



OPERATING REQUIREMENTS WAIVER

SOUTH AUSTRALIA

Section 27 *Electronic Conveyancing National Law (SA)*

Title

This instrument is South Australia's Operating Requirements Waiver OR1/2016 – Identity Agent Certification.

Enabling Provisions

1. Under sections 22 and 25 of the Electronic Conveyancing National Law (SA) (the National Law) the Registrar-General (Registrar) has determined and published Version 3 of the Operating Requirements which came into effect on and from 21 January 2016.
2. Section 27 of the National Law permits the Registrar to waive compliance with all or any provisions of the Operating Requirements if the Registrar-General is satisfied that granting the waiver is reasonable in all the circumstances.

Affected Requirements

Operating Requirements 14.1(b)(i) and Schedule 7, paragraph 9.1(d)(ii).

Explanatory Statement

Under Operating Requirement 14.1(b)(i) an Electronic Lodgment Network Operator (ELNO) must only register a Subscriber if the ELNO has verified the identity of the applicant, or the Person(s) representing the applicant, to become a Subscriber in accordance with the Subscriber Identity Verification Standard set out in Schedule 7 of the Operating Requirements. Under Operating Requirement 14.4(b) the ELNO must obtain and retain any material supporting verification of the identity of the Subscriber or the Person(s) representing the Subscriber who signs the Participation Agreement.

Schedule 7, paragraph 9.1(a) of the Operating Requirements permits an ELNO to use an Identity Agent to undertake verification of identity on its behalf. Where the ELNO uses an Identity Agent, under Schedule 7, paragraph 9.1(d)(ii), the ELNO must receive from the Identity Agent an Identity Agent Certification in the form set out in paragraph 9.1(d)(ii).

The Registrar has become aware that in some cases Identity Agents prepare a certification which does not exactly replicate the Identity Agent Certification in the form set out in Schedule 7, paragraph 9.1(d)(ii) of the Operating Requirements. From the information provided the Registrar is satisfied that the certification provided by the Identity Agent substantially complies with the form of the Identity Agent Certification.

The Registrar is of the view that it is not necessary for the Identity Agent Certification provided by the Identity Agent to exactly replicate the Identity Agent Certification in the form set out in Schedule 7, paragraph 9.1(d)(ii) of the Operating Requirements provided:



- (a) the certification made by the Identity Agent substantially complies with the form of the Identity Agent Certification set out in Schedule 7, paragraph 9.1(d)(ii) of the Operating Requirements; and
- (b) the Identity Agent and the ELNO otherwise comply with Schedule 7, paragraph 9.1 of the Operating Requirements.

Accordingly, the Registrar has determined that it would be reasonable in the circumstances to grant a partial waiver to modify the ELNO's obligations under Operating Requirements 14.1(b)(i) and Schedule 7, paragraph 9.1(d)(ii).

Partial Waiver

Subject to the Conditions, the Registrar grants the ELNO a partial waiver of the ELNO's obligation to comply with Operating Requirement 14.1(b)(i) and Schedule 7, paragraph 9.1(d)(ii) by permitting the ELNO to receive a certification from an Identity Agent which substantially complies with the form provided in Schedule 7, paragraph 9.1(d)(ii).

Conditions

A partial waiver of Operating Requirement 14.1(b)(i) and Schedule 7, paragraph 9.1(d)(ii) is granted on the conditions that:

- (a) the certification made by the Identity Agent substantially complies with the form provided in Schedule 7, paragraph 9.1(d)(ii) of the Operating Requirements; and
- (b) the ELNO and Identity Agent otherwise comply with Schedule 7, paragraph 9.1 of the Operating Requirements.

Commencement

This partial waiver commenced on 21 January 2016

Period during which this waiver applies

This partial waiver operates until the earlier of:

- (a) the date the Operating Requirements are amended to provide for the adequacy of substantial compliance with the Subscriber / Identity Agent Certification; or
- (b) the revocation of this waiver by the Registrar.

Dated: 21 January 2016

Signed by:

A handwritten signature in blue ink, appearing to read 'B.P.A.'.

Brenton Pike
Registrar-General