

# Electronic Conveyancing National Law (NSW) No 88a of 2012

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New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Note**

The Electronic Conveyancing National Law is applied as a law of NSW by the NSW *Electronic Conveyancing (Adoption of National Law) Act 2012*. This version is the Law as it applies in NSW.

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the *Interpretation Act 1987*.

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New South Wales

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New South Wales

## Editorial note—

The Electronic Conveyancing National Law is applied as a law of NSW by the NSW *Electronic Conveyancing (Adoption of National Law) Act 2012*. This version is the Law as it applies in NSW.

## Part 1 Preliminary

### 1 Short title

This Law may be cited as the *Electronic Conveyancing National Law (NSW)*.

### 2 Commencement

This Law commences in a participating jurisdiction as provided by the application law of that jurisdiction.

### 3 Definitions

(1) In this Law—

**another registrar** means a person who is a Registrar as defined in the application law of another participating jurisdiction.

**application law** means a law of a participating jurisdiction that—

- (a) applies this Law, either with or without modifications, as a law of the participating jurisdiction, or
- (b) is a corresponding law.

**ARNECC** means the Australian Registrars' National Electronic Conveyancing Council established by the Intergovernmental Agreement.

**associated financial transaction** means a transaction of a financial nature that is associated with a conveyancing transaction.

#### Examples

- 1 The payment of the purchase price for the sale and purchase of an interest in land.

2 The advancing of money in return for the granting of a mortgage or charge over an interest in land.

3 The payment of any tax, duty (for example, stamp duty), fee or charge payable in respect of the conveyancing transaction.

**client authorisation** has the meaning given in section 10.

**compliance examination** has the meaning given in section 33.

**conveyancing transaction** means a transaction that involves one or more parties and the purpose of which is—

- (a) to create, transfer, dispose of, mortgage, charge, lease or deal with in any other way an estate or interest in land, or
- (b) to get something registered, noted or recorded in the titles register, or
- (c) to get the registration, note or record of something in the titles register changed, withdrawn or removed.

**corresponding law**—

- (a) means a law of a jurisdiction that corresponds to this Law, and
- (b) includes a law of a jurisdiction that is prescribed by regulations made under a law of this jurisdiction as a corresponding law.

**digital signature** means encrypted electronic data intended for the exclusive use of a particular person as a means of identifying that person as the sender of an electronic communication or the signer of a document.

**digitally sign**, in relation to an electronic communication or a document, means create a digital signature for the communication or document.

**ELN** means Electronic Lodgment Network—see section 13.

**ELNO** means Electronic Lodgment Network Operator—see section 15.

**Intergovernmental Agreement** means the Intergovernmental Agreement for a National Electronic Conveyancing Law between the State of New South Wales, the State of Victoria, the State of Queensland, the State of Western Australia, the State of South Australia, the State of Tasmania and the Northern Territory of Australia, that came into operation on 21 November 2011 and as in force from time to time.

**interoperability** means the interworking of ELNs operated by ELNOs in a way that enables—

- (a) a subscriber using an ELN (the **first subscriber**) to complete a conveyancing transaction that involves a subscriber using another ELN without the first subscriber having to be a subscriber to the other ELN, and

(b) the preparation of a registry instrument or other document in electronic form using data from different ELNs.

**interoperability requirement** means the requirement set out in section 18A(1).

**jurisdiction** means State.

**land titles legislation**, for the purposes of the application of this Law as a law of a participating jurisdiction, has the meaning given by the application law of the jurisdiction.

**law**, in relation to a Territory, means a law of, or in force in, that Territory.

**law of this jurisdiction** includes the principles and rules of common law and equity to the extent that they have effect in this jurisdiction from time to time.

**lodge** includes deposit, present and file.

**operating requirements** means the requirements determined under section 22.

**participating jurisdiction** means a jurisdiction that is a party to the Intergovernmental Agreement and in which—

- (a) this Law applies as a law of the jurisdiction, either with or without modifications, or
- (b) there is a corresponding law.

**participation agreement**, in relation to an ELN, means—

- (a) if an ELNO provides and operates the ELN, an agreement between the ELNO and another person under which the other person is authorised to use that ELN, or
- (b) if the Registrar provides and operates the ELN, an agreement between the Registrar and another person under which the other person is authorised to use that ELN.

**participation rules** means the rules determined under section 23.

**Registrar**, for the purposes of the application of this Law as a law of a participating jurisdiction, has the meaning given by the application law of the jurisdiction.

**registry instrument**, for the purposes of the application of this Law as a law of a participating jurisdiction, has the meaning given by the application law of the jurisdiction.

**responsible tribunal**, for the purposes of the application of this Law as a law of a participating jurisdiction, has the meaning given by the application law of the jurisdiction.

**State** includes a Territory.

**subscriber** means a person who is authorised under a participation agreement to use an ELN to complete conveyancing transactions on behalf of another person or on their own behalf.

**Territory** means the Australian Capital Territory or the Northern Territory of Australia.

**titles register**, for the purposes of the application of this Law as a law of a participating jurisdiction, has the meaning given by the application law of the jurisdiction.

- (2) A term used in this Law or a statutory instrument and also in the land titles legislation has the same meaning in this Law or the statutory instrument as it has in that legislation, unless the term is defined in this Law or the statutory instrument or the context requires otherwise.

#### **4 Interpretation generally**

Schedule 1 applies in relation to this Law.

#### **5 Object of this Law**

- (1) The object of this Law is to promote efficiency throughout Australia in property conveyancing by providing a common legal framework that—
- (a) enables documents in electronic form to be lodged and processed under the land titles legislation of each participating jurisdiction, but
  - (b) does not derogate from the fundamental principles of the Torrens system of land title as incorporated in the land titles legislation of each participating jurisdiction, such as indefeasibility of title.
- (2) In order to achieve this object, this Law, among other things, authorises the Registrar in each participating jurisdiction to operate or authorise the operation of an Electronic Lodgment Network, and provides for the making of rules relating to the operation of the Electronic Lodgment Network.

#### **6 Law binds the State**

- (1) This Law binds the State.
- (2) In this section—

**State** means the Crown in right of this jurisdiction, and includes—

- (a) the Government of this jurisdiction, and
- (b) a Minister of the Crown in right of this jurisdiction, and



- (c) a statutory corporation, or other entity, representing the Crown in right of this jurisdiction.

## **Part 2 Electronic Conveyancing**

### **Division 1 Electronic lodgment**

#### **7 Documents may be lodged electronically**

- (1) A document may be lodged electronically for the purposes of the land titles legislation if the document is lodged—
  - (a) in a form approved by the Registrar, and
  - (b) by means of an ELN provided and operated under this Law.
- (2) An approval for the purposes of subsection (1) (a) may be given under section 44 or the land titles legislation or in some other way that the Registrar considers appropriate.

#### **8 Registrar to process documents lodged electronically**

- (1) If a document is lodged electronically in accordance with section 7, the Registrar must receive and process the document in accordance with the land titles legislation.
- (2) This section does not limit or affect the need for the document to comply with the requirements of the land titles legislation, this Law or any other law of this jurisdiction.

#### **9 Status of electronic registry instruments**

- (1) A registry instrument that is in a form in which it can be lodged electronically under section 7 has the same effect as if that instrument were in the form of a paper document.
- (2) A registry instrument that is digitally signed by a subscriber in accordance with the participation rules applicable to that instrument has the same effect as if a paper document having the equivalent effect had been executed by—
  - (a) if the subscriber signs under a client authorisation, each person for whom the subscriber signs in accordance with the client authorisation, or
  - (b) the subscriber in any other case.
- (3) If a registry instrument is digitally signed in accordance with the participation rules applicable to that instrument—
  - (a) the instrument is to be taken to be in writing for the purposes of every other law of this jurisdiction, and
  - (b) the requirements of any other law of this jurisdiction relating to the execution,

signing, witnessing, attestation or sealing of documents must be regarded as having been fully satisfied.

## **Division 2 Client authorisations and digital signatures**

### **Subdivision 1 Client authorisations**

#### **10 Client authorisations**

- (1) A client authorisation is a document—
  - (a) that is in the form required by the participation rules, and
  - (b) by which a party to a conveyancing transaction authorises a subscriber to do one or more things on that party's behalf in connection with the transaction so that the transaction, or part of the transaction, can be completed electronically.
- (2) The following are examples of the things that a client authorisation may authorise a subscriber to do—
  - (a) to digitally sign registry instruments or other documents,
  - (b) to present registry instruments or other documents for lodgment electronically,
  - (c) to authorise or complete any associated financial transaction.

#### **11 Effect of client authorisation**

- (1) A properly completed client authorisation—
  - (a) has effect according to its terms, and
  - (b) is not a power of attorney for the purposes of any other law of this jurisdiction relating to powers of attorney.
- (2) If a client authorisation is properly completed, the requirements of any other law of this jurisdiction relating to the execution, signing, witnessing, attestation or sealing of documents must be regarded as having been fully satisfied.
- (3) Subsections (1) and (2) do not limit or affect the application of any law of this jurisdiction relating to powers of attorney in relation to—
  - (a) the execution of a client authorisation under a power of attorney, or
  - (b) a client authorisation executed under a power of attorney.

## Subdivision 2 Digital signatures

### 12 Reliance on, and repudiation of, digital signatures

(1A) In this section—

**financial institution** means—

- (a) an authorised deposit-taking institution as defined in the *Banking Act 1959* of the Commonwealth, section 5(1), or
  - (b) a bank constituted by a law of this jurisdiction or of another State or the Commonwealth.
- (1) If a subscriber's digital signature is created for a registry instrument or other document in connection with a conveyancing transaction, then—
- (a) unless that subscriber repudiates that digital signature, that registry instrument or other document is to be taken to be signed by that subscriber, and
  - (b) unless that subscriber repudiates that digital signature, that digital signature is binding, in relation to that registry instrument or other document, on—
    - (i) that subscriber, and
    - (ii) all other persons (if any) for whom that subscriber acts under a client authorisation with respect to that conveyancing transaction, and
  - (c) unless that subscriber repudiates that digital signature, that digital signature is binding, in relation to that registry instrument or other document, for the benefit of—
    - (i) each of the parties to that conveyancing transaction, and
    - (ii) each subscriber who acts under a client authorisation with respect to that conveyancing transaction, and
    - (iia) each ELNO whose ELN is used in connection with that conveyancing transaction, and
    - (iii) any person claiming through or under any person to whom subparagraph (i) applies, and
    - (iv) the Registrar, once that registry instrument or other document is lodged electronically in accordance with section 7, and
    - (v) in the case of a document that contains a direction for the payment of money as part of that conveyancing transaction, each financial institution that pays or receives money in accordance with that direction, and

- (d) that subscriber cannot repudiate that digital signature except in the circumstances set out in subsection (4).
- (2) Subsection (1) applies regardless of—
  - (a) who created the subscriber’s digital signature, and
  - (b) the circumstances (including fraud) in which the subscriber’s digital signature was created.
- (3) Subsection (1) does not prevent the unsigned of a registry instrument or other document.
- (4) Despite subsections (1) and (2), a subscriber can repudiate the subscriber’s digital signature with respect to a registry instrument or other document if the subscriber establishes—
  - (a) that the digital signature was not created by the subscriber, and
  - (b) that the digital signature was not created by a person who, at the time the subscriber’s digital signature was created for the registry instrument or other document—
    - (i) was an employee, agent, contractor or officer (however described) of the subscriber, and
    - (ii) had the subscriber’s express or implied authority to create the subscriber’s digital signature for any document or documents, and
  - (c) that neither of the following enabled the subscriber’s digital signature to be created for the registry instrument or other document—
    - (i) a failure by the subscriber, or any of the subscriber’s employees, agents, contractors or officers, to fully comply with the requirements of the participation rules,
    - (ii) a failure by the subscriber, or any of the subscriber’s employees, agents, contractors or officers, to take reasonable care.
- (5) For the purposes of subsection (4) (b) (ii), it does not matter whether the authority was—
  - (a) general, or
  - (b) limited or restricted to documents of a particular class or to a particular document or in any other way.

## **Part 3 Electronic Lodgment Networks**

### **Division 1 Preliminary**

#### **13 Electronic Lodgment Network**

- (1) An Electronic Lodgment Network (**ELN**) is an electronic system that enables the lodging of registry instruments and other documents in electronic form for the purposes of the land titles legislation.
- (2) An ELN may also enable the preparation of registry instruments and other documents in electronic form for lodging under the land titles legislation.

### **Division 2 Operation of Electronic Lodgment Networks**

#### **14 Registrar may provide and operate ELN**

The Registrar may provide and operate an ELN.

#### **15 Registrar may approve ELNO to provide and operate ELN**

- (1) The Registrar may approve a person as an Electronic Lodgment Network Operator (**ELNO**) to provide and operate an ELN.
- (2) The Registrar must not approve a person under this section unless the person meets the qualifications for approval set out in the operating requirements.
- (3) An approval under this section must be in writing and must state the period for which it is to have effect.
- (4) The Registrar may grant more than one approval under this section.

#### **16 Conditions of approval as ELNO**

- (1) The Registrar may attach conditions to an approval under section 15, and those conditions must be specified in the approval.
- (2) The Registrar may at any time, by notice in writing to the ELNO, vary or revoke the conditions attached to the approval of that ELNO or attach new or additional conditions.

#### **17 Effect of approval as ELNO**

- (1) A person who is approved as an ELNO under section 15 may provide and operate an ELN—
  - (a) for the period stated in the approval, and
  - (b) subject to the conditions (if any) attached to the approval, and

(c) in accordance with the operating requirements.

(2) Subsection (1) is subject to sections 19 and 20.

(3) In performing functions as an ELNO, a person approved under section 15 is not and does not represent the State, and is not an agent of the State.

(4) The approval of a person as an ELNO does not restrict or prevent the provision, by that person, of services additional to those provided by the ELN.

(5) Subsection (4) is subject to the operating requirements.

### **18 ELNO required to comply with operating requirements**

A person approved as an ELNO under section 15 must comply with the operating requirements.

### **18A ELNO required to establish and maintain interoperability**

(1) A person approved as an ELNO under section 15 must, in accordance with the operating requirements, establish and maintain interoperability between the ELN operated by the person and each ELN operated by another ELNO.

(2) The Registrar may waive compliance with the interoperability requirement if the Registrar is satisfied that granting the waiver is reasonably necessary in all the circumstances.

(3) A waiver under subsection (2) may—

(a) be total or partial, and

(b) apply to particular persons approved as an ELNO under section 15 or particular classes of those persons, and

(c) apply generally or be limited in its application by reference to specified exceptions or factors, and

(d) apply indefinitely or for a specified period, and

(e) be unconditional or subject to conditions or restrictions.

### **19 Renewal of approval as ELNO**

(1) The Registrar may renew an approval of a person as an ELNO under section 15 if the Registrar is satisfied that the person meets the qualifications for renewal of approval set out in the operating requirements.

(2) The renewal of an approval under this section must be in writing and must state the period for which the renewal is to have effect.

- (3) In renewing an approval, the Registrar may exercise the powers in section 16 to attach conditions to the approval or vary or revoke conditions attached to the approval.

## **20 Revocation or suspension of approval as ELNO**

The Registrar may revoke or suspend the approval of a person as an ELNO in the circumstances set out in the operating requirements.

## **21 Monitoring of activities in ELN**

- (1) The Registrar may monitor activities in an ELN for any purpose, including (without limitation) for the purpose of maintaining the integrity of the titles register.
- (2) This section does not limit Division 5.

## **Division 3 Operating requirements and participation rules**

### **22 Operating requirements for ELNOs**

- (1) The Registrar may determine, in writing, requirements (***operating requirements***) relating to—
  - (a) the operation of an ELNO, and
  - (b) the provision and operation, by an ELNO, of an ELN.
- (2) The operating requirements may (without limitation) include provisions relating to the following matters—
  - (a) the financial standing of an ELNO,
    - (a1) changes in the control of an ELNO,
  - (b) compliance with the participation rules, including (without limitation)—
    - (i) requiring an ELNO to use a participation agreement when authorising persons to use the ELN operated by the ELNO, and
    - (ii) requiring participation agreements to incorporate the participation rules,
  - (c) interoperability, including, without limitation—
    - (i) requiring an ELNO to enter into agreements with other ELNOs with respect to interoperability, and
    - (ii) specifying matters to be dealt with, and standard provisions to be included, in those agreements, and
    - (iii) the resolution of disputes between an ELNO and other ELNOs relating to

interoperability,

- (c1) the technical and operational requirements for an ELN, including, without limitation, data standards and other requirements relating to interoperability, for example, data standards with respect to associated financial transactions,
- (c2) the integration of an ELN with other electronic systems,
- (c3) the separation of services provided by the ELN operated by an ELNO from other services provided by the ELNO,
- (c4) fees and charges payable to an ELNO, including, without limitation, principles relating to—
  - (i) the setting and publication of fees and charges, and
  - (ii) the apportionment of liability to pay fees and charges, and
  - (iii) the circumstances in which fees and charges are not payable,
- (c5) the resolution of disputes between an ELNO and subscribers to the ELN operated by the ELNO or clients of those subscribers,
- (c6) participation by an ELNO in a scheme for an industry code relating to associated financial transactions and compliance by an ELNO with that code,
- (d) the insurance cover to be held by an ELNO,
- (e) the circumstances in which the Registrar may suspend or revoke the approval of a person as an ELNO,
- (f) the giving of directions to an ELNO by the Registrar, for example a direction to restrict, suspend or terminate a subscriber's or other person's use of the ELN operated by the ELNO.

### **23 Participation rules**

- (1) The Registrar may determine, in writing, rules relating to the use of an ELN (***participation rules***).
- (2) The participation rules may (without limitation) include provisions relating to the following matters—
  - (a) the eligibility criteria for subscribers,
  - (b) the obligations of subscribers, including (without limitation) any representations or warranties they are required to give,
  - (c) the circumstances in which a subscriber's authority to use the ELN may be restricted, suspended or terminated,



- (d) client authorisations,
- (e) the obligations of subscribers to verify the identity of their clients,
- (f) the certification of registry instruments and other documents for use in connection with the ELN,
- (g) digital signing,
- (h) the retention of documents created or obtained in connection with a subscriber's use of an ELN,
- (i) compliance by subscribers with the participation rules, including (without limitation) how subscribers demonstrate compliance with the rules, the procedures for notifying non-compliance and how non-compliance may be remedied.

**24 Registrar to have regard to nationally agreed model operating requirements and participation rules**

- (1) In this section—

***model provisions*** means any model operating requirements or model participation rules from time to time developed and published by ARNECC.

- (2) In determining operating requirements and participation rules under this Law, and in determining changes to those requirements or rules, the Registrar must have regard to the desirability of maintaining consistency with any model provisions.

**25 Publication of operating requirements and participation rules**

- (1) The Registrar must ensure that the following are publicly available—

- (a) the current operating requirements and participation rules,
- (b) all superseded versions of the operating requirements and participation rules.

- (2) The operating requirements and participation rules, and any changes to either of them, must be made publicly available at least 20 business days before the operating requirements or participation rules or, as the case requires, the changes to them take effect.

- (3) However, changes to the operating requirements or participation rules may take effect within a shorter period (including immediately on being made publicly available), if the Registrar is satisfied that the changes need to take effect urgently because an emergency situation exists.

- (4) For the purposes of subsection (3), an emergency situation exists if the Registrar considers that, because of the occurrence of an event or the existence of particular circumstances, the operation, security, integrity or stability of an ELN or the titles

register or the land titles system is being, or is likely to be, jeopardised.

- (5) Documents may be made publicly available in accordance with this section in any manner the Registrar considers appropriate, including (without limitation) by means of a website.
- (6) It is sufficient compliance with subsection (1) (b) if a superseded version of the operating requirements or participation rules (other than the most recently superseded version) is publicly available only on request made to the Registrar.

## **26 Subscribers required to comply with participation rules**

- (1) A subscriber who is authorised under a participation agreement to use an ELN must comply with the participation rules relating to that ELN.
- (2) If a subscriber contravenes those participation rules, the Registrar may—
  - (a) if the Registrar operates the ELN, restrict, suspend or terminate the subscriber's use of the ELN, or
  - (b) if an ELNO operates the ELN, direct the ELNO to restrict, suspend or terminate the subscriber's use of the ELN.
- (3) Subsection (2) does not limit or affect any right, power, authority or remedy that the Registrar or an ELNO has under the operating requirements, the participation rules, a participation agreement or any other law of this jurisdiction in relation to contravention of the participation rules.

## **27 Waiving compliance with operating requirements or participation rules**

- (1) The Registrar may waive compliance with all or any provisions of the operating requirements or participation rules if the Registrar is satisfied that granting the waiver is reasonable in all the circumstances.
- (2) A waiver under this section may—
  - (a) be total or partial, and
  - (b) apply generally to all persons, or be limited in its application to particular persons or particular classes of persons, and
  - (c) apply generally or be limited in its application by reference to specified exceptions or factors, and
  - (d) apply indefinitely or for a specified period, and
  - (e) be unconditional or subject to conditions or restrictions.

## Division 4 Appeals

### 28 Appeal against decisions of Registrar

- (1) A person who is the subject of any of the following decisions (an **appellable decision**) may require the Registrar to provide, in writing, the grounds for the decision—
  - (a) a decision by the Registrar to refuse to approve the person as an ELNO,
  - (b) a decision by the Registrar to refuse to renew the person's approval as an ELNO,
  - (c) a decision by the Registrar to suspend the person's approval as an ELNO,
  - (d) a decision by the Registrar to revoke the person's approval as an ELNO,
  - (e) a decision by the Registrar to attach a condition to the person's approval as an ELNO, or to vary or revoke a condition of the person's approval as an ELNO, if the attachment, variation or revocation of the condition is done without the person's agreement,
  - (f) a decision by the Registrar to restrict, suspend or terminate the person's use, as a subscriber, of an ELN operated by the Registrar,
  - (g) a decision by the Registrar to direct an ELNO to restrict, suspend or terminate the person's use, as a subscriber, of the ELN operated by the ELNO.
- (2) A person who is the subject of an appellable decision and who has received written grounds for the decision from the Registrar under subsection (1) or otherwise may appeal against the decision to the responsible tribunal.

### 29 Determination of appeal

- (1) After hearing the appeal, the responsible tribunal may—
  - (a) confirm the appellable decision, or
  - (b) amend the appellable decision, or
  - (c) substitute another decision for the appellable decision.
- (2) In amending the appellable decision or substituting another decision for the appellable decision, the responsible tribunal has the same powers as the Registrar under this Law.

### 30 Costs

- (1) The responsible tribunal may make any order about costs it considers appropriate for the proceedings under this Division.

- (2) This section does not apply if the responsible tribunal has power under another law of this jurisdiction to make an order about costs for proceedings under this Division.

### **31 Relationship with Act establishing responsible tribunal**

This Division—

- (a) applies despite any provision to the contrary of the Act that establishes or continues the responsible tribunal, but
- (b) does not otherwise limit—
  - (i) that Act, or
  - (ii) any rules, regulations or other instrument regulating the practice or procedure of the responsible tribunal.

## **Division 5 Compliance examinations**

### **32 Definitions**

In this Division—

**ELNO** includes a former ELNO.

**subscriber** includes a former subscriber.

### **33 Compliance examinations**

The Registrar may, on receiving a request or complaint from any person or on the Registrar's own initiative, conduct an investigation (**compliance examination**) under this Part—

- (a) in relation to an ELNO for any of the following purposes—
  - (i) ascertaining whether or not the operating requirements are being, or have been, complied with,
  - (ia) ascertaining whether or not the interoperability requirement is being, or has been, complied with,
  - (ii) investigating any suspected or alleged case of misconduct with respect to the operation of an ELN, or
- (b) in relation to a subscriber for either or both of the following purposes—
  - (i) ascertaining whether or not the participation rules are being, or have been, complied with,
  - (ii) investigating any suspected or alleged case of misconduct with respect to the use of an ELN.

### **34 Obligation to cooperate with examination**

- (1) An ELNO or a subscriber in relation to whom a compliance examination is being conducted must cooperate fully with the person conducting the compliance examination for the purpose of ensuring that the person is able to conduct a proper compliance examination.
- (2) In particular, an ELNO or a subscriber must comply with any reasonable requirement by the person conducting the compliance examination—
  - (a) to furnish specified information or to produce specified documents for the purposes of the compliance examination, or
  - (b) to take specified action for the purposes of the compliance examination.
- (3) If an ELNO fails, without reasonable excuse, to cooperate as required by this section, the Registrar may take any action that the Registrar is authorised to take under the operating requirements and that the Registrar considers appropriate, which may include (without limitation) the suspension or revocation of the ELNO's approval under section 20.
- (4) If a subscriber fails, without reasonable excuse, to cooperate as required by this section, the Registrar may take any action that the Registrar is authorised to take under the operating requirements, the participation rules or the land titles legislation and that the Registrar considers appropriate.
- (5) For the purposes of subsections (3) and (4), it is not a reasonable excuse for a person to fail to give stated information, answer a question or to produce a document that giving the information, answering the question or producing the document might tend to incriminate the person or make the person liable to a penalty.
- (6) However, the following is not admissible in evidence against an individual in a criminal proceeding—
  - (a) information provided by an individual in compliance with a requirement made under this section,
  - (b) an answer given by an individual in response to a question asked under this section,
  - (c) a document produced by an individual in compliance with a requirement made under this section (other than a document to which subsection (7) applies),
  - (d) information directly or indirectly derived from—
    - (i) information mentioned in paragraph (a), or
    - (ii) an answer mentioned in paragraph (b), or

(iii) a document mentioned in paragraph (c) (other than a document to which subsection (7) applies).

(7) A document produced by an individual in compliance with a requirement made under this section is not inadmissible in evidence against the individual in a criminal proceeding on the ground that the document might incriminate the individual if the document is required to be kept under this Law, the land titles legislation, the operating requirements or the participation rules.

(8) Subsection (6) does not apply to—

(a) a proceeding about the false or misleading nature of anything in the information, answer or document, or

(b) a proceeding in which the false or misleading nature of the information, answer or document is relevant evidence.

### **35 Registrar may refer matter to appropriate authority**

(1) In this section—

#### ***appropriate authority***—

(a) means a person, body or organisation who or which is empowered by a law of this jurisdiction or of another State or the Commonwealth to take investigatory, disciplinary or other action, and

(b) includes (without limiting paragraph (a))—

(i) a law enforcement agency, and

(ii) a regulatory or disciplinary body for persons engaged in any profession, occupation, calling or business, and

(iii) another registrar.

(2) Instead of conducting a compliance examination in relation to a matter, or at any time during a compliance examination or after the completion of a compliance examination in relation to a matter, the Registrar may refer the matter to an appropriate authority.

(3) If the Registrar refers a matter to an appropriate authority, the Registrar is not obliged to take any other action in relation to the matter.

(4) The Registrar may refer a matter to an appropriate authority despite any law of this jurisdiction relating to privacy or confidentiality.

### **36 Land titles legislation not limited**

Nothing in this Division limits or affects any provision of the land titles legislation that authorises or permits any investigation, inquiry or examination of any kind.

## **Part 4 Miscellaneous**

### **Division 1 Delegation**

#### **37 Delegation by Registrar**

- (1) The Registrar may delegate the following to any other person—
  - (a) the power conferred by section 21 to monitor activities in an ELN,
  - (b) any function under Division 5 of Part 3,
  - (c) the power conferred by section 44 to approve forms.
- (2) The Registrar may, in an instrument of delegation, authorise the person to whom a power or function is delegated to subdelegate that power or function.

### **Division 2 Liability of Registrar**

#### **38 Registrar not obliged to monitor ELN or conduct compliance examination**

The Registrar is not obliged—

- (a) to monitor activities in an ELN under section 21, or
- (b) to conduct or complete a compliance examination under Division 5 of Part 3.

#### **39 No compensation**

No person is entitled to receive compensation for any loss or damage arising out of anything done or omitted in good faith in, or in connection with, the monitoring of activities in an ELN under section 21 or the conduct of a compliance examination under Division 5 of Part 3, including (without limitation)—

- (a) any decision made, in good faith, not to monitor activities in an ELN or not to conduct a compliance examination, and
- (b) any decision made, in good faith, as to how activities in an ELN are to be monitored or how a compliance examination is to be conducted.

#### **40 Registrar not responsible for additional services provided by ELNO or associated financial transactions**

- (1) The mere fact that an ELNO provides services that are additional to those provided by the ELN operated by that ELNO does not make the Registrar responsible for the regulation or operation of those additional services.
- (2) The mere fact that the operating requirements include provisions relating to the following matters does not make the Registrar responsible for the regulation or conduct of associated financial transactions—

- (a) data standards relating to those transactions,
- (b) participation by an ELNO in a scheme for an industry code relating to those transactions and compliance by an ELNO with that code.

### **Division 3 Relationship with other laws**

#### **41 Other laws relating to electronic transactions not affected**

This Law is in addition to, and not in substitution for—

- (a) the laws of this jurisdiction in relation to electronic transactions, and
- (b) any other law of this jurisdiction that authorises or permits the use of electronic documents for the purposes of the land titles legislation.

#### **42 Powers may be exercised for purposes of this Law**

If any provision of the land titles legislation empowers the making of an instrument of a legislative or administrative character, or the doing of any other act or thing, that power is to be construed (with all necessary changes) as including a general power to make instruments of that character, or to do that act or thing, for the purposes of this Law.

### **Division 4 Other matters**

#### **43 Registrar authorised to disclose certain information**

- (1) The Registrar may disclose information about the following matters to ARNECC, another registrar or a person or body who or which has functions under, or responsibility for the administration or oversight of, this Law or the land titles legislation—
  - (a) an ELNO's compliance with the operating requirements or the interoperability requirement,
  - (b) a subscriber's compliance with the participation rules,
  - (c) a compliance examination conducted under Part 3, Division 5,
  - (d) any other matter relating to the performance of the Registrar's functions under this Law.
- (2) The Registrar may disclose the information despite any law of this jurisdiction relating to privacy or confidentiality.
- (3) This section does not limit or affect section 35 or any power or duty of the Registrar under the land titles legislation or any other law of this jurisdiction to disclose the information.



## **44 Forms**

The Registrar may approve forms for use under this Law.

# **Schedule 1 Miscellaneous provisions relating to interpretation**

(Section 4)

## **Part 1 Preliminary**

### **1 Displacement of Schedule by contrary intention**

The application of this Schedule may be displaced, wholly or partly, by a contrary intention appearing in this Law.

## **Part 2 General**

### **2 Law to be construed not to exceed legislative power of Legislature**

- (1) This Law is to be construed as operating to the full extent of, but so as not to exceed, the legislative power of the Legislature of this jurisdiction.
- (2) If a provision of this Law, or the application of a provision of this Law to a person, subject matter or circumstance, would, but for this clause, be construed as being in excess of the legislative power of the Legislature of this jurisdiction—
  - (a) it is a valid provision to the extent to which it is not in excess of the power, and
  - (b) the remainder of this Law, and the application of the provision to other persons, subject matters or circumstances, is not affected.
- (3) This clause applies to this Law in addition to, and without limiting the effect of, any provision of this Law.

### **3 Every section to be a substantive enactment**

Every section of this Law has effect as a substantive enactment without introductory words.

### **4 Material that is, and is not, part of this Law**

- (1) The heading to a Part, Division or Subdivision into which this Law is divided is part of this Law.
- (2) A Schedule to this Law is part of this Law.
- (3) Punctuation in this Law is part of this Law.
- (4) A heading to a section or subsection of this Law does not form part of this Law.
- (5) Notes included in this Law (including footnotes and endnotes) do not form part of this

Law.

## **5 References to particular Acts and to enactments**

In this Law—

- (a) an Act of this jurisdiction may be cited—
  - (i) by its short title, or
  - (ii) by reference to the year in which it was passed and its number, and
- (b) a Commonwealth Act may be cited—
  - (i) by its short title, or
  - (ii) in another way sufficient in a Commonwealth Act for the citation of such an Act, together with a reference to the Commonwealth, and
- (c) an Act of another jurisdiction may be cited—
  - (i) by its short title, or
  - (ii) in another way sufficient in an Act of the jurisdiction for the citation of such an Act, together with a reference to the jurisdiction.

## **6 References taken to be included in Act or Law citation etc**

- (1) A reference in this Law to an Act includes a reference to—
  - (a) the Act as originally enacted, and as amended from time to time since its original enactment, and
  - (b) if the Act has been repealed and re-enacted (with or without modification) since the enactment of the reference, the Act as re-enacted, and as amended from time to time since its re-enactment.
- (2) A reference in this Law to a provision of this Law or of an Act includes a reference to—
  - (a) the provision as originally enacted, and as amended from time to time since its original enactment, and
  - (b) if the provision has been omitted and re-enacted (with or without modification) since the enactment of the reference, the provision as re-enacted, and as amended from time to time since its re-enactment.
- (3) Subclauses (1) and (2) apply to a reference in this Law to a law of the Commonwealth or another jurisdiction as they apply to a reference in this Law to an Act and to a provision of an Act.

## 7 Interpretation best achieving Law's purpose

- (1) In the interpretation of a provision of this Law, the interpretation that will best achieve the purpose or object of this Law is to be preferred to any other interpretation.
- (2) Subclause (1) applies whether or not the purpose is expressly stated in this Law.

## 8 Use of extrinsic material in interpretation

- (1) In this clause—

**extrinsic material** means relevant material not forming part of this Law, including, for example—

- (a) material that is set out in the document containing the text of this Law as printed by the Government Printer, and
- (b) a relevant report of a Royal Commission, Law Reform Commission, commission or committee of inquiry, or a similar body, that was laid before the Parliament of this jurisdiction before the provision concerned was enacted, and
- (c) a relevant report of a committee of the Parliament of this jurisdiction that was made to the Parliament before the provision was enacted, and
- (d) a treaty or other international agreement that is mentioned in this Law, and
- (e) an explanatory note or memorandum relating to the Bill that contained the provision, or any relevant document, that was laid before, or given to the members of, the Parliament of this jurisdiction by the member bringing in the Bill before the provision was enacted, and
- (f) the speech made to the Parliament of this jurisdiction by the member in moving a motion that the Bill be read a second time, and
- (g) material in the Votes and Proceedings of the Parliament of this jurisdiction or in any official record of debates in the Parliament of this jurisdiction, and
- (h) a document that is declared by this Law to be a relevant document for the purposes of this clause.

**ordinary meaning** means the ordinary meaning conveyed by a provision having regard to its context in this Law and to the purpose of this Law.

- (2) Subject to subclause (3), in the interpretation of a provision of this Law, consideration may be given to extrinsic material capable of assisting in the interpretation—
  - (a) if the provision is ambiguous or obscure, to provide an interpretation of it, or
  - (b) if the ordinary meaning of the provision leads to a result that is manifestly absurd

or is unreasonable, to provide an interpretation that avoids such a result, or

(c) in any other case, to confirm the interpretation conveyed by the ordinary meaning of the provision.

(3) In determining whether consideration should be given to extrinsic material, and in determining the weight to be given to extrinsic material, regard is to be had to—

(a) the desirability of a provision being interpreted as having its ordinary meaning, and

(b) the undesirability of prolonging proceedings without compensating advantage, and

(c) other relevant matters.

## **9 Effect of change of drafting practice**

If—

(a) a provision of this Law expresses an idea in particular words, and

(b) a provision enacted later appears to express the same idea in different words for the purpose of implementing a different legislative drafting practice, including, for example—

(i) the use of a clearer or simpler style, or

(ii) the use of gender neutral language,

the ideas must not be taken to be different merely because different words are used.

## **10 Use of examples**

If this Law includes an example of the operation of a provision—

(a) the example is not exhaustive, and

(b) the example does not limit, but may extend, the meaning of the provision, and

(c) the example and the provision are to be read in the context of each other and the other provisions of this Law, but, if the example and the provision so read are inconsistent, the provision prevails.

## **11 Compliance with forms**

(1) If a form is prescribed or approved by or for the purpose of this Law, strict compliance with the form is not necessary and substantial compliance is sufficient.

(2) If a form prescribed or approved by or for the purpose of this Law requires—

- (a) the form to be completed in a specified way, or
  - (b) specified information or documents to be included in, attached to or given with the form, or
  - (c) the form, or information or documents included in, attached to or given with the form, to be verified in a specified way,
- the form is not properly completed unless the requirement is complied with.

## Part 3 Terms and references

### 12 Definitions

(1) In this Law—

**Act** means an Act of the Legislature of this jurisdiction.

**adult** means an individual who is 18 or more.

**affidavit**, in relation to a person allowed by law to affirm, declare or promise, includes affirmation, declaration and promise.

**amend** includes—

- (a) omit or omit and substitute, or
- (b) alter or vary, or
- (c) amend by implication.

**appoint** includes reappoint.

**Australia** means the Commonwealth of Australia but, when used in a geographical sense, does not include an external Territory.

**business day** means a day that is not—

- (a) a Saturday or Sunday, or
- (b) a public holiday, special holiday or bank holiday in the place in which any relevant act is to be or may be done.

**calendar month** means a period starting at the beginning of any day of one of the 12 named months and ending—

- (a) immediately before the beginning of the corresponding day of the next named month, or
- (b) if there is no such corresponding day, at the end of the next named month.

**calendar year** means a period of 12 months beginning on 1 January.

**commencement**, in relation to this Law or an Act or a provision of this Law or an Act, means the time at which this Law, the Act or provision comes into operation.

**Commonwealth** means the Commonwealth of Australia but, when used in a geographical sense, does not include an external Territory.

**confer**, in relation to a function, includes impose.

**contravene** includes fail to comply with.

**country** includes—

- (a) a federation, or
- (b) a state, province or other part of a federation.

**date of assent**, in relation to an Act, means the day on which the Act receives the Royal Assent.

**definition** means a provision of this Law (however expressed) that—

- (a) gives a meaning to a word or expression, or
- (b) limits or extends the meaning of a word or expression.

