

Proposed Model Participation Rules

Stakeholder Consultation Briefing

30 March 2012



Proposed Model Participation Rules (MPR)

Model Rules that apply to Subscribers of an Electronic Lodgement Network (ELN)

They are in 2 parts:

- Rules set by the Registrars
- Rules set by the ELN Operator (ELNO)

This session deals only with those Rules set by the Registrars

Relevant Legislation

The following sections of the proposed Electronic Conveyancing National Law (ECNL) apply to the Participation Rules:

- **Section 23** – the Registrar may set rules relating to the use of an ELN
- **Section 24** – deals with consistency of Participation Rules across all jurisdictions
- **Section 25** – the Registrar must ensure the Participation Rules are publicly available
- **Section 26** – Subscribers must comply with the Participation Rules
- **Section 27** – the Registrar may waive compliance with any provisions in the Participation Rules

Section 3 – Compliance with Participation Rules

- The Subscriber must be able to comply with the Participation Rules at the time of application to become a Subscriber
- The Subscriber must comply with the Participation Rules while they are a Subscriber
- The Subscriber must continue to comply with certain Participation Rules even after they cease being a Subscriber

Section 4 – Eligibility Requirements

A Subscriber must:

- comply with the laws of the jurisdiction regarding who can be a Representative
- have an ABN
- comply with Corporations Act 2001, if they are a corporation
- be of good character and reputation
- comply with the Insurance Rules

Insurance Rules

- Professional indemnity and fidelity
- Minimum requirements those of conveyancing professionals in each jurisdiction
- ADIs and government self insure



Section 5 – Role of Subscribers

- Subscriber can act on their own behalf
- Subscriber can act, and sign documents, on behalf of a Client
- A Responsible Subscriber must exist for each lodgement



Section 6 – General Obligations

- Comply with all laws and with the Participation Rules
- Ensure compliance with the Participation Rules by all their Users
- Use the standard Client Authorisation Form
- Verify their Client’s right to enter the transaction
- Comply with the Verification of Identity Rules
- Comply with document retention rule of a minimum of 7 years
- Exercise due care and diligence when conducting transactions
- Provide assistance to the Registrar, the ELNO, or other Subscribers
- Protect sensitive information
- Ensure information supplied is correct
- Not transfer their ELN subscription

Client Authorisation

- Standard form
- Specific, standing and batch
- Authorises signing of documents, lodgement and financial settlement



Verification of Identity

- Face-to-face
- Current original documents
- At least one piece of photo id
- Use of agent - Subscriber liable
- Exceptions for established Clients and use of AML/CTF process - Subscriber liable



Section 7 – Obligations Regarding System Security and Integrity

- Take reasonable steps to ensure protection of systems
- Obtain a Digital Certificate to Sign documents digitally
- Verify identity and integrity of any Users Signing for the Subscriber
- Ensure only those authorised to Sign for the Subscriber do so
- Ensure information provided to any authority is correct
- Ensure only authorised Users access the ELN
- Ensure Users are trained
- Ensure security policy issued by ELNO is adhered to
- Notify the ELNO if any transaction might be compromised
- Provide Certifications

Certifications

Certification of each Instrument, where relevant, as to:

- verification of a party's identity
- holding a Client Authorisation
- retention of supporting evidence
- correctness of the instrument
- retention of a paper counterpart mortgage

Section 8 – Amendment of Participation Rules

- Subscriber to comply with any amendment to the Participation Rules
- Must be prior good faith consultation and 20 days' notice
- Exceptions - change to law, security or Subscribers not adversely affected

Section 9 – Restriction, Termination and Suspension

- Comply with any direction of the Registrar or ELNO restricting use of the ELN (e.g. prevent specific User accessing the ELN or limit transaction types)
- Follow directions from the Registrar regarding use of the ELN
- Suspension or termination can occur for various reasons, including:
 - breach of rules
 - acting fraudulently or negligently
 - posing a threat to the system
 - non payment of fees
 - failure to produce information
 - failure to comply with a written direction

Section 10 – Compliance

- Comply with the Compliance Examination Procedure
- Produce information or documents to the Registrar when asked
- Advise ELNO if aware of any non-compliance
- Remedy any non-compliance within 14 days of becoming aware

Section 11 – Prohibitions

A Subscriber must not:

- Modify or alter any data received from a Land Registry
- Use or reproduce any data received from a Land Registry, except to participate in the electronic transaction in which the data appears
- Use the ELN other than in accordance with the Participation Rules
- Disclose any information related to the transaction except as required for that transaction