

## MODEL PARTICIPATION RULES GUIDANCE NOTE

### VERIFICATION OF IDENTITY

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#### 1 INTRODUCTION

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

- what verification of identity is;
- why verification of identity is required;
- when verification of identity is required; and
- how verification of identity is to be carried out.

Capitalised terms have the meanings 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 VERIFICATION OF IDENTITY?

Verification of identity is a process carried out to ensure that a Person exists and the Person is in fact who they claim to be. It includes ensuring that the Person the Subscriber is dealing with is the same person shown in any evidence obtained by the Subscriber as part of the reasonable steps taken to verify the identity of the Person (e.g. photographic identity documents such as a passport or drivers licence).

The Model Participation Rules for electronic conveyancing require a Subscriber to take reasonable steps to verify the identity of:

- Clients;
- Mortgagors;
- Persons to whom certificates of title are provided;
- Signers;

- Subscriber Administrators; and
- Users who are not Signers or Subscriber Administrators.

### 3 WHY IS VERIFICATION OF IDENTITY REQUIRED?

The purpose of carrying out verification of identity is to reduce the risk of identity fraud and the registration of fraudulent land transactions. Verification of identity of Clients and mortgagors is considered to be part of the due diligence required of conveyancing professionals. In electronic conveyancing, a Subscriber who is representing a Client will sign Registry Instruments or other Documents on the Client's behalf. In a similar way, mortgagees can sign a mortgage certifying that they hold a valid mortgage from the mortgagor.

In order for other participants in a Conveyancing Transaction to have confidence in the Registry Instruments or Documents, it is vital that the Client's or mortgagor's identity is verified.

### 4 WHEN IS VERIFICATION OF IDENTITY REQUIRED?

The various circumstances when verification of identity is required to be undertaken are outlined below.

#### 4.1 Clients and Client Agents

A Subscriber must identify each Client for which it has a Client Authorisation or their Client Agent. Where the Client Authorisation is optional, and is not used, the Subscriber must identify the Client or their Client Agent. Where the Client or Client Agent:

- **is an Individual**, the identity of that individual must be verified; or
- **is a company**, the existence of the company must be confirmed and the identity of the Person or Persons signing for the company or witnessing the company seal must be verified; or
- **has appointed an Individual as an attorney to sign for the Client**, the identity of the attorney must be verified; or
- **has appointed a company as an attorney to sign for the Client**, the existence of the company must be confirmed and the identity of the Person or Persons signing for the company or witnessing the company seal must be verified.
- **is an incorporated association**, the existence of the incorporated association must be confirmed and the identity of the Person or Persons signing for the incorporated association must be verified.

## **4.2 Mortgagor**

For a mortgage or an amendment or variation of mortgage, if a Subscriber is an incoming mortgagee (for example, a financial institution acting for itself), the Subscriber must verify the identity of the mortgagor or their agent.

If a Subscriber is representing an incoming mortgagee (for example a law firm on the panel for a financial institution), it must verify the identity of the mortgagor or their agent, unless it is reasonably satisfied that the mortgagee has taken reasonable steps to verify the identity of the mortgagor or their agent.

For a transfer of mortgage, the Subscriber must take reasonable steps to verify the identity of the mortgagor by ensuring that 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. This requirement in the Model Participation Rules only applies to Registry Instruments and other electronic Documents lodged electronically, not to other arrangements such as equitable assignments.

## **4.3 Paper certificates of title**

This requirement does not apply in Jurisdictions that do not have paper certificate of titles.

A Subscriber must verify the identity of any Client or Client Agent before providing them a duplicate or paper certificate of title.

A Subscriber must verify the identity of any mortgagor, former mortgagor or their agent before providing them a duplicate or paper certificate of title, unless the Subscriber is reasonably satisfied that the mortgagee it represents has taken reasonable steps to verify the identity of each mortgagor, former mortgagor or their agent.

## **4.4 Signers**

A Subscriber must verify the identity of each Person who is to Digitally Sign Documents on its behalf prior to a Digital Certificate being allocated to that Person.

## **4.5 Subscriber Administrators**

The Subscriber must verify the identity of each Person whom it appoints as a Subscriber Administrator, prior to their appointment as a Subscriber Administrator.

## **4.6 Users**

The Subscriber must verify the identity of each User that is not a Signer or Subscriber Administrator before the User is given access to the Electronic Lodgment Network.

## **5 HOW IS VERIFICATION OF IDENTITY TO BE CARRIED OUT?**

In all of the circumstances outlined above, a Subscriber is required to take reasonable steps to verify the identity of the Person.

Where a Subscriber is an organisation, any duly authorised Person can undertake the verification of identity.

A Subscriber must give a certification in the relevant Registry Instrument or Document that reasonable steps have been taken to verify identity.

### **5.1 What are 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.

The Subscriber decides what steps to take to verify the Person’s identity. What constitutes reasonable steps may be influenced by various factors that when taken into account contribute to a Subscriber being able to reasonably have confidence in the Person’s identity. Examples of these factors might include the length of time a Subscriber has known the Person or whether they have represented the Person on previous occasions.

Where a mortgagee represented by a Subscriber undertakes the verification of identity and therefore determines what steps to take to verify the mortgagor’s identity, the Subscriber must be reasonably satisfied that the mortgagee took reasonable steps. It is for a Subscriber to assess how it can be reasonably satisfied in the circumstances.

A standard for undertaking verification of identity is set out in Schedule 8 of the Model Participation Rules. This Verification of Identity Standard is not mandatory. However, if this Verification of Identity Standard is properly carried out by one of the prescribed categories of people, the Subscriber will be deemed to have taken reasonable steps to verify identity. The Verification of Identity Standard is one set of reasonable steps but there are other reasonable steps that can be taken to verify identity.

Subscribers are required to retain evidence supporting the verification of identity in order to demonstrate that reasonable steps were taken. Refer to Model Participation Rules Guidance Note #5: Retention of Evidence.

## **5.2 How can verifications be conducted overseas?**

Where a Subscriber's Client or Client Agent or a mortgagor is overseas, the Subscriber or mortgagee (represented by a Subscriber) needs to decide what steps to take to verify the Person's identity having regard to the available services and options under the circumstances.

One available option is to utilise the services of an Australian Embassy, High Commission or Consulate coupled with any necessary further steps in order for the Subscriber or mortgagee to be reasonably confident in the Person's identity. This process is detailed in the Appendix to this Guidance Note.

An international financial institution or Law Practice would also be able to use overseas personnel to conduct verification of identity.

## **5.3 When can an agent be used?**

A Subscriber can use an agent to undertake verification of identity on its behalf. A Subscriber that engages an agent to conduct a verification of identity should direct the agent how to conduct the verification of identity.

If the Subscriber appoints the agent as an Identity Agent, the Subscriber must direct the Identity Agent to apply the Verification of Identity Standard. For further information on the appointment of an Identity Agent refer to Section 5.7 below.

The Subscriber may also appoint an agent, who is not an Identity Agent, to undertake verification of identity and may direct the agent to conduct the verification of identity in some other way that constitutes taking reasonable steps. If the Subscriber appoints an agent who is not an Identity Agent, the Subscriber cannot rely on the deeming provision in Model Participation Rule 6.5.6.

A Subscriber should obtain from their agent supporting documentation so the Subscriber can make the required verification of identity certification. A Subscriber who intends to rely on verification of identity undertaken by an agent on its behalf should take steps to confirm that the agent has conducted the verification of identity in accordance with the Subscriber's directions, and with an appropriate level of care and attention. The Subscriber should consider the supporting documentation provided to the Subscriber and, if it contains discrepancies or inconsistencies, the Subscriber should make further enquiries.

Refer to Model Participation Rules Guidance Note #3: Certifications.

## 5.4 Signing of a Client Authorisation or Mortgage

Ideally, a Client Authorisation would be signed at the same time as the verification of identity is undertaken in order to ensure it is signed by the Client or Client Agent. However, there may be instances where these processes are not able to occur simultaneously. In these instances, the Subscriber needs to take reasonable steps to ensure that the Client Authorisation is being signed by their Client or Client Agent who was identified.

Similarly for the granting of a mortgage, the Subscriber must take reasonable steps to ensure that it is the mortgagor that was identified that grants the mortgage.

One example of how this may be done is by checking the verification of identity supporting documentation and taking appropriate steps to ensure it is the same Person signing.

## 5.5 Further Steps

What constitutes reasonable steps is dependent on the circumstances of each individual case. Further enquiries should be made where doubt arises, or should reasonably have arisen, in relation to a transaction and a Person's identity.

The Model Participation Rules require further steps to be taken where:

- an identity Document does not appear to be genuine;
- a photograph on an identity Document is not a reasonable likeness;
- the Person Being Identified does not appear to be the Person to which the identity Documents relate; or
- it is otherwise reasonable to take further steps.

Some circumstances where it may otherwise be reasonable to take further steps could include:

- where the Client or Client Agent has very limited identity Documents and there is no explanation as to why; or
- where you become aware the identity Documents have been cancelled; or
- where there appears to be an inconsistency between the identity Documents and the Client Authorisation or mortgage, such as differing signatures; or
- where an agent is used and there appears to be inconsistencies in the supporting documentation they provided in relation to verification of identity.

Examples of further steps that could be taken include (but are not limited to):

- obtaining more identity Documents;
- making enquiries with the Client or Client Agent or third parties;
- where the identity Documents are Australian, using electronic verification services;

- where it is a foreign identity Document, checking the Document looks the same as those on the respective country's government website;
- where the identity Document is in another language, having the identity Document translated by an authorised translator;
- where the verification is unable to be conducted face-to-face due to remoteness, conducting the verification by electronic means with further steps to satisfy yourself of the Person's identity.

Some circumstances may not be directly linked to verification of identity but may raise awareness that greater care should be taken in relation to a particular transaction and the Person Being Identified. For example, the transaction is urgent, you doubt the veracity of the instructions, it involves a non-standard mortgage of an unencumbered title or the Client or Client Agent has limited English. Whilst such transactions may be legitimate, it may be necessary to verify the circumstances surrounding the transaction. For example, checking the reason for urgency or engaging an independent interpreter.

## **5.6 Previous verification of identity**

Where a verification of identity has occurred within the previous two years (either by applying the Verification of Identity Standard or some other way that constitutes reasonable steps), the Person's identity does not need to be verified again, provided the Subscriber takes reasonable steps to ensure they are dealing with the Person who was previously identified. It is expected the Subscriber would review the evidence for the previous verification in order to be able to satisfy themselves that they are dealing with one and the same Person.

In addition, the Subscriber does not need to re-verify the identity of a Client or Client Agent with whom the Subscriber has a current Client Authorisation if the Subscriber previously complied with the verification of identity requirements prior to Digitally Signing any electronic Registry Instrument or other electronic Document under that Client Authorisation. For example, where there is a Standing Authority in place that extends for a time period of three years, and more than two years have passed since the Subscriber verified the identity of the Client, the Subscriber is not required to re-verify the identity of that Client. Where a Client Authorisation has expired, and the initial verification of identity was conducted more than two years ago, re-verification of identity is required.

## **5.7 What is the Verification of Identity Standard?**

The Verification of Identity Standard sets out procedures for how verification of identity may be performed. If the Standard is properly carried out by one of the prescribed categories of people then it will be deemed reasonable steps. Where there is a dispute the Subscriber

will be required to prove that the Verification of Identity Standard was properly carried out for it to be deemed reasonable steps.

### 5.7.1 Who can use the Verification of Identity Standard?

Anyone can use the Verification of Identity Standard. However, for it to be deemed reasonable steps the Standard must be properly carried out by one of the following categories of people:

- **Subscriber**

The Subscriber can apply the Verification of Identity Standard themselves.

- **Mortgagee (where the mortgagee is represented by a Subscriber)**

Where a mortgagee is not a Subscriber themselves but is represented by a Subscriber, the mortgagee can apply the Verification of Identity Standard to undertake verification of the identity of the mortgagor.

- **Identity Agent**

An Identity Agent is an agent of either the Subscriber or a mortgagee that is represented by a Subscriber, who meets the Identity Agent requirements of the Model Participation Rules. An Identity Agent must be appointed in writing by the Subscriber or a mortgagee represented by a Subscriber to act as the agent of the Subscriber or mortgagee. Depending on the laws of a jurisdiction, appointment in writing may include by electronic means. The appointment in writing must contain a direction to use the Verification of Identity Standard and must occur prior to the Identity Agent meeting with the Person Being Identified. The Identity Agent must provide a certification substantially in the form contained in Schedule 9 of the Model Participation Rules.

It is important that the appointment be in writing to ensure that there is no ambiguity as to what the Identity Agent has been asked to do (i.e. apply the Verification of Identity Standard).

The Subscriber or the mortgagee must reasonably believe the Identity Agent is reputable, competent and insured. An Identity Agent must maintain minimum levels of insurance. A Subscriber or mortgagee may, for example, take the following steps to satisfy themselves of the Identity Agent's reputation, competence and insurance:

- asking questions of the Identity Agent about how the verification of identity process is to be performed and who will verify the Client's identity;

- confirming with the Identity Agent that they have the required insurance under the Insurance Rules which covers all aspects of the Identity Agent's verification of identity process; and
- taking any other steps the Subscriber thinks reasonable in the circumstances.

