

Transfer of Land Amendment Regulations 2017

Made by the Governor in Executive Council.

1. Citation

These regulations are the *Transfer of Land Amendment Regulations 2017*.

2. Commencement

These regulations come into operation as follows —

- (a) regulations 1 and 2 — on the day on which these regulations are published in the *Gazette*;
- (b) the rest of the regulations — on the day after that day.

3. Regulations amended

These regulations amend the *Transfer of Land Regulations 2004*.

4. Part 3A Division 1 inserted

At the beginning of Part 3A insert:

Division 1 — Certain registry instruments must be lodged by means of an ELN

8A. Terms used

- (1) In this Division —
ELN means an ELN provided and operated under the *Electronic Conveyancing Act 2014*.
- (2) If a term is given a meaning in the *Electronic Conveyancing Act 2014*, it has the same meaning in this Division unless the contrary intention appears in this Division.

8B. Registry instruments to which this Division applies

This Division applies to a registry instrument that may be lodged under the Act for the purpose of —

- (a) mortgaging an estate or interest in land or discharging the mortgage of an estate or interest in land; or
- (b) transferring an estate or interest in land; or

- (c) getting a caveat noted or its noting withdrawn.

8C. Certain registry instruments must be lodged by means of an ELN

- (1) If a registry instrument can be lodged by means of an ELN, it must not be lodged otherwise than by means of an ELN.
- (2) For the purposes of subregulation (1), a registry instrument can be lodged by means of an ELN if —
 - (a) the instrument can be lodged electronically under the Act, the *Electronic Conveyancing Act 2014* and these regulations; and
 - (b) the ELN provides for the lodgment of that type of registry instrument.
- (3) A failure to comply with subregulation (1) does not affect the validity of any registration, noting or withdrawal of noting under the Act.
- (4) Subregulation (1) has effect subject to the rest of this Division.

8D. Where party to transaction is self-represented

- (1) Subject to subregulation (3), regulation 8C(1) does not apply to a registry instrument if a person required to sign the instrument is self-represented and not a subscriber.
- (2) A person is self-represented, in relation to a registry instrument, if the person has not engaged another person, on a commercial basis, to assist in the completion of the conveyancing transaction for the purposes of which the instrument may be lodged.
- (3) If the purpose for which a registry instrument may be lodged is the mortgaging of an estate or interest in land or the discharging of the mortgage of an estate or interest in land, subregulation (1) has effect without reference to the mortgagor.
- (4) A person cannot use the exception in subregulation (1) in relation to more than 10 registry instruments in a 12 month period.
- (5) A person uses the exception in subregulation (1) if they lodge, or a person on their behalf lodges, a registry instrument, other than by means of an ELN, in reliance on subregulation (1).

8E. Where 2 or more registry instruments lodged simultaneously

Regulation 8C(1) does not apply to a registry instrument if —

- (a) the instrument is 1 of 2 or more registry instruments that are lodged at the same time; and
- (b) the Registrar is satisfied that the instruments are related; and
- (c) either —
 - (i) there is no ELN by means of which all of the instruments may be lodged; or
 - (ii) regulation 8C(1) does not apply to at least 1 of the instruments because of another provision of this Division.

8F. Registrar's power to exempt

- (1) The Registrar may exempt a person or a class of person from complying with regulation 8C(1) if satisfied that —
 - (a) it is in the public interest to do so; and
 - (b) not to do so would result in 1 or more persons suffering hardship, undue inconvenience or undue expense.
- (2) The Registrar may grant an exemption by reference to a registry instrument or conveyancing transaction, a class of registry instrument or conveyancing transaction, all registry instruments or conveyancing transactions, or on some other basis.

8G. When r. 8C(1) commences to apply to lodging certain registry instruments

- (1) Regulation 8C(1) does not apply —
 - (a) to lodging a registry instrument before the effective date for the instrument; or
 - (b) to lodging a registry instrument if the instrument is signed, by at least 1 of the persons required to sign it, before the effective date for the instrument.
- (2) The effective date for a registry instrument is —
 - (a) for an instrument that may be lodged for the purpose of mortgaging an estate or interest in land or discharging the mortgage of an estate or interest in land — 1 December 2017;
 - (b) for an instrument that may be lodged for the purpose of transferring an estate or interest in

land or getting a caveat noted or its noting
withdrawn — 1 May 2018.

5. Part 3A Division 2 heading inserted

Before regulation 9AA insert:

Division 2 — General requirements

N. HAGLEY, Clerk of the Executive Council.