**document** means any record of information however recorded, and includes—

- (a) anything on which there is writing, or
- (b) anything on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them, or
- (c) anything from which sounds, images or writings can be reproduced with or without the aid of anything else, or
- (d) a map, plan, drawing or photograph, or
- (e) any record of information that exists in a digital form and is capable of being reproduced, transmitted, stored and duplicated by electronic means.

**expire** includes lapse or otherwise cease to have effect.

**external Territory** means a Territory, other than an internal Territory, for the government of which as a Territory provision is made by a Commonwealth Act.

**fail** includes refuse.

**financial year** means a period of 12 months beginning on 1 July.

**foreign country** means a country (whether or not an independent sovereign State) outside Australia and the external Territories.

**function** includes a power, authority or duty.

**Gazette** means the Government Gazette of this jurisdiction.

**Gazette notice** means notice published in the Gazette.

**gazetted** means published in the Gazette.

**Government Printer** means the Government Printer of this jurisdiction, and includes any other person authorised by the Government of this jurisdiction to print an Act or instrument.

**individual** means a natural person.

**insert**, in relation to a provision of this Law, includes substitute.

**instrument** includes a statutory instrument.

**internal Territory** means the Australian Capital Territory, the Jervis Bay Territory or the Northern Territory.

**Jervis Bay Territory** means the Territory mentioned in the [Jervis Bay Territory Acceptance Act 1915](#) (Commonwealth).

**make** includes issue or grant.

**minor** means an individual who is under 18.

**modification** includes addition, omission or substitution.

**month** means a calendar month.

**named month** means 1 of the 12 months of the year.

**Northern Territory** means the Northern Territory of Australia.

**number** means—

- (a) a number expressed in figures or words, or
- (b) a letter, or
- (c) a combination of a number so expressed and a letter.

**oath**, in relation to a person allowed by law to affirm, declare or promise, includes affirmation, declaration or promise.

**office** includes position.

**omit**, in relation to a provision of this Law or an Act, includes repeal.

**party** includes an individual or a body politic or corporate.

**penalty** includes forfeiture or punishment.

**person** includes an individual or a body politic or corporate.

**power** includes authority.

**printed** includes typewritten, lithographed or reproduced by any mechanical or electronic means.

**proceeding** means a legal or other action or proceeding.

**provision**, in relation to this Law or an Act, means words or other matter that form or forms part of this Law or the Act, and includes—

- (a) a Chapter, Part, Division, Subdivision, section, subsection, paragraph, subparagraph, sub-subparagraph or Schedule of or to this Law or the Act, or
- (b) a section, clause, subclause, item, column, table or form of or in a Schedule to this Law or the Act, or
- (c) the long title and any preamble to the Act.

**record** includes information stored or recorded by means of a computer.

**repeal** includes—

- (a) revoke or rescind, or
- (b) repeal by implication, or
- (c) abrogate or limit the effect of this Law or the instrument concerned, or
- (d) exclude from, or include in, the application of this Law or the instrument concerned any person, subject matter or circumstance.

**sign** includes the affixing of a seal or the making of a mark.

**statutory declaration** means a declaration made under an Act, or under a Commonwealth Act or an Act of another jurisdiction, that authorises a declaration to be made otherwise than in the course of a judicial proceeding.

**statutory instrument** means an instrument made or in force under or for the purposes of this Law, and includes an instrument made or in force under any such instrument.

**swear**, in relation to a person allowed by law to affirm, declare or promise, includes



affirm, declare or promise.

**word** includes any symbol, figure or drawing.

**writing** includes any mode of representing or reproducing words in a visible form.

(2) In a statutory instrument—

**the Law** means this Law.

### **13 Provisions relating to defined terms and gender and number**

(1) If this Law defines a word or expression, other parts of speech and grammatical forms of the word or expression have corresponding meanings.

(2) Definitions in or applicable to this Law apply except so far as the context or subject matter otherwise indicates or requires.

(3) In this Law, words indicating a gender include each other gender.

(4) In this Law—

(a) words in the singular include the plural, and

(b) words in the plural include the singular.

### **14 Meaning of “may” and “must” etc**

(1) In this Law, the word **may**, or a similar word or expression, used in relation to a power indicates that the power may be exercised or not exercised, at discretion.

(2) In this Law, the word **must**, or a similar word or expression, used in relation to a power indicates that the power is required to be exercised.

(3) This clause has effect despite any rule of construction to the contrary.

### **15 Words and expressions used in statutory instruments**

(1) Words and expressions used in a statutory instrument have the same meanings as they have, from time to time, in this Law, or relevant provisions of this Law, under or for the purposes of which the instrument is made or in force.

(2) This clause has effect in relation to an instrument except so far as the contrary intention appears in the instrument.

### **16 Effect of express references to bodies corporate and individuals**

In this Law, a reference to a person generally (whether the expression “person”, “party”, “someone”, “anyone”, “no-one”, “one”, “another” or “whoever” or another expression is used)—

- (a) does not exclude a reference to a body corporate or an individual merely because elsewhere in this Law there is particular reference to a body corporate (however expressed), and
- (b) does not exclude a reference to a body corporate or an individual merely because elsewhere in this Law there is particular reference to an individual (however expressed).

### **17 Production of records kept in computers etc**

If a person who keeps a record of information by means of a mechanical, electronic or other device is required by or under this Law—

- (a) to produce the information or a document containing the information to a court, tribunal or person, or
- (b) to make a document containing the information available for inspection by a court, tribunal or person,

then, unless the court, tribunal or person otherwise directs—

- (c) the requirement obliges the person to produce or make available for inspection, as the case may be, a document that reproduces the information in a form capable of being understood by the court, tribunal or person, and
- (d) the production to the court, tribunal or person of the document in that form complies with the requirement.

### **18 References to this jurisdiction to be implied**

In this Law—

- (a) a reference to an officer, office or statutory body is a reference to such an officer, office or statutory body in and for this jurisdiction, and
- (b) a reference to a locality or other matter or thing is a reference to such a locality or other matter or thing in and of this jurisdiction.

### **19 References to officers and holders of offices**

In this Law, a reference to a particular officer, or to the holder of a particular office, includes a reference to the person for the time being occupying or acting in the office concerned.

### **20 Reference to certain provisions of Law**

If a provision of this Law refers—

- (a) to a Part, section or Schedule by a number and without reference to this Law, the reference is a reference to the Part, section or Schedule, designated by the number, of

or to this Law, or

- (b) to a Schedule without reference to it by a number and without reference to this Law, the reference, if there is only one Schedule to this Law, is a reference to the Schedule, or
- (c) to a Division, Subdivision, subsection, paragraph, subparagraph, sub-subparagraph, clause, subclause, item, column, table or form by a number and without reference to this Law, the reference is a reference to—
  - (i) the Division, designated by the number, of the Part in which the reference occurs, and
  - (ii) the Subdivision, designated by the number, of the Division in which the reference occurs, and
  - (iii) the subsection, designated by the number, of the section in which the reference occurs, and
  - (iv) the paragraph, designated by the number, of the section, subsection, Schedule or other provision in which the reference occurs, and
  - (v) the paragraph, designated by the number, of the clause, subclause, item, column, table or form of or in the Schedule in which the reference occurs, and
  - (vi) the subparagraph, designated by the number, of the paragraph in which the reference occurs, and
  - (vii) the sub-subparagraph, designated by the number, of the subparagraph in which the reference occurs, and
  - (viii) the section, clause, subclause, item, column, table or form, designated by the number, of or in the Schedule in which the reference occurs,

as the case requires.

