

PARTICIPATION RULES WAIVER

New South Wales Section 27 *Electronic Conveyancing National Law*

Title

This instrument is New South Wales Participation Rules Waiver PR 3/2022 – Local Government Organisations.

Enabling Provisions

1. Under sections 23 and 25 of the *Electronic Conveyancing National Law* (the National Law) the Registrar General has determined and published Version 6 of the Participation Rules for Electronic Conveyancing (Participation Rules), which came into effect on and from 12 April 2021. Capitalised terms used in this instrument and not defined have the meaning given to those terms in the National Law or the Participation Rules.
2. Section 27 of the National Law permits the Registrar General to waive compliance with all or any provisions of the Participation Rules if the Registrar General is satisfied that granting the waiver is reasonable in all the circumstances

Affected Participation Rules

Participation Rules 6.3, 6.4, 6.5, 7.10 and Certification Rules 1 and 2 (Affected Participation Rules).

Explanatory Statement

The *Local Government Act 1993* (NSW) allows Local Government Organisations to have variations to their names. As a result, Local Government Organisations require the ability to use those alternative names when discharging or creating new interests on titles. Whilst Local Government Organisations are entitled to act for themselves in the Electronic Lodgment Network (known as a 'Principal Subscriber'), they are only able to transact in their legal entity name. Representative Subscribers on the other hand, such as lawyers and licenced conveyancers, don't have that restriction, as they can act on behalf of other legal entities.

It is important that Local Government Organisations be allowed the choice to act for themselves and carry out their usual conveyancing procedures, without being forced to engage an external Representative Subscriber to discharge or create an interest in a different legal name. The Registrar General has therefore permitted the registration of Local Government Organisations as Representative Subscribers under varied Participation Agreements with Electronic Lodgment Network Operators, allowing land to be registered in other names or transacting with land using other names.

Under Participation Rules 6.3, 6.4 and 6.5, if a Subscriber is a Representative, the Subscriber must take reasonable steps to verify its Client has the right to enter into the transaction, verify the Client's identity and obtain a properly completed Client Authorisation, except where not required under that Participation Rule for certain types of instruments. The Local Government Organisation, in its capacity as a Representative Subscriber, in circumstances where it may acquire land under varied names, cannot perform the obligations imposed by Participation Rules 6.3, 6.4 and 6.5 as practically, the Local Government

Organisation is still acting for itself.

Under Participation Rule 7.10, the Certification Rules must be complied with. Certification Rule 1 by which a Certifier certifies that they have taken reasonable steps to confirm the identity of the relevant party is waived. Certification Rule 2 by which a Certifier certifies they hold a properly completed Client Authorisation is waived. Where, through this waiver, the Registrar General has waived a Subscriber's obligation to comply with Certification Rules 1 and 2 (**Waived Certifications**) but a Registry Instrument or other electronic Document requires the Certifier to provide the Waived Certifications in the Electronic Workspace, the Registrar General will not rely upon the Waived Certifications.

Accordingly, the Registrar General has determined that it would be reasonable in the circumstances to grant a partial waiver modifying the obligations of Subscriber(s) who are Local Government Organisations under the Affected Participation Rules.

Waiver

Subject to the Conditions, the Registrar General grants Local Government Organisations a partial waiver of their obligations to comply with the Affected Participation Rules.

Conditions

The partial waiver is granted on the condition that the Local Government Organisations is to only transact for itself (albeit under different names) and must not act for others.

Commencement

This waiver commences on the date it is signed.

Period during which this waiver applies

This waiver operates until the revocation of this waiver by the Registrar General.

Dated: 30 November 2022

Signed by:



**Danusia Cameron
Registrar General**