

(ii) an Identity Agent Certification.

6.5.6 Subject to Participation Rule 6.5.3, compliance with the Verification of Identity Standard by:

- (a) the Subscriber and/or its Identity Agent; or
- (b) where the Subscriber represents a mortgagee, that mortgagee and/or that mortgagee's Identity Agent,

will be deemed to constitute the taking of reasonable steps for the purposes of Participation Rule 6.5.1.

## **6.6 Supporting evidence**

The Subscriber must retain the evidence supporting an electronic Registry Instrument or other electronic Document for at least seven years from the date of Lodgment of the electronic Registry Instrument or other electronic Document that is registered or recorded including:

- (a) any evidence required by the Duty Authority; and
- (b) any Client Authorisation and any evidence supporting that Client Authorisation; and
- (c) any evidence supporting a Party's right to enter into the Conveyancing Transaction; and
- (d) any evidence supporting verification of identity; and
- (e) any other evidence demonstrating compliance with Prescribed Requirements.

## **6.7 Compliance with laws and Participation Rules**

The Subscriber must comply with any applicable laws (including any applicable Privacy Laws) for the Jurisdiction in which the land the subject of the Conveyancing Transaction is situated and these Participation Rules.

## **6.8 Compliance with directions**

6.8.1 The Subscriber must comply with any reasonable direction of the Registrar.

6.8.2 The Subscriber must comply with any direction of the Registrar, or of an ELNO at the Registrar's direction, given in response to an emergency situation as referred to in the ECNL, in the manner and timing set out in the direction.

## **6.9 Assistance**

The Subscriber must provide reasonable assistance to the Registrar, the ELNO and each other Subscriber to enable those parties to comply with the ECNL and the Land Titles

Legislation in relation to a particular Conveyancing Transaction.

## **6.10 Protection of information**

The Subscriber must take reasonable steps to ensure that information provided to the Subscriber by any other Subscriber, any Client, the Registrar or an ELNO is protected from unauthorised use, reproduction or disclosure.

## **6.11 Information**

The Subscriber must take reasonable steps to ensure that all the information it supplies in relation to a Conveyancing Transaction is to the Subscriber's knowledge, information and belief correct, complete and not false or misleading.

## **6.12 No assignment**

The Subscriber must not assign, novate, transfer or otherwise deal with its subscription to an ELN.

## **6.13 Mortgages**

6.13.1 Where a mortgagor (in its capacity as mortgagor) is not a Subscriber or represented by a Subscriber, the mortgagee, or the mortgagee's Representative, must:

- (a) ensure that the mortgagor grants a mortgage on the same terms as the mortgage signed by, or on behalf of, the mortgagee; and
- (b) ensure that the mortgagee or the mortgagee's Representative holds the mortgage granted by the mortgagor; and
- (c) provide certification 5 of the Certification Rules; and
- (d) for a transfer of mortgage, ensure that the transferee mortgagee or the transferee mortgagee's Representative holds the mortgage granted by the mortgagor.

6.13.2 Where the mortgagee or Representative signs the mortgage, the mortgagee signs only on its own behalf and not on behalf of the mortgagor.

## **6.14 (Deleted)**

## **6.15 Conduct of Conveyancing Transactions**

The Subscriber must:

- (a) comply with the laws of the Jurisdiction in which the land the subject of the Conveyancing Transaction is situated regarding who can conduct a Conveyancing Transaction; and
- (b) take reasonable steps to ensure that a Signer complies with the laws of the Jurisdiction in which the land the subject of the Conveyancing Transaction is situated



regarding who can conduct a Conveyancing Transaction and Digitally Sign electronic Registry Instruments and other electronic Documents.

## **7 OBLIGATIONS REGARDING SYSTEM SECURITY AND INTEGRITY**

### **7.1 Protection measures**

The Subscriber must take reasonable steps to:

- (a) comply with the security policy of each ELNO with which it has a current Participation Agreement, including without any limitation, in relation to:
  - (i) the technology required to enable the Subscriber to access the ELN; and
  - (ii) the specification of virus protection software required to be installed on the Subscriber's computers; and
  - (iii) protection of Security Items; and
  - (iv) training and monitoring of its Users in relation to the Subscriber's security obligations; and
- (b) not do anything that it knows or ought reasonably to know is likely to have an adverse effect on the operation, security, integrity, stability or the overall efficiency of any ELN; and
- (c) not fail to do anything within its reasonable control, the omission of which, it knows or ought reasonably to know is likely to have an adverse effect on the operation, security, integrity, stability or the overall efficiency of any ELN.

### **7.2 Users**

7.2.1 Subject to Participation Rule 7.2.2, the Subscriber must:

- (a) take reasonable steps to ensure that only Users access an ELN; and
- (b) ensure that each of its Users has received training appropriate to their use of an ELN, including cyber security awareness training covering as a minimum secure use of the ELN, secure use of the Subscriber's Systems and secure use of email and other electronic communication; and
- (c) ensure that each of its other principals, Officers, employees, agents and contractors who access the Subscriber's Systems receive cyber security awareness training covering as a minimum secure use of the Subscriber's Systems and secure use of email and other electronic communication.

7.2.2 The Subscriber may use application to application technology for accessing an ELN and data entry provided that the Subscriber does not use application to application technology for the function of Digital Signing or for Subscriber Administrator functions.

### 7.2.3 The Subscriber must:

- (a) take reasonable steps to ensure that its Users are not or have not been subject to:
  - (i) an Insolvency Event within the last five years; or
  - (ii) a conviction of fraud or an indictable offence which may impact on the conduct of a Conveyancing Transaction or a conviction for any offence for dishonesty against any law in connection with business, professional or commercial activities; or
  - (iii) disqualification from managing a body corporate under the Corporations Act; or
  - (iv) any determination of disciplinary action of any government or governmental authority or agency, or any regulatory authority of a financial market or a profession, which may impact on the conduct of a Conveyancing Transaction; or
  - (v) any current restriction on their right to access an ELN; and
- (b) prior to the initial allocation of a Digital Certificate to a Signer or prior to the appointment of a Subscriber Administrator, ensure a police background check is conducted for that Signer or Subscriber Administrator to ensure the Signer or Subscriber Administrator is not or has not been subject to a conviction of fraud or an indictable offence which may impact on the conduct of a Conveyancing Transaction or a conviction for any offence for dishonesty against any law in connection with business, professional or commercial activities.

### 7.2.4 Where a User is:

- (a) an Australian Legal Practitioner; or
- (b) a Licensed Conveyancer; or
- (c) a Public Servant acting on behalf of the Crown in right of the Commonwealth, a State or a Territory; or
- (d) a fit and proper Person for the purpose of performing duties in relation to the credit activities authorised by an Australian Credit Licence; or
- (e) a Local Government Officeholder acting on behalf of a Local Government Organisation; or
- (f) a Statutory Body Officeholder acting on behalf of a Statutory Body,

the Subscriber is deemed to comply with Participation Rule 7.2.3(a).