## **21 Reference to provisions of this Law or an Act is inclusive**

In this Law, a reference to a portion of this Law or an Act includes—

- (a) a reference to the Chapter, Part, Division, Subdivision, section, subsection or other provision of this Law or the Act referred to that forms the beginning of the portion, and
- (b) a reference to the Chapter, Part, Division, Subdivision, section, subsection or other provision of this Law or the Act referred to that forms the end of the portion.

### **Example**

A reference to “sections 5 to 9” includes both section 5 and section 9. It is not necessary to refer to “sections 5 to 9 (both inclusive)” to ensure that the reference is given an inclusive interpretation.

## **Part 4 Functions and powers**

### **22 Performance of statutory functions**

- (1) If this Law confers a function or power on a person or body, the function may be performed, or the power may be exercised, from time to time as occasion requires.
- (2) If this Law confers a function or power on a particular officer or the holder of a particular office, the function may be performed, or the power may be exercised, by the person for the time being occupying or acting in the office concerned.
- (3) If this Law confers a function or power on a body (whether or not incorporated), the performance of the function, or the exercise of the power, is not affected merely because of vacancies in the membership of the body.

### **23 Power to make instrument or decision includes power to amend or repeal**

If this Law authorises or requires the making of an instrument or decision—

- (a) the power includes power to amend or repeal the instrument or decision, and
- (b) the power to amend or repeal the instrument or decision is exercisable in the same way, and subject to the same conditions, as the power to make the instrument or decision.

### **24 Matters for which statutory instruments may make provision**

- (1) If this Law authorises or requires the making of a statutory instrument in relation to a matter, a statutory instrument made under this Law may make provision for the matter by applying, adopting or incorporating (with or without modification) the provisions of—
  - (a) an Act or statutory instrument, or
  - (b) another document (whether of the same or a different kind),as in force at a particular time or as in force from time to time.
- (2) If a statutory instrument applies, adopts or incorporates the provisions of a document, the statutory instrument applies, adopts or incorporates the provisions as in force from time to time, unless the statutory instrument otherwise expressly provides.
- (3) A statutory instrument may—
  - (a) apply generally throughout this jurisdiction or be limited in its application to a particular part of this jurisdiction, or
  - (b) apply generally to all persons, matters or things or be limited in its application to—

- (i) particular persons, matters or things, or
  - (ii) particular classes of persons, matters or things, or
- (c) otherwise apply generally or be limited in its application by reference to specified exceptions or factors.
- (4) A statutory instrument may—
  - (a) apply differently according to different specified factors, or
  - (b) otherwise make different provision in relation to—
    - (i) different persons, matters or things, or
    - (ii) different classes of persons, matters or things.
- (5) A statutory instrument may authorise a matter or thing to be from time to time determined, applied or regulated by a specified person or body.
- (6) If this Law authorises or requires a matter to be regulated by statutory instrument, the power may be exercised by prohibiting by statutory instrument the matter or any aspect of the matter.
- (7) If this Law authorises or requires provision to be made with respect to a matter by statutory instrument, a statutory instrument made under this Law may make provision with respect to a particular aspect of the matter despite the fact that provision is made by this Law in relation to another aspect of the matter or in relation to another matter.
- (8) A statutory instrument may provide for the review of, or a right of appeal against, a decision made under the statutory instrument, or this Law, and may, for that purpose, confer jurisdiction on any court, tribunal, person or body.
- (9) A statutory instrument may require a form prescribed by or under the statutory instrument, or information or documents included in, attached to or given with the form, to be verified by statutory declaration.

## **25 Presumption of validity and power to make**

- (1) All conditions and preliminary steps required for the making of a statutory instrument are presumed to have been satisfied and performed in the absence of evidence to the contrary.
- (2) A statutory instrument is taken to be made under all powers under which it may be made, even though it purports to be made under this Law or a particular provision of this Law.

## **26 Appointments may be made by name or office**

- (1) If this Law authorises or requires a person or body—
  - (a) to appoint a person to an office, or
  - (b) to appoint a person or body to exercise a power, or
  - (c) to appoint a person or body to do another thing,the person or body may make the appointment by—
  - (d) appointing a person or body by name, or
  - (e) appointing a particular officer, or the holder of a particular office, by reference to the title of the office concerned.
- (2) An appointment of a particular officer, or the holder of a particular office, is taken to be the appointment of the person for the time being occupying or acting in the office concerned.

## **27 Acting appointments**

- (1) If this Law authorises a person or body to appoint a person to act in an office, the person or body may, in accordance with this Law, appoint—
  - (a) a person by name, or
  - (b) a particular officer, or the holder of a particular office, by reference to the title of the office concerned,to act in the office.
- (2) The appointment may be expressed to have effect only in the circumstances specified in the instrument of appointment.
- (3) The appointer may—
  - (a) determine the terms and conditions of the appointment, including remuneration and allowances, and
  - (b) terminate the appointment at any time.
- (4) The appointment, or the termination of the appointment, must be in, or evidenced by, writing signed by the appointer.
- (5) The appointee must not act for more than one year during a vacancy in the office.
- (6) If the appointee is acting in the office otherwise than because of a vacancy in the office and the office becomes vacant, then, subject to subclause (2), the appointee may continue to act until—

- (a) the appointer otherwise directs, or
  - (b) the vacancy is filled, or
  - (c) the end of a year from the day of the vacancy,
- whichever happens first.
- (7) The appointment ceases to have effect if the appointee resigns by writing signed and delivered to the appointer.
- (8) While the appointee is acting in the office—
- (a) the appointee has all the powers and functions of the holder of the office, and
  - (b) this Law and other laws apply to the appointee as if the appointee were the holder of the office.
- (9) Anything done by or in relation to a person purporting to act in the office is not invalid merely because—
- (a) the occasion for the appointment had not arisen, or
  - (b) the appointment had ceased to have effect, or
  - (c) the occasion for the person to act had not arisen or had ceased.
- (10) If this Law authorises the appointer to appoint a person to act during a vacancy in the office, an appointment to act in the office may be made by the appointer whether or not an appointment has previously been made to the office.

## **28 Powers of appointment imply certain incidental powers**

- (1) If this Law authorises or requires a person or body to appoint a person to an office—
- (a) the power may be exercised from time to time as occasion requires, and
  - (b) the power includes—
    - (i) power to remove or suspend, at any time, a person appointed to the office, and
    - (ii) power to appoint another person to act in the office if a person appointed to the office is removed or suspended, and
    - (iii) power to reinstate or reappoint a person removed or suspended, and
    - (iv) power to appoint a person to act in the office if it is vacant (whether or not the office has ever been filled), and
    - (v) power to appoint a person to act in the office if the person appointed to the office is absent or is unable to discharge the functions of the office (whether

because of illness or otherwise).

- (2) The power to remove or suspend a person under subclause (1) (b) may be exercised even if this Law provides that the holder of the office to which the person was appointed is to hold office for a specified period.
- (3) The power to make an appointment under subclause (1) (b) may be exercised from time to time as occasion requires.
- (4) An appointment under subclause (1) (b) may be expressed to have effect only in the circumstances specified in the instrument of appointment.

## **29 Delegation of functions**

- (1) If this Law authorises a person or body to delegate a function, the person or body may, in accordance with this Law and any other applicable law, delegate the function to—
  - (a) a person or body by name, or
  - (b) a specified officer, or the holder of a specified office, by reference to the title of the office concerned.
- (2) The delegation may be—
  - (a) general or limited, and
  - (b) made from time to time, and
  - (c) revoked, wholly or partly, by the delegator.
- (3) The delegation, or a revocation of the delegation, must be in, or evidenced by, writing signed by the delegator or, if the delegator is a body, by a person authorised by the body for the purpose.
- (4) A delegated function may be exercised only in accordance with any conditions to which the delegation is subject.
- (5) The delegate may, in the performance of a delegated function, do anything that is incidental to the delegated function.
- (6) A delegated function that purports to have been exercised by the delegate is taken to have been properly exercised by the delegate unless the contrary is proved.
- (7) A delegated function that is properly exercised by the delegate is taken to have been exercised by the delegator.
- (8) If, when exercised by the delegator, a function is dependent on the delegator's opinion, belief or state of mind, then, when exercised by the delegate, the function is



dependent on the delegate's opinion, belief or state of mind.

(9) If—

- (a) the delegator is a specified officer or the holder of a specified office, and
- (b) the person who was the specified officer or holder of the specified office when the delegation was made ceases to be the holder of the office,

then—

- (c) the delegation continues in force, and
- (d) the person for the time being occupying or acting in the office concerned is taken to be the delegator for the purposes of this clause.

(10) If—

- (a) the delegator is a body, and
- (b) there is a change in the membership of the body,

then—

- (c) the delegation continues in force, and
- (d) the body as constituted for the time being is taken to be the delegator for the purposes of this clause.

(11) If a function is delegated to a specified officer or the holder of a specified office—

- (a) the delegation does not cease to have effect merely because the person who was the specified officer or the holder of the specified office when the function was delegated ceases to be the officer or the holder of the office, and
- (b) the function may be exercised by the person for the time being occupying or acting in the office concerned.

(12) A function that has been delegated may, despite the delegation, be exercised by the delegator.

(13) The delegation of a function does not relieve the delegator of the delegator's obligation to ensure that the function is properly exercised.

(14) Subject to subclause (15), this clause applies to a subdelegation of a function in the same way as it applies to a delegation of a function.

(15) If this Law authorises the delegation of a function, the function may be subdelegated only if this Law expressly authorises the function to be subdelegated.

### 30 Exercise of powers before commencement

- (1) If a provision of this Law (the **empowering provision**) that has not commenced would, had it commenced, confer a power—
  - (a) to make an appointment, or
  - (b) to make a statutory instrument of a legislative or administrative character, or
  - (c) to do another thing,then—
  - (d) the power may be exercised, and
  - (e) anything may be done for the purpose of enabling the exercise of the power or of bringing the appointment, instrument or other thing into effect,before the empowering provision commences.
- (2) If a provision of a New South Wales Act (the **empowering provision**) that does not commence on its enactment would, had it commenced, amend a provision of this Law so that it would confer a power—
  - (a) to make an appointment, or
  - (b) to make a statutory instrument of a legislative or administrative character, or
  - (c) to do another thing,then—
  - (d) the power may be exercised, and
  - (e) anything may be done for the purpose of enabling the exercise of the power or of bringing the appointment, instrument or other thing into effect,before the empowering provision commences.
- (3) If—
  - (a) this Law has commenced and confers a power to make a statutory instrument (the **basic statutory instrument-making power**), and
  - (b) a provision of a New South Wales Act that does not commence on its enactment would, had it commenced, amend this Law so as to confer additional power to make a statutory instrument (the **additional instrument-making power**),then—
  - (c) the basic instrument-making power and the additional instrument-making power

may be exercised by making a single instrument, and

(d) any provision of the instrument that required an exercise of the additional instrument-making power is to be treated as made under subclause (2).

(4) If an instrument, or a provision of an instrument, is made under subclause (1) or (2) that is necessary for the purpose of—

(a) enabling the exercise of a power mentioned in the subclause, or

(b) bringing an appointment, instrument or other thing made or done under such a power into effect,

the instrument or provision takes effect—

(c) on the making of the instrument, or

(d) on such later day (if any) on which, or at such later time (if any) at which, the instrument or provision is expressed to take effect.

(5) If—

(a) an appointment is made under subclause (1) or (2), or

(b) an instrument, or a provision of an instrument, made under subclause (1) or (2) is not necessary for a purpose mentioned in subclause (4),

the appointment, instrument or provision takes effect—

(c) on the commencement of the relevant empowering provision, or

(d) on such later day (if any) on which, or at such later time (if any) at which, the appointment, instrument or provision is expressed to take effect.

(6) Anything done under subclause (1) or (2) does not confer a right, or impose a liability, on a person before the relevant empowering provision commences.

(7) After the enactment of a provision mentioned in subclause (2) but before the provision's commencement, this clause applies as if the references in subclauses (2) and (5) to the commencement of the empowering provision were references to the commencement of the provision mentioned in subclause (2) as amended by the empowering provision.

(8) In the application of this clause to a statutory instrument, a reference to the enactment of the instrument is a reference to the making of the instrument.

## **Part 5 Distance, time and age**

### **31 Matters relating to distance, time and age**

- (1) In the measurement of distance for the purposes of this Law, the distance is to be measured along the shortest road ordinarily used for travelling.
- (2) If a period beginning on a given day, act or event is provided or allowed for a purpose by this Law, the period is to be calculated by excluding the day, or the day of the act or event, and—
  - (a) if the period is expressed to be a specified number of clear days or at least a specified number of days, by excluding the day on which the purpose is to be fulfilled, and
  - (b) in any other case, by including the day on which the purpose is to be fulfilled.
- (3) If the last day of a period provided or allowed by this Law for doing anything is not a business day in the place in which the thing is to be or may be done, the thing may be done on the next business day in the place.
- (4) If the last day of a period provided or allowed by this Law for the filing or registration of a document is a day on which the office is closed where the filing or registration is to be or may be done, the document may be filed or registered at the office on the next day that the office is open.
- (5) If no time is provided or allowed for doing anything, the thing is to be done as soon as possible, and as often as the prescribed occasion happens.
- (6) If, in this Law, there is a reference to time, the reference is, in relation to the doing of anything in a jurisdiction, a reference to the legal time in the jurisdiction.
- (7) For the purposes of this Law, a person attains an age in years at the beginning of the person's birthday for the age.

## **Part 6 Effect of repeal, amendment or expiration**

### **32 Time of Law ceasing to have effect**

If a provision of this Law is expressed—

- (a) to expire on a specified day, or
  - (b) to remain or continue in force, or otherwise have effect, until a specified day,
- the provision has effect until the last moment of the specified day.

### **33 Repealed Law provisions not revived**

If a provision of this Law is repealed or amended by a New South Wales Act, or a provision of a New South Wales Act, the provision is not revived merely because the New South Wales Act or the provision of the New South Wales Act—

- (a) is later repealed or amended, or
- (b) later expires.

### **34 Saving of operation of repealed Law provisions**

(1) The repeal, amendment or expiry of a provision of this Law does not—

- (a) revive anything not in force or existing at the time the repeal, amendment or expiry takes effect, or
- (b) affect the previous operation of the provision or anything suffered, done or begun under the provision, or
- (c) affect a right, privilege or liability acquired, accrued or incurred under the provision, or
- (d) affect a penalty incurred in relation to an offence arising under the provision, or
- (e) affect an investigation, proceeding or remedy in relation to such a right, privilege, liability or penalty.

(2) Any such penalty may be imposed and enforced, and any such investigation, proceeding or remedy may be begun, continued or enforced, as if the provision had not been repealed or amended or had not expired.

### **35 Continuance of repealed provisions**

If a New South Wales Act repeals some provisions of this Law and enacts new provisions in substitution for the repealed provisions, the repealed provisions continue in force until the new provisions commence.

### **36 Law and amending Acts to be read as one**

This Law and all New South Wales Acts amending this Law are to be read as one.

## **Part 7 Instruments under Law**

### **37 Schedule applies to statutory instruments**

(1) This Schedule applies to a statutory instrument, and to things that may be done or are required to be done under a statutory instrument, in the same way as it applies to this Law, and things that may be done or are required to be done under this Law, except so far as the context or subject matter otherwise indicates or requires.

- (2) The fact that a provision of this Schedule refers to this Law and not also to a statutory instrument does not, by itself, indicate that the provision is intended to apply only to this Law.