

WA Participation Rules Version 7

Determined by the Registrar of Titles under Section 23 of
the *Electronic Conveyancing Act 2014*

Explanatory Memorandum Prepared for The Joint Standing Committee on Delegated Legislation



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Hon John Carey
Minister for Lands



Brad McBride
Delegate Registrar of Titles



Bruce Roberts
Acting Chief Executive

For further information relating to this Explanatory Memorandum, please contact:

Diem Kyi

A/Principal Consultant

Registrations

Landgate, 1 Midland Square, MIDLAND WA 6056

Ph 9273 9844

Email diem.kyi@landgate.wa.gov.au

1 Background & Introduction

On 23 February 2024, Brad McBride, Delegate Registrar of Titles made a written determination in accordance with section 23 of the *Electronic Conveyancing Act 2014* (EC Act) that WA Participation Rules Version 7 (WAPRv7) would come into effect in WA on 28 March 2024.

WAPRv7 forms part of the legal framework required for providing National Electronic Conveyancing (NEC) in Western Australia. Annexure 1 is a diagram explaining the NEC legal framework.

1.1 What is National Electronic Conveyancing

NEC is a legal and business framework which enables the electronic preparation of real property conveyancing transaction documents and the electronic lodgement of those documents with a Land Registry. Where appropriate NEC also enables the electronic settlement of the real property conveyancing transaction including financial disbursements.

NEC is delivered through on-line business platforms called Electronic Lodgment Networks (Networks).

The Networks are provided and operated by Electronic Lodgment Network Operators (Operators) approved by Landgate. There are currently two Operators approved in WA, Property Exchange Australia Ltd (PEXA) and Sympli Australia Pty Ltd (Sympli).

Only authorised users (Subscribers), which are generally lawyers, conveyancers and financial institutions, are entitled to access the Networks on behalf of their clients or on their own behalf.

1.2 The National Scheme

NEC is an initiative of the Council of Australian Governments (COAG) under the National Partnership Agreement to Deliver a Seamless National Economy 2008.

All States and Territories have signed the Intergovernmental Agreement for an Electronic Conveyancing National Law (IGA). The IGA came into effect on 21 November 2011.

The Australian Registrars National Electronic Conveyancing Council (ARNECC), established under the IGA, is responsible for the ongoing management and maintenance of the Electronic Conveyancing National Law (EC National Law).

1.3 The EC National Law

The key provisions of the EC National Law are as follows.

- authorise the Registrar or the Land Registry to receive and process electronic instruments;
- provide that electronic Land Registry instruments, when digitally signed by a Subscriber under a Client Authorisation, have the same effect as a signed paper document;

- set out the circumstances in which a digital signature is binding;
- authorise Landgate to approve an operator of a network;
- provide that the Registrar can make
 - operating requirements binding an operator of a Network; and
 - **participation rules** binding Subscribers to a Network; and
- require an organisation approved as an Operator to establish and maintain interoperability with each Network operated by another Operator.

1.4 The Electronic Conveyancing Act 2014 ("EC Act")

The EC Act enacts legislation in Western Australia corresponding to the EC National Law. The EC Act was passed by Parliament in March 2014.

Western Australia has a different statutory schema from other Land Registries in Australia. In Western Australia there are three entities whose functions relate to the administration of the Torrens Land Title Register (Register). The Western Australian Land Information Authority (Landgate) is a statutory authority incorporated under the Land Information Authority Act 2006. The Registrar of Titles (Registrar) and the Commissioner of Titles (Commissioner) are both statutory officeholders appointed under sections 7 and 5 respectively of the Transfer of Land Act 1893. Landgate, the Registrar and the Commissioner each have statutory functions and powers relating to the administration, accuracy and integrity of the Register.

In implementing the EC National Law, minor variations were made to the EC Act to reflect Western Australia's statutory schema.

1.5 Model Participation Rules

The EC Act provides for the making of participation rules by the Registrar of Titles with which a Subscriber must comply in using the Network.

In determining the participation rules for a jurisdiction, the Registrar must have regard to any model participation rules published by ARNECC. The statutory requirement for the Registrar to have regard to ARNECC's model participation rules in determining the participation rules in the jurisdiction is intended to ensure that Subscribers use the Network in the same manner and are subject to the same obligations nationally.

ARNECC has developed and published Model Participation Rules Version 7 (MPRv7) following industry consultation.

2 WA Participation Rules Version 7

As required by EC Act s24(2), WAPRv7 was created having a very close regard to MPRv7. The rules in WAPRv7 are identical to MPRv7.

On 23 February 2024, a Delegate Registrar of Titles, Mr Brad McBride, made a written determination that WAPRv7 will come into effect in WA on 28 March 2024 as required by EC Act s23(1).

3 Date of Publication & Government Gazette Notice

WAPRv7 was published on Landgate's website on 23 February 2024, in accordance with EC Act s25.

Notice of the making and publication of WAPRv7 was published in the Government Gazette dated 8 March 2024, in accordance with EC Act s43(3). Annexure 2 is a copy of the Government Gazette notice.

4 Purpose of and Justification for Subsidiary Legislation

The purpose of the participation rules are to set out the rules Subscribers must comply with when using a Network, to achieve the required regulatory outcomes for NEC. Those regulatory outcomes are the creation of:

- an environment for the completion of transactions that is trusted by the community;
- an environment in which transactions are only completed with the authority of lawful parties and conducted and completed in accordance with their instructions;
- an environment in which transactions are completed in compliance with the Registrar's requirements;
- an environment in which transactions are completed without error, omission or misrepresentation.

Subscribers must use the Network in accordance with WAPRv7. There is a statutory obligation on a Subscriber to comply with WAPRv7 under EC Act s26. In addition, a Subscriber will enter into a contract (Participation Agreement) with an Operator requiring compliance with WAPRv7.

4.1 Key changes in Participation Rules

WAPRv7 key changes relate to interoperability. On 12 May 2022, the *Electronic Conveyancing National Law Amendment Bill* passed the NSW Parliament. The Bill enacts a statutory obligation for Operators to interoperate.

Currently, all parties to conveyancing transactions must use the same Network to complete the transaction. Interoperability refers to different Operator's Networks being able to communicate with each other to complete a property transaction. For multiparty transactions, interoperability will allow Subscribers to use the Network of their choosing, without having to subscribe to all Networks to complete a property transaction. Interoperability connections are currently being built between Networks.

The key changes are summarised below.

Definitions

In relation to the interoperability, definitions have been added or existing definitions amended as required.

Subscriber as trustee and partnerships

An existing rule for a Subscriber that is a partnership requires the Subscriber to do anything required by an Operator to give full effect to the Participation Rules. The rule has been amended so that the Subscriber must do anything required by an Operator with which it has a current Participation Agreement.

Obligations regarding system security and integrity

An existing rule requires a Subscriber to comply with the Operator's security policy. Amendment of the rule so that the Subscriber must comply with the security policy of each Operator with which it has a current Participation Agreement.

User access

Existing rules relating to keeping Access Credentials up to date with an Operator and ensuring a Subscriber Administrator is appointed for the Network amended to apply to each Operator and each Operator's Network with which the Subscriber has a current Participation Agreement.

Revoking authority

Existing rules require that if a Subscriber is restricted from using a Network by the Registrar, that Subscriber must Promptly prevent any of its Users from accessing and using that Network. This rule has been amended so that if a Subscriber is restricted from using a Network provided and operated by an Operator with which the Subscriber has a current Participation Agreement, then the Subscriber must prevent its Users from accessing and using that Network as well as any other affected Network.

Compromised Security Items

In the event a Security Item is compromised a Subscriber is required to (amongst other things) –

- revoke the User's authority to access and use a Network
- Promptly notify the Operator

These rules have been expanded to include revocation of their authority to access and use any Network affected by the compromise and to Promptly notify all Operators who provide and operate a Network affected by the compromise.

If a Private Key is used to sign a document without the authorisation of the Subscriber or the authorisation of their Client, they must immediately notify the Operator on whose Network the documents were digitally signed.

Compliance

Amendment of an existing rule requiring Subscribers provide the Operator and the Registrar with written notice of non-compliance of the Participation Rules to state they must provide written notice to any Operator with which they have a current Participation Agreement and the Registrar.

Schedule 1

On 7 August 2023 the changes to the *Transfer of Land Act 1893* (TLA) introduced by the *Transfer of Land Amendment Act 2022* (TLAA), came into effect. The three key changes were –

- Removal of Duplicate Certificates of Title
- Enabling the issuing of statutory notices under the TLA electronically;
- Clarification of the definition of counterpart documents.

Schedule 1 of the WAPRv7 was amended to reflect that verification of identity rules relating to handing back duplicate certificates of title, and certifications made on documents relating to duplicate certificates of title, are no longer applicable in Western Australia.

Schedule 6 – Insurance Rules

Amendment to an existing rule requiring a Subscriber provide an Operator with evidence of meeting insurance requirements amended to clarify the requirement relates to any Operator with which the Subscriber has a current participation agreement.

5 Unusual or Controversial Provisions

There are no unusual or controversial provisions in WAPRv7.

6 Consultation

National and State targeted consultation has occurred in drafting and finalising MPRv7. A summary of the consultation feedback is available at Annexure 3. As the rules in WAPRv7 are identical to MPRv7, it was not necessary to conduct any further consultation in relation to WAPRv7.

7 Regulatory Impact Assessment

A Regulatory Impact Assessment was not required for the WAPRv7 as the introduction of these participation rules does not have an economically significant impact on Western Australia. Landgate made this determination by assessing the WAPRv7 against the provisions of the Better Regulation Unit Guidance Note 1: Economically Significant Impacts finding that the WAPRv7 does not meet the criteria to be economically significant. Specifically, WAPRv7 does not:

- add significantly to business costs,
- disproportionately impact groups, such as small business or low-income households,
- introduce controls that reduce the number of participants in a market,
- impose higher costs on a business activity or type of product or service, or
- impose restrictions that reduce the available range or price or service quality options.

8 Fees

WAPRv7 does not impose any fees.

9 Disclaimer

This explanatory memorandum is only an aid to understanding and must not be substituted for the subsidiary legislation or other instrument gazetted or made available to the public.