

MODEL PARTICIPATION RULES GUIDANCE NOTE

COMPLIANCE EXAMINATIONS

1. INTRODUCTION

This guidance note aligns with Version 4 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.

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 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 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 Participation Rules and to build trust and confidence in the electronic lodgment network.

4. WHEN WILL A COMPLIANCE EXAMINATION BE CONDUCTED?

Subscribers will be generally selected at random for compliance examination.

Priority will be given to conducting compliance examination on Subscribers:

- who are newly registered;
- who have never been subject to a compliance examination;
- whose last or previous compliance examination(s) demonstrated non-compliance with the Participation Rules or misconduct with respect to the use of an electronic lodgment network;
- who have been the subject of a notification to the Registrar.

Targeted compliance examinations will also be conducted where the Registrar identifies any potential threat to the operation, security or integrity of the electronic lodgment network or the titles register. For example:

- past instances of non-compliance with the Participation Rules; or
- the Registrar identifying a problem with a registry instrument or conveyancing transaction during the examination of a registry instrument.

5. HOW WILL A COMPLIANCE EXAMINATION BE CONDUCTED?

Schedule 5 of the 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 checklist (see Appendix) from the Registrar.

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 MPR Guidance Note # 1: Client Authorisation);
- verification of identity (refer to MPR Guidance Note # 2: Verification of Identity);
- verification of the right to deal (refer to MPR Guidance Note # 4: Right to Deal);
- supporting evidence (refer to MPR 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 if they fail, without reasonable excuse, to comply with the notice the Registrar may suspend the Subscriber.

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 form:**
 - correct form and version used;
 - client details match the lodged registry instrument(s);
 - transaction details match the lodged registry instrument(s);
 - correctly signed by the client / client agent;
 - correctly signed by the Subscriber or its agent;
 - form completed including date;
 - form signed by the client/client agent at the time verification of identity is conducted. If not:
 - evidence of the steps taken to ensure form signed by the client/client agent provided;
 - that evidence is satisfactory;
 - evidence of reasonable steps taken 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 to the conveyancing transaction(s) the subject of the client authorisation;
 - form signed by the client/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 Participation Rule 6.5.1;
 - evidence of the steps taken to verify identity provided;

- evidence matches the client details in the lodged registry instruments(s) and (if applicable) the titles register;
- reasonable steps appear to have been taken;
- timing of verification of identity in relation to the signing of any client authorisation form is satisfactory;
- timing of verification of identity in relation to the signing of the registry instrument(s) is satisfactory.
- **Verification of the right to deal:**
 - evidence of the steps taken to verify right to deal provided;
 - evidence matches the client details in the lodged registry instruments(s) and (if applicable) the titles register;
 - reasonable steps appear to have been taken;
 - timing of verification of right to deal in relation to the signing of any client authorisation form is satisfactory;
 - timing of verification of right to deal in relation to the signing of the lodged dealing(s) is satisfactory.
- **Supporting evidence** (other than supporting evidence required above):
 - any evidence required by the duty authority provided and satisfactory;
 - any evidence required by statute or prescribed requirements provided and satisfactory;
 - copy of any mortgage granted by mortgagor provided;
 - mortgage granted by mortgagor on same terms as that of the lodged registry instrument;
 - mortgage granted by mortgagor correctly signed and executed.

Subscribers should refer to the relevant Model Participation Rules Guidance Note for further guidance regarding compliance with the 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 the compliance examination revealed compliance with the Participation Rules and accordingly no further action is required; or
- notification that the compliance examination revealed non-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 ten 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 Participation Rules may commence.

6. FREQUENTLY ASKED QUESTIONS

Q1: As a Subscriber who operates nationally, 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 co-ordinated and conducted consistently across all operating jurisdictions in accordance with this Guidance Note.

SUBSCRIBER COMPLIANCE EXAMINATION CHECKLIST

Registry Instrument / Document:
Client Authorisation <ul style="list-style-type: none"><input type="checkbox"/> Copy of Client Authorisation provided<input type="checkbox"/> Evidence provided of the steps taken to ensure form signed by the Client/Client Agent<input type="checkbox"/> Evidence provided of steps taken 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 to the Conveyancing Transaction(s) the subject of the Client Authorisation
Verification of Identity <ul style="list-style-type: none"><input type="checkbox"/> Evidence provided of the steps taken to verify identity of the Client(s) and/or the mortgagor(s)
Verification of Right to Deal <ul style="list-style-type: none"><input type="checkbox"/> Evidence provided of the steps taken to verify right to deal of the Client(s) and/or the mortgagor(s)
Supporting evidence <p>Copies of all supporting evidence provided including:</p> <ul style="list-style-type: none"><input type="checkbox"/> Any evidence required by the Duty Authority<input type="checkbox"/> If applicable, copy of any mortgage granted by mortgagor<input type="checkbox"/> Any evidence required by Prescribed Requirements

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: