

PARTICIPATION RULES WAIVER

New South Wales

Section 27 *Electronic Conveyancing (Adoption of National Law) Act 2012*

Title

This instrument is New South Wales Participation Rule Waiver – NSW Trustee and Guardian

Enabling Provisions

1. Under sections 23 and 25 of the *Electronic Conveyancing (Adoption of National Law) Act 2012* (the National Law) the Registrar-General (Registrar) has determined and published Version 5 of the Participation Rules which came into effect on 25 February 2019 (Participation Rules).
2. Section 27 of the National Law permits the Registrar to waive compliance with all or any provisions of the Participation Rules if the Registrar is satisfied that granting the waiver is reasonable in all the circumstances.

Affected Participation Rules

Participation Rules 6.3, 6.13, 7.10 and Certification Rules 2, 3 and 5 (Affected Participation Rules).

Explanatory Statement

Under Participation Rule 6.3, a Representative Subscriber must enter into a Client Authorisation with its Client before the Subscriber Signs any electronic Registry Instrument or other electronic Document in the ELN. A Representative Subscriber must take reasonable steps to ensure the Client Authorisation is signed by the Subscriber's Client.

NSW Trustee and Guardian (NSWTG) routinely acts for 'managed persons' as authorised under the *NSW Trustee and Guardianship Act 2009*. NSWTG cannot obtain a Client Authorisation, or have it signed by the 'managed person' as 'managed persons' lack legal capacity to provide the authorisation. NSWTG will hold and be able to produce evidence to support the transaction, such as a court order.

Where a mortgagor is not represented, Participation Rule 6.13 requires the mortgagee or Representative to ensure it holds a mortgage granted by the mortgagor that is signed by, or on behalf of, the mortgagee. Where NSWTG lodges a mortgage to be registered over the 'managed person's' property, NSWTG may be required to sign the mortgage as both mortgagor (in its capacity as manager) and mortgagee. NSWTG would therefore be unable to comply with Participation Rule 6.13. As NSWTG would be unable to comply with Participation Rule 6.3 and 6.13, NSWTG would by consequence not be able to comply with Participation Rule 7.10 which requires a Subscriber to provide certifications set out in the Certification Rules. NSWTG will be unable to provide certifications 2, 3 as it relates to retaining a completed Client Authorisation and 5 of the Certification Rules.

Waiver

Subject to the Conditions, the Registrar grants NSWTG a partial waiver of its obligations to comply with the Affected Participation Rules when transacting as a Subscriber to an ELN.

Conditions

The partial waiver is granted on the conditions:

- (a) Where NSWTG is able to comply with the Affected Participation Rules with respect to a particular circumstance, transaction or dealing, NSWTG comply with the Affected Participation Rules.
- (b) NSWTG retains all available and applicable supporting evidence to support the transaction or dealing and present it for the purpose of Subscriber Compliance Examinations.
- (c) NSWTG reassess the need for this waiver if, and when, amendments are made to the *NSW Trustee and Guardianship Act 2009, Electronic Conveyancing (Adoption of National Law) Act 2012, Real Property Act 1900* or NSW Participation Rules.

Commencement

This waiver commences on 1 June 2020.

Period during which this waiver applies

This waiver operates until it is revoked by the Registrar.

Dated: 29 May 2020

Signed by:



Jeremy Cox
Registrar General