

MODEL PARTICIPATION RULES GUIDANCE NOTE

COMPLIANCE EXAMINATIONS

1 INTRODUCTION

This guidance note aligns with Version 6 of the Model Participation Rules and explains:

- what a Compliance Examination is;
- why Compliance Examination is necessary;
- when a Compliance Examination will be conducted; and
- how a Compliance Examination will be conducted.

Capitalised terms have the meaning given to them in the Model Participation Rules, Model Operating Requirements or Electronic Conveyancing National Law.

This guide does not constitute legal advice nor does it replace prudent conveyancing practice. Nothing written in this guide overrides the Electronic Conveyancing National Law, Participation Rules, any other relevant legislation or Registrar’s Prescribed Requirements.

2 WHAT IS A COMPLIANCE EXAMINATION?

Section 33 of the Electronic Conveyancing National Law provides the Registrar in each Jurisdiction with the power to undertake a Compliance Examination for the purpose of ascertaining whether or not the Model Participation Rules have been complied with, or investigating any suspected or alleged case of misconduct by a Subscriber (including a former Subscriber).

Under section 34 of the Electronic Conveyancing National Law, a Subscriber is obliged to cooperate fully in a Compliance Examination and comply with any reasonable requirement by the Person conducting the Compliance Examination.

Schedule 5 of the Model Participation Rules sets out a procedure for the conduct of a Compliance Examination. The procedure is outlined further in Section 5 below.

3 WHY IS A COMPLIANCE EXAMINATION NECESSARY?

A key objective of the Subscriber Compliance Program is to ensure the program assists Subscribers in meeting their obligations and responsibilities under the Model Participation Rules and to build trust and confidence in the Electronic Lodgment Network.

4 WHEN WILL A COMPLIANCE EXAMINATION BE CONDUCTED?

Subscribers may be selected for a Compliance Examination at random or based on one or more factors including the following:

- whether the Subscriber is newly registered;
- whether the Subscriber has been examined before;
- whether the Subscriber's last or previous examinations were unsatisfactory or if there have been past instances of non-compliance;
- whether the Subscriber has been identified through a notification to the Registrar raising issue(s);
- the Registrar identifying a problem with a transaction during the examination of a dealing;
- the volume, value or complexity of transactions the Subscriber is Lodging; and
- any potential threat to the operation, security, integrity or stability of an ELN.

5 HOW WILL A COMPLIANCE EXAMINATION BE CONDUCTED?

Schedule 5 of the Model Participation Rules outlines the procedure for the conduct of a Compliance Examination (the Compliance Examination Procedure). The Compliance Examination Procedure is reflected in the information below.

5.1 Notice

A Subscriber will receive a notice including a Subscriber Compliance Examination Checklist (see the checklist in the Appendix) from the Registrar (or the Land Registry if the function has been delegated to it).

The notice will:

- identify the Registry Instruments for which the Compliance Examination will be conducted;
- request that the Subscriber provide Documents and/or information that demonstrate the Subscriber's compliance with the Participation Rules, including the following:
 - Client Authorisation (refer to Model Participation Rules Guidance Note #1: Client Authorisation);
 - verification of identity (refer to Model Participation Rules Guidance Note #2: Verification of Identity including details of the reasonable steps taken to verify the identity);
 - verification of the right to deal (refer to Model Participation Rules Guidance Note #4: Right to Deal including details of the reasonable steps taken to verify the right to deal);
 - supporting evidence (refer to Model Participation Rules Guidance Note #5: Retention of Evidence).
- state a time, no less than 10 Business Days after the giving of the notice, within which the Documents and/or information must be provided to the Registrar.
- outline how the Documents and/or information must be provided to the Registrar.

Subscribers should be aware that failing, without reasonable excuse, to comply with the notice is a Suspension Event that may result in the commencement of the Suspension and Termination Procedure in Schedule 7 of the Model Participation Rules.

5.2 Examination by the Registrar

The Registrar will initially conduct a desktop examination of the Documents and/or information provided by the Subscriber for the Registry Instruments identified to determine whether the Subscriber has complied with the relevant Participation Rules. The desktop examination will, as a minimum, include the following:

- **Client Authorisation:**
 - correct form and version used;
 - client details match the Lodged Registry Instrument(s);
 - transaction details match the Lodged Registry Instrument(s);
 - correctly signed and dated by the Client or Client Agent;
 - correctly signed and dated by the Subscriber or its agent;
 - form properly completed;
 - form signed by the Client or Client Agent at the time verification of identity is conducted.
If not:
 - written details (including timing); and
 - supporting evidence of the steps taken to ensure form signed by the Client or Client Agent;
 - written details (including timing) and supporting evidence of the steps taken to verify the authority of each Person entering into the Client Authorisation on behalf of a Client to both bind the Client to the Client Authorisation and to the Conveyancing Transaction(s) the subject of the Client Authorisation;
 - form signed by the Client or Client Agent before the Subscriber Digitally Signed the Registry Instruments or other electronic Documents.
- **Verification of identity:**
 - verification of identity has been undertaken for all applicable Persons outlined in Model Participation Rule 6.5.1;
 - written details (including timing) and supporting evidence of the steps taken to verify identity, including copies of identity documents and, if relevant, copies of any Identifier Declarations or statutory declarations, a copy of the Identity Agent Certification and a copy of the written appointment of any Identity Agent;
 - evidence matches the Client details in the Lodged Registry Instruments(s) and (if applicable) the Titles Register;
 - timing of verification of identity in relation to the signing of any Client Authorisation form;
 - timing of verification of identity in relation to the signing of the Registry Instrument(s).
- **Verification of the right to deal:**

- written details (including timing) and supporting evidence of the steps taken to verify right to deal;
- evidence matches the Client details in the Lodged Registry Instruments(s) and (if applicable) the Titles Register;
- timing of verification of right to deal in relation to the signing of any Client Authorisation form;
- timing of verification of right to deal in relation to the signing of the Lodged Registry Instrument(s).
- **Supporting evidence** (other than supporting evidence required above):
 - any evidence required by the Duty Authority;
 - any evidence required by statute or Prescribed Requirements;
 - copy of any mortgage granted by mortgagor;
 - mortgage granted by mortgagor on same terms as that of the Lodged Registry Instrument.

Subscribers should refer to the relevant Model Participation Rules Guidance Note for further guidance regarding compliance with the Model Participation Rules for each of the above.

5.3 Outcome of Compliance Examination

The Subscriber will be notified of the outcome of the Compliance Examination in writing within 10 Business Days of the completion of the Compliance Examination. The outcome will be one of the following:

- notification that, based on the documentation provided, no evidence of non-compliance with the Participation Rules has been identified and no further action is required; or
- notification that, based on the documentation provided, the Compliance Examination revealed that the Subscriber has not demonstrated compliance with the Participation Rules and notification of the next steps, for example:
 - details of actions required to be taken to remedy the non-compliance with the Participation Rules; or
 - that a site visit is required and a proposed date and time, more than 10 Business Days after the date of the notification, for the site visit to occur.

If the Compliance Examination results in the Registrar knowing or having reasonable grounds to suspect/believe that a Suspension Event or Termination Event has occurred, the Suspension and Termination Procedure in Schedule 7 of the Model Participation Rules may commence.

The Subscriber may be asked to explain the steps it has put in place to ensure compliance with the Participation Rules in the future and/or any training that will be undertaken.

5.4 Reasonable steps

“Reasonable steps” is a commonly used legal concept. When applied to Subscribers and mortgagees, it means the taking of such steps as an ordinarily prudent Subscriber or mortgagee

would have taken in the circumstances and in the ordinary course of his or her business. Whether reasonable steps were taken will be a question of fact depending on the circumstances of the individual case. Ultimately, this would be determined by a Court on an objective basis.

Where a Model Participation Rule requires reasonable steps to be taken, a Subscriber will be required to provide written details and supporting evidence of the steps taken as part of the Compliance Examination.

During a compliance examination, no assessment will be made as to whether reasonable steps have been taken in any circumstances where the Model Participation Rules require reasonable steps to be taken.

6 FREQUENTLY ASKED QUESTIONS

Q1: Will each Jurisdiction follow the same approach in undertaking Compliance Examinations?

A1: The Australian Registrars' National Electronic Conveyancing Council has developed a Subscriber Compliance Program so that Compliance Examinations are conducted consistently across all operating Jurisdictions in accordance with this Guidance Note.

