

OPERATING REQUIREMENTS WAIVER

New South Wales

Section 27 *Electronic Conveyancing National Law (NSW)*

Title

This instrument is Operating Requirements Waiver OR 2/2015 – ELNO monitoring of Mortgagee Subscriber.

Enabling Provisions

1. Under sections 22 and 25 of the Electronic Conveyancing National Law (NSW) (the National Law) the Registrar General (“Registrar”) has determined and published Version 2 of the Operating Requirements relating to use of an Electronic Lodgment Network (Operating Requirements) which will come into effect on and from 1 October 2014.
2. Section 27 of the National Law permits the Registrar to waive compliance with all or any provisions of the Operating Requirements if the Registrar is satisfied that granting the waiver is reasonable in all the circumstances.

Affected Requirement

Operating Requirement 14.7.

Explanatory Statement

Under Operating Requirement 14.7, an Electronic Lodgment Network Operator (“ELNO”) must monitor compliance of Subscribers with the Participation Rules relating to the use of an Electronic Lodgment Network, which have been determined by the Registrar under sections 22 and 25 of the National Law, and must take specified actions in the event of a breach or suspected breach by a Subscriber of the Participation Rules.

The Registrar has granted to Subscribers who are mortgagees and to Subscribers representing mortgagees a partial waiver of the obligations to comply with Participation Rule 6.5.1(b) and (c) (Waiver PR 1/2015)

The Registrar is of the view that an ELNO should not be required to monitor compliance with, and take action in the event of a breach or suspected breach of, Participation Rule 6.5.1(b) and (c), to the extent that Waiver PR 1/2015 applies.

The Registrar has determined that a waiver should be granted to modify the ELNO’s obligations under Operating Requirement 14.7, pending formal amendment of the Participation Rules as referred to in Waiver PR 1/2015.

Waiver

Subject to the Conditions, the Registrar grants the ELNO a partial waiver of the ELNO’s obligation to comply with Operating Requirement 14.7.

Conditions

Partial waiver of Operating Requirement 14.7 is granted on the condition that an ELNO complies with Operating Requirement 14.7 insofar as it relates to compliance by Subscribers with Participation Rule 6.5.1 with the following amended paragraphs (b) and (c) of 6.5.1 substituted:

- (b) where the Subscriber is a mortgagee, and the mortgagor (in its capacity as mortgagor) does not have a Representative, each mortgagor or their agent; and
- (c) where the Subscriber represents a mortgagee, and the mortgagor (in its capacity as mortgagor) does not have a Representative, each mortgagor or their agent – however, the Subscriber need not take reasonable steps to verify the identity of each mortgagor or their agent if the Subscriber is satisfied that mortgagee has taken reasonable steps to verify the identity of each mortgagor or their agent; and

Commencement

This waiver commenced on 1 April 2015.

Period during which this waiver applies

This waiver operates until the earlier of:

- (a) the date on which Waiver PR 1/2015 ceases to apply; or
- (b) the publication of a revocation of this waiver by the Registrar.

Dated: 3 July 2015

Signed by:



**Des Mooney
Registrar General**