7.2.5 Notwithstanding Participation Rule 7.2.4, if an ELNO or the Registrar knows or has reasonable grounds to suspect that a User does not meet the requirements in Participation Rule 7.2.3(a), the ELNO or Registrar can request the Subscriber to provide evidence that the

User is not or has not been subject to any of the matters listed in Participation Rule 7.2.3(a).

### **7.3 User access**

7.3.1 The Subscriber must keep up to date within each ELN provided and operated by an ELNO with which it has a current Participation Agreement:

- (a) its Users' Access Credentials; and
- (b) signing rights linked to those Access Credentials; and
- (c) administrative rights linked to those Access Credentials.

7.3.2 The Subscriber must ensure that, at all times, it has at least one Subscriber Administrator for each ELN provided and operated by an ELNO with which it has a current Participation Agreement.

7.3.3 The Subscriber:

- (a) is taken to have made any change to the items described in Participation Rule 7.3.1 made by any Person (other than an Unrelated Third Party of the Subscriber) using Access Credentials that, at the time the change is requested, have linked to them the necessary signing rights and administrative rights to make the change; and
- (b) irrevocably and unconditionally waives any right it might otherwise have to claim that the Person does not have authority to make the change (other than any claim the Subscriber has against the Person).

### **7.4 (Deleted)**

### **7.5 Digital Certificates**

7.5.1 Electronic Registry Instruments and other electronic Documents to be Lodged through an ELN must be Digitally Signed, where the electronic Registry Instrument or other electronic Document requires a Digital Signature, using a Private Key to create the Subscriber's Digital Signature.

7.5.2 The Subscriber must obtain at least one Digital Certificate and keep it valid.

7.5.3 The Subscriber must take reasonable steps to ensure that only Signers Digitally Sign electronic Registry Instruments or other electronic Documents.

7.5.4 The Subscriber must ensure that all information provided to any Certification Authority, or to any Registration Authority, or to an ELNO for the purpose of obtaining a Digital Certificate, is correct, complete and not false or misleading.

7.5.5 The Subscriber must take reasonable steps to ensure that:

- (a) a Digital Certificate is only used to Digitally Sign by the Signer to whom it is allocated; and

- (b) Signers do not allow any other Person to use their Access Credentials and Digital Certificates; and
- (c) Signers keep the Digital Certificate allocated to them safe and secure in the Signer's control; and
- (d) Access Credentials are only used to access an ELN by the User to whom the Access Credentials belong; and
- (e) other Users do not allow any other Person to use their Access Credentials.

## **7.6 (Deleted)**

## **7.7 Notification of Jeopardised Conveyancing Transactions**

7.7.1 Where to the Subscriber's knowledge, information or belief a Conveyancing Transaction has been Jeopardised the Subscriber must:

- (a) where it is possible to do so, unsign any electronic Registry Instruments and other electronic Documents relating to the Conveyancing Transaction immediately; and
- (b) immediately notify (to the extent permitted by law) the ELNO and the Registrar of the situation.

7.7.2 The Subscriber must immediately notify (to the extent permitted by law) the other Participating Subscribers of any information about the Conveyancing Transaction that it believes to be incorrect, omitted, false or misleading or that the Conveyancing Transaction has been Jeopardised.

## **7.8 Revoking authority**

7.8.1 If a Subscriber no longer intends:

- (a) a Person to be a User of an ELN, the Subscriber must Promptly revoke the User's access to and use of that ELN; or
- (b) a Person to be a Signer of an ELN, the Subscriber must Promptly revoke the User's signing rights within that ELN and, where appropriate, request the Certification Authority to revoke the Signer's Digital Certificate; or
- (c) a Person to be a Subscriber Administrator of an ELN, the Subscriber must Promptly revoke the User's administrative rights within that ELN.

7.8.2 The Subscriber must immediately withdraw its authorisation to Digitally Sign electronic Registry Instruments and other electronic Documents from any Person who ceases to be the principal, Officer, employee, agent or contractor of the Subscriber.

7.8.3 If a Subscriber is restricted in its use of an ELN provided and operated by an ELNO with which it has a current Participation Agreement, or any ELN by the Registrar, the Subscriber

must Promptly prevent any of its Users from accessing and using that ELN or any affected ELN other than in accordance with the restriction.

## **7.9 Compromised Security Items**

7.9.1 If a Subscriber becomes aware that any of the Security Items of any of its Users have been or are likely to be Compromised, the Subscriber must:

- (a) immediately revoke the User's authority to access and use any ELN affected by the Compromise and prevent the User from accessing and using any affected ELN; and
- (b) for a Digital Certificate:
  - (i) immediately check all Electronic Workspaces in which the Private Key has been used to Digitally Sign any electronic Registry Instruments and other electronic Documents and unsign any electronic Registry Instruments and other electronic Documents in accordance with Participation Rule 7.9.2; and
  - (ii) Promptly notify the Certification Authority and revoke or cancel the Digital Certificate (including doing everything reasonably necessary to cause the Certification Authority to revoke or cancel it); and
  - (iii) Promptly notify all ELNOs who provide and operate an ELN affected by the Compromise.

7.9.2 If a Subscriber becomes aware or suspects that any of its Private Keys have been used to Digitally Sign any electronic Registry Instruments and other electronic Documents without its authorisation or the authorisation of any Client on whose behalf the electronic Registry Instruments and other electronic Documents are purported to be Digitally Signed:

- (a) where it is possible to do so, the Subscriber must unsign the electronic Registry Instruments and other electronic Documents immediately; or
- (b) where it is not possible to unsign the electronic Registry Instruments and other electronic Documents, the Subscriber must immediately notify the ELNO on whose ELN the electronic Registry Instruments and other electronic Documents were Digitally Signed of the situation.

## **7.10 Certifications**

The Subscriber must provide those of the certifications set out in the Certification Rules as are required when Digitally Signing an electronic Registry Instrument or other electronic Document.

## **8 AMENDMENT OF PARTICIPATION RULES**

The Subscriber must comply with any amendment made to these Participation Rules by the Registrar pursuant to the Amendment to Participation Rules Procedure.

## **9 RESTRICTION, SUSPENSION AND TERMINATION**

### **9.1 Comply with directions relating to restriction of access or use**

The Subscriber must comply with any direction of the Registrar, or of an ELNO at the Registrar's direction, restricting any access or use of an ELN.

### **9.2 Suspension at direction of Registrar**

The Subscriber may be suspended by the Registrar, or by an ELNO at the direction of the Registrar, at any time if a Suspension Event occurs.

### **9.3 Termination at direction of Registrar**

The Subscriber may be terminated by the Registrar, or by an ELNO at the direction of the Registrar, at any time if a Termination Event occurs.

### **9.4 Rights and obligations on suspension, termination or resignation**

Suspension or termination of a Subscriber, or its resignation as a Subscriber, does not affect any right or liability of any party which:

- (a) has accrued at the time the suspension, termination or resignation takes effect; or
- (b) may arise, accrue or crystallise after that time out of, or by reason of, any facts or circumstances occurring or in existence at or before the time the suspension, termination or resignation takes effect.

### **9.5 Further steps by Subscriber**

If the Subscriber is restricted, suspended or terminated or the Subscriber resigns, the Subscriber must, at its own expense:

- (a) take reasonable steps to ensure that any Outstanding Conveyancing Transaction for which the Subscriber is a Participating Subscriber is completed (such as facilitating another Subscriber taking over the Subscriber's role in the Outstanding Conveyancing Transaction) and do anything else in connection with the ELN which it could reasonably be expected to do in order to minimise inconvenience to any other Person; and
- (b) do anything an ELNO or Registrar considers reasonable to achieve the outcomes described in Participation Rule 9.5(a), such as entering into arrangements, obtaining

consents, submitting electronic Registry Instruments or other electronic Documents, Digitally Signing electronic Registry Instruments or other electronic Documents where required, and producing Documents; and

- (c) notify its Client (if any), and each other Participating Subscriber, in each Outstanding Conveyancing Transaction for which the Subscriber is a Participating Subscriber, of the restriction, suspension, termination or resignation.

## 10 COMPLIANCE

The Subscriber must:

- (a) comply with Section 34 of the ECNL and the Compliance Examination Procedure; and
- (b) give written notice to any ELNO with which it has a current Participation Agreement and the Registrar, as soon as practicable, if it becomes aware that it has breached or may in the future be no longer able to comply with these Participation Rules; and
- (c) remedy any non-compliance with these Participation Rules within 10 Business Days (or such longer time determined by the Registrar in his or her absolute discretion having regard to the nature of the breach) from when it becomes aware that it has breached these Participation Rules; and
- (d) take such action as is necessary in order to avoid a breach in circumstances where the Subscriber becomes aware that it may in the future be no longer able to comply with these Participation Rules.

## 11 PROHIBITIONS

The Subscriber must not:

- (a) modify or alter any Registry Information or Title Activity Check data for a Conveyancing Transaction or do anything that allows or causes another Person to do any of these things; or
- (b) use, reproduce or disclose, or allow another Person to use, reproduce or disclose, Registry Information or Title Activity Check data for a Conveyancing Transaction, except for the purpose of the Conveyancing Transaction or where required by law to do so; or
- (c) use or participate in an ELN other than in accordance with these Participation Rules; or
- (d) other than information which the Subscriber enters into an ELN, use, reproduce or disclose any information passing into or out of an ELN in connection with a

Conveyancing Transaction except for the purpose of the Conveyancing Transaction or where required by law to do so.

## **12 ADDITIONAL PARTICIPATION RULES**

The Subscriber must comply with the Additional Participation Rules, if any.



# SCHEDULE 1 – ADDITIONAL PARTICIPATION RULES

Participation Rule 6.5.1(c) does not apply in the Australian Capital Territory, New South Wales, Queensland, South Australia, Tasmania and Western Australia.

Certification 6 in the Certification Rules does not apply in the Australian Capital Territory, New South Wales, Queensland, South Australia, Tasmania and Western Australia.

## **SCHEDULE 2 – AMENDMENT TO PARTICIPATION RULES PROCEDURE**

### **1. Amendments with prior consultation**

- 1.1. Any amendment to these Participation Rules must be the subject of good faith consultation by the Registrar with a representative group of Subscribers and, where relevant, Subscribers' local and national professional associations, regulators, insurers or any other Person (as reasonably determined by the Registrar) before the amendment comes into effect.
- 1.2. Each amendment must be notified to all Subscribers at least 20 Business Days before the amendment comes into effect. The notification must contain the date the amendment comes into effect.

### **2. Amendments without prior consultation**

- 2.1. The Registrar may determine that an amendment to these Participation Rules need not be the subject of prior consultation or notification in accordance with paragraph 1 before the amendment comes into effect, if the Registrar determines in good faith that:
  - (a) such a course is required by law; or
  - (b) an emergency situation, as referred to in the ECNL, exists.
- 2.2. Notwithstanding paragraph 2.1, each amendment must be notified to all Subscribers as soon as reasonably practicable before the amendment comes into effect. The notification must contain the date the amendment comes into effect.

## SCHEDULE 3 – CERTIFICATION RULES

- 1 The Certifier has taken reasonable steps to verify the identity of the [transferor/transferee/mortgagor/mortgagee/caveator/applicant/covenantor/covenantee/encumbrancer/encumbrancee/grantor/grantee/lienor/lessor/lessee/receiving party/relinquishing party] or his, her or its administrator or attorney.
- 2 The Certifier holds a properly completed Client Authorisation for the Conveyancing Transaction including this Registry Instrument or Document.
- 3 The Certifier has retained the evidence supporting this Registry Instrument or Document.
- 4 The Certifier has taken reasonable steps to ensure that this Registry Instrument or Document is correct and compliant with relevant law and any Prescribed Requirement.
- 5 The Certifier, or the Certifier is reasonably satisfied that the mortgagee it represents, :
  - (a) has taken reasonable steps to verify the identity of the mortgagor or his, her or its administrator or attorney; and
  - (b) holds a mortgage granted by the mortgagor on the same terms as this Registry Instrument or Document.
- 6 The Certifier has:
  - (a) retrieved; and
  - (b) either securely destroyed or made invalid,the (duplicate) certificate(s) of title for the folio(s) of the Register listed in this Registry Instrument or Document.

# SCHEDULE 4 – CLIENT AUTHORISATION

## CLIENT AUTHORISATION

Version 7

When this form is signed, the Representative is authorised to act for the Client in a Conveyancing Transaction(s)

**Privacy Collection Statement:** The information in this form is collected under statutory authority and used for the purpose of maintaining publicly searchable registers and indexes and for the other purposes set out in clause 4.1 of this form.

Representative Reference: \_\_\_\_\_

CLIENT DETAILS	CLIENT 1	CLIENT 2
NAME	_____	_____
ACN/ARBN	_____	_____
ADDRESS	_____	_____

TRANSACTION DETAILS	AUTHORITY TYPE	<input type="checkbox"/> SPECIFIC AUTHORITY (set out conveyancing transaction details below) <input type="checkbox"/> STANDING AUTHORITY (ends on revocation or expiration date: ___/___/___ (tick relevant conveyancing transaction(s) below)) <input type="checkbox"/> BATCH AUTHORITY (attach details of conveyancing transaction(s))	
		CONVEYANCING TRANSACTION(S) 1	CONVEYANCING TRANSACTION(S) 2
PROPERTY ADDRESS	_____	_____	_____
LAND TITLE REFERENCE(S) (and/or property description)	_____	_____	_____
CONVEYANCING TRANSACTION(S)	<input type="checkbox"/> TRANSFER <input type="checkbox"/> PRIORITY NOTICE  <input type="checkbox"/> OTHER (set out below or attach details))	<input type="checkbox"/> MORTGAGE <input type="checkbox"/> DISCHARGE/RELEASE OF MORTGAGE  <input type="checkbox"/> CAVEAT <input type="checkbox"/> WITHDRAWAL OF CAVEAT	<input type="checkbox"/> TRANSFER <input type="checkbox"/> PRIORITY NOTICE  <input type="checkbox"/> OTHER (set out below or attach details))
ADDITIONAL INSTRUCTIONS	_____	_____	_____

CLIENT AUTHORISATION AND SIGNING	CLIENT 1 / CLIENT AGENT 1	CLIENT 2 / CLIENT AGENT 2
	<p><b>I CERTIFY that:</b></p> <p>(a) I am the Client or Client Agent; and</p> <p>(b) I have the legal authority to instruct the Representative in relation to the Conveyancing Transaction(s); and</p> <p>(c) if I am acting as a Client Agent that I have no notice of the revocation of my authority to act on behalf of the Client.</p> <p><b>I AUTHORISE</b> the Representative to act on my behalf, or where I am a Client Agent to act on behalf of the Client, in accordance with the terms of this Client Authorisation and any Participation Rules and any Prescribed Requirement to:</p> <p>(a) sign documents on my behalf as required for the Conveyancing Transaction(s); and</p> <p>(b) submit or authorise submission of documents for lodgment with the relevant Land Registry; and</p> <p>(c) authorise any financial settlement involved in the Conveyancing Transaction(s); and</p> <p>(d) do anything else necessary to complete the Conveyancing Transaction(s).</p>	
	DATE / /	DATE / /
	SIGN HERE	SIGN HERE
	CLIENT/CLIENT AGENT NAME _____	CLIENT/CLIENT AGENT NAME _____
	CAPACITY _____	CAPACITY _____
	<b>If applicable AUSTRALIAN CONSULAR OFFICE WITNESS or IDENTITY AGENT (if not a Representative Agent)</b>	<b>If applicable AUSTRALIAN CONSULAR OFFICE WITNESS or IDENTITY AGENT (if not a Representative Agent)</b>
	NAME _____ DATE _____	NAME _____ DATE _____

## **Terms of this Client Authorisation**

### **1 What is Authorised**

The Client authorises the Representative to act on behalf of the Client in accordance with the terms of this Client Authorisation and any Participation Rules and any Prescribed Requirement to:

- (a) sign documents on the Client's behalf as required for the Conveyancing Transaction(s); and
- (b) submit or authorise submission of documents for lodgment with the relevant Land Registry; and
- (c) authorise any financial settlement involved in the Conveyancing Transaction(s); and
- (d) do anything else necessary to complete the Conveyancing Transaction(s).

The Client acknowledges that the Client is bound by any documents required in connection with a Conveyancing Transaction that the Representative signs on the Client's behalf in accordance with this Client Authorisation.

### **2 Mortgagees**

Where:

- (a) the Representative represents the Client in the Client's capacity as mortgagee; and
- (b) the Client represents to the Representative that the Client has taken reasonable steps to verify the identity of the mortgagor,

the Client indemnifies the Representative for any loss resulting from the Client's failure to take reasonable steps to verify the identity of the mortgagor.

### **3 Revocation**

This Client Authorisation may be revoked by either the Client or the Representative giving notice in writing to the other that they wish to end this Client Authorisation.

## 4 Privacy and Client information

4.1 The Client acknowledges that information relating to the Client that is required to complete or process the Conveyancing Transaction(s), including the Client's Personal Information, may be collected, stored and used by, and disclosed to, stored and used by:

- (a) the Duty Authority;
- (b) ELNOs;
- (c) the Land Registry;
- (d) the Registrar;
- (e) the Representative;
- (f) Subscribers; and
- (g) third parties (who may be located overseas),

involved in the completion or processing of the Conveyancing Transaction(s), for the purpose of completing and processing the Conveyancing Transaction(s) or as required by law, including for the purpose of a Compliance Examination.

4.2 The Client consents to the collection, disclosure, storage and use of information relating to the Client as acknowledged under clause 4.1.

4.3 For further information about the collection, disclosure, storage and use of your Personal Information, refer to the privacy policy of the persons listed in clause 4.1(a) to (g).

## 5 Applicable law

This Client Authorisation is governed by the law in force in the Jurisdiction in which the Property is situated. The Client and the Representative submit to the non-exclusive jurisdiction of the courts of that place.

## 6 Meaning of words used in this Client Authorisation

In this Client Authorisation, capitalised terms have the meaning set out below:

**Australian Consular Office Witness** means a person listed in section 3 of the *Consular Fees Act 1955* (Cth).

**Batch Authority** means an authority for the Representative to act for the Client in a batch of Conveyancing Transactions details of which are attached to this Client Authorisation.

**Capacity** means the role of the signatory (for example an attorney or a director of a company).

**Client** means the person or persons named in this Client Authorisation.

**Client Agent** means a person authorised to act as the Client's agent but does not include the Representative acting solely in this role.

**Compliance Examination** has the meaning given to it in the ECNL.

**Conveyancing Transaction** has the meaning given to it in the ECNL.

**Duty Authority** means the State Revenue Office of the Jurisdiction in which the property is situated.

**ECNL** means the Electronic Conveyancing National Law as adopted or implemented in a Jurisdiction by the application law, as amended from time to time.

**ELNO** means Electronic Lodgment Network Operator.

**Identity Agent** means a person appointed in writing by either a Representative, or a mortgagee represented by a Representative, to act as the agent of the Representative or mortgagee, and who:

- (a) the Representative or mortgagee reasonably believes is reputable, competent and appropriately insured; and
- (b) is authorised by the Representative or mortgagee to conduct verification of identity on behalf of the Representative or mortgagee in accordance with the Verification of Identity Standard.

**Jurisdiction** means an Australian State or Territory.

**Land Registry** means the agency of a State or Territory responsible for maintaining the Jurisdiction's titles register and, where the responsibility has been delegated, it includes the delegate.

**Participation Rules** means the rules relating to use of the electronic lodgment network determined by the Registrar from time to time.

**Personal Information** has the meaning given to it in the *Privacy Act 1988* (Cth).

**Prescribed Requirement** means any published requirement of the Registrar that Representatives are required to comply with.

**Registrar** means the Recorder of Titles in Tasmania; the Registrar-General in Australian Capital Territory, New South Wales, Northern Territory and South Australia; and the Registrar of Titles in Queensland, Victoria and Western Australia.

**Representative** is the Australian legal practitioner, law practice or licensed conveyancer named in this Client Authorisation who acts on behalf of the Client and under the relevant legislation of the Jurisdiction in which the property is situated can conduct a Conveyancing Transaction.

**Representative Agent** means a person appointed in writing by a Representative to act as the agent of the Representative including to sign the Client Authorisation. For the avoidance of doubt this can include an Identity Agent if so authorised.

**Specific Authority** means an authority for the Representative to act for the Client in completing the Conveyancing Transactions described in this Client Authorisation.

**Standing Authority** means an authority for the Representative to act for the Client as described in this Client Authorisation for the period of time set out in this Client Authorisation.

**Subscriber** has the meaning given to it in the ECNL.



## **SCHEDULE 5 – COMPLIANCE EXAMINATION PROCEDURE**

### **1 Power to request information and Documents**

- 1.1 The Registrar or the Registrar's delegate must provide notice to the Subscriber.
- 1.2 The notice must state:
  - (a) the time within which the information must be furnished and/or the Document must be produced (which must be not less than 10 Business Days after the giving of the notice); and
  - (b) how information is to be furnished and/or the Document is to be produced.
- 1.3 A notice under paragraph 1.2 may be given in writing or by any electronic means that the Registrar or the Registrar's delegate considers appropriate.
- 1.4 The Subscriber to whom a notice is given under paragraph 1.2 must comply with the requirements set out in the notice within the period specified in the notice.
- 1.5 (Deleted)

### **2 Inspection and retention of Documents**

- 2.1 If an original Document is produced in accordance with a notice given under paragraph 1.2, the Registrar or the Registrar's delegate may do one or more of the following:
  - (a) inspect the Document; or
  - (b) make a copy of, or take an extract from, the Document; or
  - (c) retain the Document for as long as is reasonably necessary for the purposes of the Compliance Examination to which the Document is relevant.
- 2.2 If requested by the Subscriber, as soon as practicable after the Registrar or the Registrar's delegate retains a Document under paragraph 2.1, the Registrar or the Registrar's delegate must give a receipt for it to the Person who produced it. The receipt must identify in general terms the Document retained.

### **3 Return of retained Documents**

- 3.1 The Registrar or the Registrar's delegate must as soon as reasonably practicable return an original Document retained under paragraph 2.1 to the Subscriber, if the Registrar or the Registrar's delegate is satisfied that its continued retention is no longer necessary.
- 3.2 The Registrar or the Registrar's delegate is not bound to return any Document where the Document has been provided to any police authority or anyone else entitled to the Document pursuant to any law or court order.

## **4 Access to retained Documents**

- 4.1 Until an original Document retained under paragraph 2.1 is returned to its owner, the Registrar or the Registrar's delegate must allow a Person otherwise entitled to possession of the Document to inspect, make a copy of, or take an extract from, the Document at a reasonable time and place decided by the Registrar or the Registrar's delegate.
- 4.2 Paragraph 4.1 does not apply if it is impracticable or it would be reasonable not to allow the Document to be inspected or copied or an extract from the Document to be taken.

## **5 Costs**

- 5.1 If the Subscriber is found to be in material breach of the Participation Rules, the Subscriber must, if required by the Registrar, pay all reasonable fees and Costs incurred as a direct result of the Registrar or the Registrar's delegate carrying out the Compliance Examination. If the Subscriber is not found to be in material breach, such fees and Costs will not be recoverable from the Subscriber.
- 5.2 The Cost of all actions required to be taken by the Subscriber to remedy any breach of these Participation Rules identified by the Registrar or the Registrar's delegate is to be paid by the Subscriber.

## **SCHEDULE 6 – INSURANCE RULES**

### **1 Subscriber insurance**

1.1 Each Subscriber must maintain professional indemnity insurance:

- (a) which specifically names the Subscriber as being insured; and
- (b) with an Approved Insurer; and
- (c) for an insured amount of at least \$1,500,000 per claim (including legal Costs); and
- (d) having an excess per claim of no greater than \$20,000; and
- (e) having an annual aggregate amount of not less than \$20,000,000; and
- (f) which includes coverage for Conveyancing Transactions; and
- (g) the terms of which do not limit compliance with Insurance Rules 1.1(a) to (f).

1.2 Each Subscriber must maintain fidelity insurance:

- (a) which specifically names the Subscriber as being insured; and
- (b) with an Approved Insurer; and
- (c) for an insured amount of at least \$1,500,000 per claim (including legal Costs); and
- (d) having an excess per claim of no greater than \$20,000; and
- (e) having an annual aggregate amount of not less than \$20,000,000; and
- (f) which provides coverage for third party claims arising from dishonest and fraudulent acts; and
- (g) which includes coverage for Conveyancing Transactions; and
- (h) the terms of which do not limit compliance with Insurance Rules 1.2(a) to (g).

1.3 If a Subscriber does not comply with Insurance Rules 1.1 and 1.2, the Subscriber must maintain professional indemnity insurance:

- (a) which specifically names the Subscriber as being insured; and
- (b) with an Approved Insurer; and
- (c) for an insured amount of at least \$1,500,000 per claim (including legal Costs); and
- (d) having an excess per claim of no greater than \$20,000; and
- (e) having an annual aggregate amount of not less than \$20,000,000; and
- (f) which provides coverage for third party claims arising from dishonest and fraudulent acts; and
- (g) which includes coverage for Conveyancing Transactions; and

(h) the terms of which do not limit compliance with Insurance Rules 1.3(a) to (g).

1.4 A Subscriber may maintain fidelity insurance held through a mutual fund by paying a levy or contribution rather than an annual insurance premium. The insurance must otherwise comply with Insurance Rule 1.2.

## **2 Identity Agent insurance**

2.1 Each Identity Agent must maintain professional indemnity insurance:

- (a) which specifically names the Identity Agent as being insured; and
- (b) with an Approved Insurer; and
- (c) for an insured amount of at least \$1,500,000 per claim (including legal Costs); and
- (d) having an excess per claim of no greater than \$20,000; and
- (e) having an annual aggregate amount of not less than \$20,000,000; and
- (f) which includes coverage for verification of identity for the purposes of these Participation Rules; and
- (g) the terms of which do not limit compliance with Insurance Rules 2.1(a) to (f).

2.2 Each Identity Agent must maintain fidelity insurance:

- (a) which specifically names the Identity Agent as being insured; and
- (b) with an Approved Insurer; and
- (c) for an insured amount of at least \$1,500,000 per claim (including legal Costs); and
- (d) having an excess per claim of no greater than \$20,000; and
- (e) having an annual aggregate amount of not less than \$20,000,000; and
- (f) which provides coverage for third party claims arising from dishonest and fraudulent acts; and
- (g) which includes coverage for verification of identity for the purposes of these Participation Rules; and
- (h) the terms of which do not limit compliance with Insurance Rules 2.2(a) to (g).

2.3 If an Identity Agent does not comply with Insurance Rules 2.1 and 2.2, the Identity Agent must maintain professional indemnity insurance:

- (a) which specifically names the Identity Agent as being insured; and
- (b) with an Approved Insurer; and
- (c) for an insured amount of at least \$1,500,000 per claim (including legal Costs); and
- (d) having an excess per claim of no greater than \$20,000; and

- (e) having an annual aggregate amount of not less than \$20,000,000; and
- (f) which provides coverage for third party claims arising from dishonest and fraudulent acts; and
- (g) which includes coverage for verification of identity for the purposes of these Participation Rules; and
- (h) the terms of which do not limit compliance with Insurance Rules 2.3(a) to (g).

2.4 An Identity Agent may maintain fidelity insurance held through a mutual fund by paying a levy or contribution rather than an annual insurance premium. The insurance must otherwise comply with Insurance Rule 2.2.

### **3 Self-insuring Subscribers and Identity Agents**

Despite Insurance Rules 1 and 2, the following Persons need not take out any insurance to become or remain a Subscriber or an Identity Agent:

- (a) an ADI; or
- (b) the Crown in right of the Commonwealth, a State or a Territory; or
- (c) a Local Government Organisation or a Statutory Body:
  - (i) creating, dealing with, or making an application with respect to, an estate or interest in its land; or
  - (ii) purchasing, acquiring, or making an application with respect to, an estate or interest in land; or
  - (iii) Lodging Caveats, withdrawals of Caveats, Priority Notices, extensions of Priority Notices and withdrawals of Priority Notices; or
  - (iv) using administrative notices required to manage certificates of title.

### **4 Deemed compliance with these Insurance Rules**

4.1 The following are deemed to comply with Insurance Rules 1 and 2:

- (a) an Australian Legal Practitioner or a Law Practice who holds or is covered by professional indemnity insurance which indemnifies the Australian Legal Practitioner or Law Practice for claims arising from the conduct of Conveyancing Transactions and either holds or is covered by fidelity insurance or contributes to, or on whose behalf a contribution is made to, or is covered by a fidelity fund operated pursuant to legislative requirements which includes coverage for claims arising from the conduct of Conveyancing Transactions; and
- (b) a Licensed Conveyancer who holds or is covered by professional indemnity insurance which includes coverage for claims arising from the conduct of Conveyancing

Transactions and either holds or is covered by fidelity insurance or contributes to, or on whose behalf a contribution is made to, or is covered by a fidelity fund operated pursuant to legislative requirements which includes coverage for claims arising from the conduct of Conveyancing Transactions.

- 4.2 A Mortgage Broker, when acting as agent of a mortgagee for the purposes of verifying the identity of a mortgagor, is deemed to comply with Insurance Rule 2 if:
- (a) pursuant to legislative requirements, either it holds or is covered by:
    - (i) professional indemnity insurance and fidelity insurance, or
    - (ii) professional indemnity insurance which provides cover for third party claims arising from dishonest and fraudulent acts, and
  - (b) that insurance covers the verification of identity.

## **5 Compliance**

The Subscriber or an Identity Agent must comply with any requirements set by its insurer.

## **6 Proof of insurance**

The Subscriber must provide evidence of insurance to any ELNO with which it has a current Participation Agreement as required by that ELNO.

# **SCHEDULE 7 – SUSPENSION EVENTS, TERMINATION EVENTS AND SUSPENSION AND TERMINATION PROCEDURE**

## **1 Suspension Events**

The following are Suspension Events:

- (a) the Registrar knows or has reasonable grounds to suspect that the Subscriber:
  - (i) is in material breach of any of the Subscriber's obligations under the Participation Rules; or
  - (ii) has or may have acted fraudulently in a way which may impact on a Conveyancing Transaction; or
  - (iii) has or may have acted negligently in a way which may impact on a Conveyancing Transaction; or
  - (iv) poses a threat to the operation, security, integrity or stability of an ELN; or
  - (v) has otherwise engaged in conduct contrary to the interests of other Subscribers or the Registrar, which may impact on a Conveyancing Transaction; or
- (b) the Subscriber's purported payment of any Land Registry Fees is unpaid or dishonoured and the Subscriber fails to remedy the non-payment Promptly; or
- (c) the Subscriber fails, without reasonable excuse, to comply with a notice served under the Compliance Examination Procedure; or
- (d) the Subscriber fails, without reasonable excuse, to produce Documents within a time specified in a written request from the Registrar; or
- (e) the Subscriber fails, without reasonable excuse, to comply with a written direction of the Registrar given to the Subscriber or to a class of Subscribers to which the Subscriber belongs; or
- (f) the Subscriber fails, without reasonable excuse, to comply with the ELNO's Subscriber Review Process.

## **2 Termination Events**

The following are Termination Events:

- (a) the Registrar knows or has reasonable grounds to believe that the Subscriber:
  - (i) is in material breach of any of the Subscriber's obligations under the Participation Rules; or

- (ii) has or may have acted fraudulently in a way which may impact on a Conveyancing Transaction; or
  - (iii) has or may have acted negligently in a way which may impact on a Conveyancing Transaction; or
  - (iv) poses a threat to the operation, security, integrity or stability of an ELN; or
  - (v) has otherwise engaged in conduct contrary to the interests of other Subscribers or the Registrar, which may impact on a Conveyancing Transaction; or
- (b) the Subscriber is subject to an order or directions of a court, tribunal, professional regulator or disciplinary body, which may impact on a Conveyancing Transaction; or
  - (c) the Subscriber is not reinstated within a reasonable time following a suspension of the Subscriber.

### **3 Suspension and Termination Procedure**

#### **3.1 Show Cause Notice procedure**

- (a) Subject to paragraph 3.2, the Registrar may suspend or terminate, or direct an ELNO to suspend or terminate, the Subscriber only if the Registrar first gives the Subscriber a “Show Cause Notice”. A Show Cause Notice must:
  - (i) be in writing; and
  - (ii) request the Subscriber to show cause, within 15 Business Days of the date of the Show Cause Notice, why the Subscriber should not be suspended or terminated, as the case may be; and
  - (iii) set out in detail the Registrar’s reasons for issuing the request.
- (b) After the expiry of the 15 Business Days from the date of the Show Cause Notice, the Registrar, after considering any further information or steps taken by the Subscriber, must, within a reasonable time, determine whether to suspend or terminate, or direct an ELNO to suspend or terminate, the Subscriber.

#### **3.2 Urgent decisions to suspend or terminate**

- (a) If the Registrar becomes aware that a Suspension Event or Termination Event has or may have occurred in respect of the Subscriber and believes that it is necessary to take urgent action to protect the operation, security, integrity or stability of an ELN, the Registrar may immediately suspend or terminate, or direct an ELNO to immediately suspend or terminate, the Subscriber without first providing a Show Cause Notice under paragraph 3.1.



- (b) However, the Registrar must then issue to the Subscriber a Show Cause Notice within 15 Business Days. A Show Cause Notice must:
  - (i) be in writing; and
  - (ii) request the Subscriber to show cause, within 15 Business Days of the date of the Show Cause Notice, why the Subscriber should be reinstated; and
  - (iii) specify the reasons for the suspension or termination.
- (c) If the Registrar does not issue a Show Cause Notice in accordance with this paragraph 3.2 within 15 Business Days of a suspension or termination taking effect following a determination by the Registrar to suspend or terminate the Subscriber under this paragraph 3.2, the Registrar must reinstate, or direct that ELNO to reinstate, the Subscriber.
- (d) After the expiry of the 15 Business Days following the date of the Show Cause Notice under this paragraph 3.2, the Registrar, after considering any further information or steps taken by the Subscriber must, within a reasonable time, determine whether to reinstate the Subscriber or direct the ELNO to reinstate the Subscriber.

### 3.3 Notice of suspension and termination decisions

After making a final determination under paragraph 3.1 or paragraph 3.2, the Registrar must notify the Subscriber Promptly of the determination. If the determination:

- (a) is made under paragraph 3.1, the notice must specify the reasons for the determination and, except where the Registrar directs an ELNO to suspend or terminate, the time and date the suspension or termination is to take effect; or
- (b) is made under paragraph 3.2, the notice must specify the reasons for the determination and, except where the Registrar directs an ELNO to suspend or terminate, the time and date the suspension or termination took effect.

### 3.4 Suspension or termination - reinstatement

If the Registrar suspends or terminates the Subscriber, or directs an ELNO to suspend or terminate the Subscriber, the Registrar may reinstate, or direct an ELNO to reinstate, the Subscriber at any time if the Registrar determines that the Subscriber's access to the ELN does not pose a threat to the operation, security, integrity or stability of the ELN.

### 3.5 Registrar's determinations

A determination by the Registrar to suspend or terminate a Subscriber, or to direct an ELNO to suspend or terminate a Subscriber, does not affect any other determination the Registrar has made previously or may make subsequently.

## SCHEDULE 8 – VERIFICATION OF IDENTITY STANDARD

### 1 Definitions

In this Verification of Identity Standard capitalised terms have the meanings set out below:

**ADI** (authorised deposit-taking institution) has the meaning given to it in the *Banking Act 1959* (Cth).

**Adult** has the meaning given to it in the ECNL.

**Application Law** has the meaning given to it in the ECNL.

**Australian Legal Practitioner** has the meaning given to it in the relevant legislation of the Jurisdiction in which the land the subject of the Conveyancing Transaction is situated and in South Australia is a legal practitioner for the purposes of the *Legal Practitioners Act 1981* (SA).

**Australian Passport** means a passport issued by the Australian Commonwealth government.

**Bank Manager** means a Person appointed to be in charge of the head office or any branch office of an ADI carrying on business in Australia under the *Banking Act 1959* (Cth).

**Category** means the categories of identification Documents set out in the table in this Verification of Identity Standard paragraph 3, as amended from time to time.

**Commonwealth** has the meaning given to it in the ECNL.

**Community Leader** means, in relation to an Aboriginal or Torres Strait Islander community:

- (a) a Person who is recognised by the members of the community to be a community elder; or
- (b) if there is an Aboriginal council that represents the community, an elected member of the council; or
- (c) a member, or a member of staff, of a Torres Strait Regional Authority established under the *Aboriginal and Torres Strait Islander Act 2005* (Cth); or
- (d) a member of the board, or a member of staff, of Indigenous Business Australia established under the *Aboriginal and Torres Strait Islander Act 2005* (Cth); or
- (e) a member of the board, or a member of staff, of an Indigenous Land Corporation established under the *Aboriginal and Torres Strait Islander Act 2005* (Cth); or
- (f) a member, or a member of staff, of an Aboriginal Land Council established under the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth).

**Conveyancing Transaction** has the meaning given to it in the ECNL.

**Court Officer** means a judge, master, magistrate, registrar, clerk or the chief executive officer of any court in Australia.

**Doctor** means a Person who is registered under any Commonwealth, State or Territory law as a practitioner in the medical profession.

**Document** has the meaning given to it in the ECNL.

**ECNL** means the Electronic Conveyancing National Law as adopted or implemented in a Jurisdiction by the Application Law, as amended from time to time.

**Identifier Declaration** means the declaration set out in Verification of Identity Standard paragraph 4.

**Identity Declarant** means a Person providing an Identifier Declaration.

**Identity Verifier** means the Person conducting the verification of identity in accordance with this Verification of Identity Standard.

**Individual** has the meaning given to it in the ECNL.

**Land Council Officeholder** means a chairperson or deputy chairperson (however described) of an Australian land council or land and sea council established under any Commonwealth, State or Territory law.

**Licensed Conveyancer** means a Person licensed or registered under the relevant legislation of the Jurisdiction in which the land the subject of the Conveyancing Transaction is situated and in Western Australia is a real estate settlement agent for the purposes of the *Settlement Agents Act 1981 (WA)*.

**Local Government Officeholder** means a chief executive officer or deputy chief executive officer (however described) of a Local Government Organisation.

**Local Government Organisation** means a local government council (however described) established under any Commonwealth, State or Territory law.

**Nurse** means a Person registered under any Commonwealth, State or Territory law as a practitioner in the nursing and midwifery profession.

**Officer** means an Officer of a corporation as defined in the Corporations Act or an Officer of an entity as defined in the Corporations Act or a Person who makes, or participates in making, decisions that affect the whole, or a substantial part, of a government entity of the Commonwealth, a State or Territory, a Local Government Organisation or a Statutory Body.

**Person** has the meaning given to it in the ECNL.

**Person Being Identified** means the Person whose identity is being verified.

**Photo Card** is a card issued by the Commonwealth or any State or Territory showing a photograph of the holder and enabling the holder to evidence their age and/or their identity.

**Police Officer** means a member of a police service of the Commonwealth, State or Territory.

**Public Servant** means an employee or Officer of the Commonwealth, a State or a Territory.

**Record** has the meaning given to it in the ECNL.

**Relative** means a Person's spouse or domestic partner or a child, grandchild, sibling, parent or grandparent of the Person or of the Person's spouse or domestic partner.

**State** means New South Wales, Queensland, South Australia, Tasmania, Victoria and Western Australia.

**Statutory Declaration** has the meaning given to it in the ECNL.

**Territory** means the Australian Capital Territory and the Northern Territory of Australia.

**Verification of Identity Standard** means this verification of identity standard, as amended from time to time.

## **2 Face-to-face regime**

- 2.1 The verification of identity must be conducted during a face-to-face in-person interview between the Identity Verifier and the Person Being Identified.
- 2.2 Where Documents containing photographs are produced by the Person Being Identified, the Identity Verifier must be satisfied that the Person Being Identified is a reasonable likeness (for example the shape of his or her mouth, nose, eyes and the position of his or her cheek bones) to the Person depicted in those photographs.

## **3 Categories of identification Documents and evidence retention**

- 3.1 At the face-to-face in-person interview described in paragraph 2.1, the Identity Verifier must ensure that the Person Being Identified produces original Documents in one of the Categories in the following table, starting with Category 1.
- 3.2 The Identity Verifier must be reasonably satisfied that a prior Category cannot be met before using a subsequent Category.
- 3.3 The Identity Verifier must:
  - (a) sight the originals of all Documents from Categories 1, 2, 3, 4, 5 or 6 produced by the Person Being Identified; and
  - (b) retain copies of all Documents produced by the Person Being Identified and any Identity Declarant.

3.4 The Documents produced must be current, except for an expired Australian Passport which has not been cancelled and was current within the preceding two years.

Category	Minimum Document Requirements
	<b>For Persons who are Australian citizens or residents</b>
1	Australian Passport or foreign passport or Australian Evidence of Immigration Status ImmiCard or Australian Migration Status ImmiCard <u>plus</u> Australian drivers licence or Photo Card <u>plus</u> change of name or marriage certificate if necessary
2	Australian Passport or foreign passport or Australian Evidence of Immigration Status ImmiCard or Australian Migration Status ImmiCard <u>plus</u> full birth certificate or citizenship certificate or descent certificate <u>plus</u> Medicare or Centrelink or Department of Veterans' Affairs card <u>plus</u> change of name or marriage certificate if necessary
3	Australian drivers licence or Photo Card <u>plus</u> full birth certificate or citizenship certificate or descent certificate <u>plus</u> Medicare or Centrelink or Department of Veterans' Affairs card <u>plus</u> change of name or marriage certificate if necessary
4	(a) Australian Passport or foreign passport or Australian Evidence of Immigration Status ImmiCard or Australian Migration Status ImmiCard <u>plus</u> another form of government issued photographic identity Document <u>plus</u> change of name or marriage certificate if necessary  (b) Australian Passport or foreign passport or Australian Evidence of Immigration Status ImmiCard or Australian Migration Status ImmiCard <u>plus</u> full birth certificate <u>plus</u> another form of government issued identity Document <u>plus</u> change of name or marriage certificate if necessary
5	(a) Identifier Declaration <u>plus</u> full birth certificate or citizenship certificate or descent certificate <u>plus</u> Medicare or Centrelink or Department of Veterans' Affairs card <u>plus</u> change of name or marriage certificate if necessary.  (b) Identifier Declaration by a Person specified in Verification of Identity Standard paragraph 4.4(e) <u>plus</u> Medicare or Centrelink or Department of Veterans' Affairs card <u>plus</u> change of name or marriage certificate if necessary.  <i>Note: Refer to Verification of Identity Standard paragraph 4.</i>
	<b>For Persons who are not Australian citizens or residents</b>
6	(a) Foreign passport <u>plus</u> another form of government issued photographic identity Document <u>plus</u> change of name or marriage certificate if necessary  (b) Foreign passport <u>plus</u> full birth certificate <u>plus</u> another form of government issued identity Document <u>plus</u> change of name or marriage certificate if necessary.

## **4 The Identifier Declaration**

4.1 Where the requirements of:

- (a) Categories 1 to 4 cannot be met, Category 5(a) may be used; and
- (b) Category 5(a) cannot be met, Category 5(b) may be used,

including the provision of an Identifier Declaration in accordance with this paragraph.

4.2 The Identity Verifier must ensure that both the Person Being Identified and the Identity Declarant attend the same face-to-face in-person interview described in paragraph 2.1.

4.3 The Identity Verifier must verify the identity of the Identity Declarant in accordance with this Verification of Identity Standard except that the Identity Verifier cannot utilise Category 5.

4.4 The Identity Verifier must undertake reasonable enquiries to satisfy themselves that the Identity Declarant is:

- (a) an Adult; and
- (b) an Individual who has known the Person Being Identified for more than one year; and
- (c) not a Relative of the Person Being Identified; and
- (d) not a party to the Conveyancing Transaction(s) the Person Being Identified has entered into or is entering into; and
- (e) where Category 5(b) is used, an Australian Legal Practitioner, a Bank Manager, Community Leader, Court Officer, Doctor, Land Council Officeholder, Licensed Conveyancer, Local Government Officeholder, Nurse, Police Officer or Public Servant.

4.5 The Identity Verifier must ensure that the Identity Declarant provides a Statutory Declaration detailing the following:

- (a) the Identity Declarant's name and address; and
- (b) the Identity Declarant's occupation; and
- (c) the Identity Declarant's date of birth; and
- (d) the nature of the Identity Declarant's relationship with the Person Being Identified; and
- (e) that the Identity Declarant is not a Relative of the Person Being Identified; and

- (f) that the Identity Declarant is not a party to the Conveyancing Transaction(s) the Person Being Identified has entered into or is entering into; and
- (g) the length of time that the Identity Declarant has known the Person Being Identified; and
- (h) that to the Identity Declarant's knowledge, information and belief the Person Being Identified is who they purport to be; and
- (i) where Category 5(b) is used, that the Identity Declarant is an Australian Legal Practitioner, a Bank Manager, Community Leader, Court Officer, Doctor, Land Council Officeholder, Licensed Conveyancer, Local Government Officeholder, Nurse, Police Officer or Public Servant.

## **5 Body corporate**

The Identity Verifier must:

- (a) confirm the existence and identity of the body corporate by conducting a search of the Records of the Australian Securities and Investments Commission or other regulatory body with whom the body corporate is required to be registered; and
- (b) take reasonable steps to establish who is authorised to sign or witness the affixing of the seal on behalf of the body corporate; and
- (c) verify the identity of the Individual or Individuals signing or witnessing the affixing of the seal on behalf of the body corporate in accordance with the Verification of Identity Standard.

*[Note: body corporate includes an incorporated association.]*

## **6 Individual as attorney**

The Identity Verifier must:

- (a) confirm from the [registered] power of attorney the details of the attorney and the donor; and
- (b) take reasonable steps to establish that the Conveyancing Transaction(s) is authorised by the power of attorney; and
- (c) verify the identity of the attorney in accordance with the Verification of Identity Standard.

## **7 Body corporate as attorney**

The Identity Verifier must:

- (a) confirm from the [registered] power of attorney the details of the attorney and the donor; and

- (b) take reasonable steps to establish that the Conveyancing Transaction(s) is authorised by the power of attorney; and
- (c) comply with Verification of Identity Standard paragraph 5.

*[Note: body corporate includes an incorporated association.]*

**8 (Deleted)**

**9 (Deleted)**

**10 Further checks**

The Identity Verifier must undertake further steps to verify the identity of the Person Being Identified and/or the Identity Declarant where:

- (a) the Identity Verifier knows or ought reasonably to know that:
  - (i) any identity Document produced by the Person Being Identified and/or the Identity Declarant is not genuine; or
  - (ii) any photograph on an identity Document produced by the Person Being Identified and/or the Identity Declarant is not a reasonable likeness of the Person Being Identified or the Identity Declarant; or
  - (iii) the Person Being Identified and/or the Identity Declarant does not appear to be the Person to which the identity Document(s) relate; or
- (b) it would otherwise be reasonable to do so.



**SCHEDULE 9 – IDENTITY AGENT CERTIFICATION**

I, [full name of the Person undertaking the verification of identity], of [full name of Identity Agent] of [address of the Identity Agent] being a [occupation of the Identity Agent] and having been appointed in writing and directed to use the Verification of Identity Standard by [Subscriber name] hereby certify that:

- (a) the identification relates to [full name of the Person Being Identified or the Identity Declarant]; and
- (b) the identification was carried out on [date]; and
- (c) the original identification Documents as listed below were produced to me and copies of these Documents signed, dated and endorsed by me as true copies are attached to this certification; and
- (d) the verification of identity was conducted in accordance with the Verification of Identity Standard[; and
- (e) I witnessed [full name of the Person Being Identified] execute the completed Client Authorisation or grant the mortgage].\*

.....

.....

Date:

Signature of Identity Agent

List of identification Documents produced (see (c) above):

Description of identity Documents produced and endorsed
E.g. Australian Passport

\*Delete where Identity Agent not requested to witness or is not legally entitled to witness the document.

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