SUBSCRIBER COMPLIANCE EXAMINATION CHECKLIST

Registry Instrument / Document:	
Client Authorisation – refer to MPR Guidance Note #1	
<input type="checkbox"/>	Copy of Client Authorisation provided
<input type="checkbox"/>	Written details of the steps (including the timing of the steps) taken to ensure Client Authorisation form was signed by the Client/Client Agent
<input type="checkbox"/>	Any supporting evidence of the steps taken provided
<input type="checkbox"/>	Written details of the steps taken (including the timing of the steps) to verify the authority of each Person entering into a Client Authorisation on behalf of a Client to both bind the Client to the Client Authorisation and the Conveyancing Transaction(s) the subject of the Client Authorisation
<input type="checkbox"/>	Any supporting evidence of the steps taken provided
Verification of Identity – refer to MPR Guidance Note #2	
<input type="checkbox"/>	Written details of the steps taken (including the timing of the steps) to verify the identity of each (i) Client (ii) Client Agent or (iii) person signing the Client Authorisation on behalf of a Client (as applicable) including any relating to a justification for a change of name If the Verification of Identity Standard has not been applied, a written description of the reasonable steps taken and why they were reasonable must be provided
<input type="checkbox"/>	Any supporting evidence of the steps taken provided, including: <ul style="list-style-type: none"> • where the Verification of Identity Standard has been applied – copies of the identity documents and copies of any Identifier Declarations or statutory declarations relied upon • where an Identity Agent was appointed – a copy of the Identity Agent Certification and a copy of the written appointment of the Identity Agent • where the Verification of Identity Standard has not been applied – copies of the identity documents or other evidence relied upon (if any)
For a mortgage or an amendment or variation of mortgage – for the verification of identity of each mortgagor or mortgagor’s agent, either:	
<input type="checkbox"/>	Written details of the steps (including the timing of the steps) taken to verify the identity of each mortgagor or mortgagor’s agent If the Verification of Identity Standard has not been applied, a written description of the reasonable steps taken and why they were reasonable must be provided
<input type="checkbox"/>	Any supporting evidence of the steps taken provided, including: <ul style="list-style-type: none"> • where the Verification of Identity Standard has been applied – copies of the identity documents and copies of any Identifier Declarations or statutory declarations relied upon • where an Identity Agent was appointed – a copy of the Identity Agent Certification and a copy of the written appointment of the Identity Agent • where the Verification of Identity Standard has not been applied – copies of the identity documents or other evidence relied upon (if any)
OR	
<input type="checkbox"/>	Where the Subscriber represents a mortgagee and was reasonably satisfied that the mortgagee has taken reasonable steps to verify the identity of each mortgagor or mortgagor’s agent – written details of the basis in on which the Subscriber was reasonably satisfied
<input type="checkbox"/>	Any supporting evidence of the steps taken provided
For a transfer of mortgage – for the verification of identity of each mortgagor or mortgagor’s agent:	

<input type="checkbox"/> Written details of the steps (including the timing of the steps) taken to ensure the transferee mortgagee has complied with the requirements under the Land Titles Legislation and any Prescribed Requirements of the Jurisdiction in which the land the subject of the Conveyancing Transaction is situated <input type="checkbox"/> Any supporting evidence of the steps taken provided
Verification of Right to Deal – refer to MPR Guidance Note #4
<input type="checkbox"/> Written details of the steps (including the timing of the steps) taken to verify the right to deal of the Client(s) <input type="checkbox"/> Any supporting evidence of the steps taken provided
<p>For a mortgage – for the verification of the right to deal of the mortgagor, either:</p> <input type="checkbox"/> Written details of the steps (including the timing of the steps) taken to verify the right to deal of the mortgagor(s) <input type="checkbox"/> Any supporting evidence of the steps taken provided OR <input type="checkbox"/> Where a Subscriber represents a mortgagee and was reasonably satisfied that the mortgagee has taken steps to verify the right to deal of the mortgagor(s) – written details of the basis on which the Subscriber was reasonably satisfied <input type="checkbox"/> Any supporting evidence of the steps taken provided
Supporting Evidence
<p>Copies of all other supporting evidence provided, including:</p> <input type="checkbox"/> Any evidence required by the Duty Authority <input type="checkbox"/> If applicable, a copy of any mortgage granted by the mortgagor <input type="checkbox"/> Any evidence required by the Prescribed Requirements Jurisdiction specific requirements: <input type="checkbox"/> If applicable, any evidence supporting a dealing requirement* <input type="checkbox"/> If applicable, evidence of the steps taken to retrieve and either securely destroy or make invalid the Certificate of Title(s) for the folio(s) of the Register listed in the Registry Instrument/Document* *delete if not applicable

I certify that the Documents and/or information provided in accordance with this checklist are to the Subscriber's knowledge, information and belief correct, complete and not false or misleading.

Name:

Subscriber Name:

Signature:

Date: