

2024

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

TENTH ASSEMBLY

**REVISED EXPLANATORY STATEMENT – DI2024-29 - Electronic Conveyancing
National Law (ACT) Participation Rules 2024**

**Presented by
Shane Rattenbury MLA
Attorney-General
4 June 2024**

Australian Capital Territory

Electronic Conveyancing National Law (ACT) Participation Rules 2024

Disallowable instrument DI2024–29

made under the

Electronic Conveyancing National Law (ACT), s 23 (Participation rules) and s25(1) (Publication of operating requirements and participation rules)

EXPLANATORY STATEMENT

Overview

The purpose of this explanatory statement is to describe the amendments to the Participation Rules for subscribers to an Electronic Lodgment Network (ELN) in the Australian Capital Territory. The rules have been determined pursuant to section 23 of the *Electronic Conveyancing National Law (ACT)* (ECNL). Commencement complies with section 25(1)(b) of the *ECNL*.

The Participation Rules made by this instrument have adopted the Model Participation Rules Version 7 developed and approved by the Australian Registrars' National Electronic Conveyancing Council (ARNECC) in full. The Model Participation Rules have been determined by ARNECC for promulgation by each Registrar before coming into effect in that jurisdiction as Participation Rules.

The Participation Rules covers topics such as the eligibility criteria for subscribers, representations or warranties to be given by subscribers, suspension or termination of a subscriber's access, client authorisations, obligations of subscribers to verify the identity of their client, certification of registry instruments, digital signatures and the retention of documents.

Pursuant to section 36(1)(g) of the *Legislation Act 2001* a regulatory impact statement is not required for these Participation Rules as they are part of a nationally uniform scheme of legislation.

Human Rights

Section 12 of the *Human Rights Act 2004* (HRA) provides that everyone has the right not to have his or her privacy, family, home or correspondence interfered with unlawfully or arbitrarily and not to have his or her reputation unlawfully attacked. The

proposed disallowable instrument introduces minor changes to the Participation Rules for subscribers of the ELN in the Australian Capital Territory that primarily relate to changes in the Model Operating Requirements Version 7 about interoperability of ELNOs. As the ELN contains individual's personal information for the purpose of lodging land title registry instruments and other documents, the changes engage the right to privacy under section 12. These proposed changes to the Participation Requirements are primarily future focused. They are intended to impose an obligation on ELNOs to perform interoperable transactions from late 2025 as per the Operating Requirements. They do not create any new obligation on persons or subscribers to share personal information. As such, these changes neither limit nor positively engage a person or subscribers right to privacy now or in the future.

It is important to also note:

- Interoperability does not require subscribers to provide any additional personal information to an Electronic Lodgment Network that is currently required for a land transaction and is publicly available from the land register;
- personal information is essential to facilitate a property transaction to affect a legal transfer of land or register interests in land and to ensure the integrity of the system;
- the Electronic Conveyancing National Law framework allows for the lawful collection and use of personal information, and imposes obligations on subscribers and ELNOs to protect that data; and
- it only effects relevant subscribers.

The proposed changes do not change or increase the nature or scope of data or information provided, nor further engage privacy matters beyond what currently exists in a regular paper or electronic base land transaction.

On this basis, to the extent that the Participation Rules may engage with the rights of privacy, these limitations are justified.

Detail

This Explanatory Statement deals with the changes in provisions of the Participation Rules in groups rather than Rule-by-Rule. The Participation Rules are largely self-explanatory and for the purposes of Version 7 are to be read alongside the more substantial changes to the Model Operating Requirements Version 7 which relate to the implementation of interoperability in 2025. These amendments will be well understood by subscribers, particularly those who are already involved in electronic conveyancing in other jurisdictions. ARNECC will publish updated Guidance Notes on the Participation Rules on the ARNECC website to assist subscribers in understanding what is expected in complying with the Rules.

Unless otherwise defined in this document, each capitalised word has the meaning given to it in the Participation Rules.

ELNO Participation Agreements

Participation Rules 5.5, 7.1, 7.3, 7.8, and 10

The changes to these Rules compels subscribers to consider any Participation Agreement that may be entered into not just with the existing ELNO but also any other ELNO that it may have such an agreement with for the purposes of interoperation - in effect allowing for multiple Participation Agreements.

Comprised Security Items

Participation Rule 7.9

The amendment to this Rule extends the obligation of Subscribers to notify all participating ELNOs of the security items if any of its Users have been or are likely to be compromised.

Definitions

Amendments and insertions have been made to the definitions to include the below:

Interoperability has the meaning given to it in the ECNL.

Interoperable Electronic Workspace means an Electronic Workspace generated by an ELN and 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.

As above, these amendments relate to and should be read in conjunction with the amendments in the Model Operating Requirements and the Guidance Notes on the Participation Rules once published.

Other definitions adjusted as appropriate to reflect the amendments.