



Department of Environment,
Land, Water & Planning

Land Victoria
570 Bourke Street
MELBOURNE 3000
GPO Box 527
MELBOURNE VIC 3001
Telephone: (03) 8636 2617
Facsimile: (03) 8636 2662
DX 250639

PARTICIPATION RULES WAIVER

Victoria

Section 27 Electronic Conveyancing National Law (Victoria)

Title

This instrument is Victorian Participation Rules Waiver PR1/2016 – Identity Agent Certification.

Enabling Provisions

1. Under sections 23 and 25 of the Electronic Conveyancing National Law (Victoria) (the National Law) the *Registrar of Titles* (Registrar) has determined and published:
 - (a) Version 1 of the Participation Rules which came into effect on and from April 2013.
 - (b) Version 2 of the Participation Rules which came into effect on and from April 2014.
 - (c) Version 3 of the Participation Rules which came into effect on and from 9 November 2015.
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 Rules

Version 1 of the Participation Rules: Schedule 8, paragraph 9(d).

Version 2 of the Participation Rules: Schedule 8, paragraph 9(e).

Version 3 of the Participation Rules: Participation Rule 6.5.5(d)(ii) and Schedule 9.

Privacy Statement

Any personal information about you or a third party in your correspondence will be protected under the provisions of the Privacy and Data Protection Act 2000. It will only be used or disclosed to appropriate Ministerial, Statutory Authority, or departmental staff in regard to the purpose for which it was provided, unless required or authorised by law. Enquiries about access to information about you held by the Department should be directed to the Privacy Coordinator, Department of Environment, Land, Water and Planning, PO Box 500, East Melbourne, Victoria 8002.



Explanatory Statement

Under Participation Rule 6.5.1 a Subscriber must take reasonable steps to verify the identity of the Persons listed under that rule.

Under Participation Rule 6.5.2 (Version 1 and Version 2 of the Participation Rules) and Participation Rule 6.5.6 (Version 3 of the Participation Rules) compliance with the Verification of Identity Standard in Schedule 8 will be deemed to constitute taking reasonable steps for the purposes of Participation Rule 6.5.1.

Under Schedule 8 (Version 1 and Version 2 of the Participation Rules) and Rule 6.5.5(a) (Version 3 of the Participation Rules) a Subscriber is permitted to use a Subscriber Agent or Identity Agent respectively to undertake verification of identity.

Where a Subscriber uses a Subscriber Agent or Identity Agent, the Subscriber must receive from that agent a certification (**Subscriber / Identity Agent Certification**) in the form set out in Schedule 8, paragraph 9(d) (Version 1 of the Participation Rules), Schedule 8, paragraph 9(e) (Version 2 of the Participation Rules) or Schedule 9 (Version 3 of the Participation Rules) as applicable.

The Registrar has become aware that in some cases Subscriber Agents / Identity Agents prepare a certification which does not exactly replicate the Subscriber / Identity Agent Certification's in Schedule 8, paragraph 9(d) (Version 1 of the Participation Rules), Schedule 8 paragraph, 9(e) (Version 2 of the Participation Rules) or Schedule 9 (Version 3 of the Participation Rules) as applicable.

From the information provided the Registrar is satisfied that the certifications provided by the Subscriber / Identity Agent substantially comply with the form of the Subscriber / Identity Agent Certification in Schedule 8, paragraph 9(d) (Version 1 of the Participation Rules), Schedule 8, paragraph 9(e) (Version 2 of the Participation Rules) or Schedule 9 (Version 3 of the Participation Rules) as applicable.

The Registrar is of the view that it is not necessary for the certification provided by the Subscriber / Identity Agent to exactly replicate the Subscriber / Identity Agent Certification set out in Schedule 8, paragraph 9(d) (Version 1 of the Participation Rules), Schedule 8 paragraph 9(e) (Version 2 of the Participation Rules) or Schedule 9 (Version 3 of the Participation Rules) respectively provided:

- (a) the certification made by the Subscriber / Identity Agent substantially complies with the form of the Subscriber / Identity Agent Certification in the form set out in Schedule 8, paragraph 9(d) (Version 1 of the Participation Rules), Schedule 8, paragraph 9(e) (Version 2 of the Participation Rules) or Schedule 9 (Version 3 of the Participation Rules) respectively; and
- (b) the Subscriber and Subscriber/Identity Agent otherwise comply with Schedule 8, paragraph 9(d) (Version 1 of the Participation Rules), Schedule 8,

paragraph 9(e) (Version 2 of the Participation Rules) or Rule 6.5.5 (Version 3 of the Participation Rules) as applicable.

Accordingly, the Registrar has determined that it would be reasonable in all the circumstances to grant a partial waiver modifying a Subscriber's obligations under the Participation Rules.

Partial Waiver

Subject to the Conditions, the Registrar grants Subscribers to an Electronic Lodgement Network a partial waiver modifying the Subscriber's obligations to comply with:

Schedule 8, paragraph 9(d) (Version 1 of the Participation Rules);

Schedule 8, paragraph 9(e) (Version 2 of the Participation Rules);

Rule 6.5.5 (d)(ii) and Schedule 9 (Version 3 of the Participation Rules);

by providing that where a Subscriber / Identity Agent provides a certification which substantially complies with the form provided in Schedule 8, paragraph 9(d) (Version 1 of the Participation Rules), Schedule 8, paragraph 9(e) (Version 2 of the Participation Rules) or Schedule 9 (Version 3 of the Participation Rules) as applicable the Subscriber will have complied with Schedule 8, paragraph 9(d), Schedule 8, paragraph 9(e) or Schedule 9 respectively.

Conditions

The partial waiver is granted on the conditions that:

- (a) the Subscriber / Identity Agent provides a certification which substantially complies with the form provided in Schedule 8, paragraph 9(d) (Version 1 of the Participation Rules), Schedule 8, paragraph 9(e) (Version 2 of the Participation Rules) or Schedule 9 (Version 3 of the Participation Rules) as applicable.
- (b) the Subscriber and Subscriber / Identity Agent otherwise complies with Schedule 8, paragraph 9(d) (Version 1 of the Participation Rules); Schedule 8, paragraph 9(e) (Version 2 of the Participation Rules); or Rule 6.5.5 (Version 3 of the Participation Rules) as applicable.

Commencement

This partial waiver commences on: the date Version 1 of the Participation Rules came into effect.

Period during which this waiver applies

This partial waiver operates to the earlier of:

- (a) the date the Participation Rules 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: 2 March 2016

Signed by:



Ian Ireson
Deputy Registrar of Titles