The Verification of Identity Standard can be applied in whole or in part by any of the above categories of people acting as the Identity Verifier in the Standard. For example, the Subscriber may do some of the verification related to companies such as establishing who is authorised to sign for the company but use an Identity Agent to do the face-to-face verification of identity of the company's officers. Alternatively, the Subscriber may engage an Identity Agent and direct them to use the Verification of Identity Standard in its entirety.

## **5.7.2 How is the Verification of Identity Standard used?**

This section describes how the Verification of Identity Standard is used, and what is required of those using it in various situations.

### **5.7.2.1 Face-to-face verification**

To comply with the Verification of Identity Standard, the Person undertaking the verification (Identity Verifier) must conduct a face-to-face in-person interview with the Person to be identified (Person Being Identified).

The Identity Verifier must carefully inspect the Documents used to verify the identity and ensure the Documents are current (except for an expired Australian passport which may have expired within the last two years) and original. Any photographs on the Documents must reasonably correspond with the appearance of the Person Being Identified.

### **5.7.2.2 Identification Document Categories**

The Person Being Identified must supply original identification Documents from the list of Documents in the categories in the Verification of Identity Standard. The first assessment that needs to be made is whether or not the Person Being Identified is an Australian citizen or resident. If they are, then Categories 1 to 5 must be used. If they are not, Category 6 must be used. The highest category available must be used. A lower level category can only be used if the Person Being Identified does not possess the Documents required for the higher level, the Documents have expired, or if the Document is an Australian Passport that has been expired for a period of more than two years.

The Document categories in the Verification of Identity Standard require that a change of name or marriage certificate is to be provided if applicable. There may be instances where identification Documents issued by different government departments have been registered

in differing names but a change of name certificate is not appropriate, as that Individual has not changed and/or does not intend to officially change their name. In such a situation an Identity Verifier must take reasonable steps to ensure the Person Being Identified is one and the same Person as in the varying identification Documents provided. This may involve the Identity Verifier undertaking further checks to verify that Person's identity.

Category 5 is for Australian residents who need to use an Identity Declarant. An Identifier Declaration is a statutory declaration by a Person who knows the Person Being Identified. The Person making the statutory declaration is called the Identity Declarant. There are specific Prescribed Requirements on who can be an Identity Declarant and what must be included in the Identifier Declaration. The Identity Declarant must also have their identity verified by the Identity Verifier using the Verification of Identity Standard. However, the identity of the Identity Declarant cannot be verified by a further Identity Declarant.

### **5.7.2.3 Verification of Identity of Bodies Corporate**

For a body corporate, an Identity Verifier must:

- confirm the existence of the body corporate;
- take reasonable steps to establish who is authorised to sign for the body corporate or witness the affixing of any seal; and
- verify the identity of the individuals signing or witnessing the affixing the seal on behalf of the body corporate.

### **5.7.2.4 Verification of Identity of Attorneys**

For an attorney who is an Individual, an Identity Verifier must:

- confirm the details of the Person appointing the attorney (donor) and the attorney (donee) from the (registered) power of attorney;
- take reasonable steps to establish that the Conveyancing Transaction is authorised by that power of attorney; and
- verify the identity of the attorney.

For an attorney who is a body corporate the Identity Verifier must:

- confirm the details of the Person appointing the attorney (donor) and the attorney (donee) from the (registered) power of attorney;
- take reasonable steps to establish that the Conveyancing Transaction is authorised by that power of attorney;
- confirm the existence of the body corporate;
- take reasonable steps to establish who is authorised to sign for the body corporate or witness the affixing of any seal; and

- verify the identity of the Individuals signing or witnessing the affixing the seal on behalf of the body corporate.

#### **5.7.2.5 Evidence Required from an Identity Agent**

Where the verification of identity is conducted by an Identity Agent, the Subscriber or mortgagee (represented by a Subscriber) must receive from the Identity Agent an Identity Agent Certification in substantial compliance with that set out in Schedule 9 of the Model Participation Rules.

The Identity Agent Certification details:

- to whom the verification of identity relates;
- when it was carried out and by whom;
- what verification of identity Documents were used; and
- states that it was done in accordance with the Verification of Identity Standard as directed by the Subscriber.

The Identity Agent must also provide copies of the identity Documents relied on, signed dated and endorsed as true copies.

## **6 FREQUENTLY ASKED QUESTIONS**

### **Q1: How do I verify the identity of my Client or Client Agent who is overseas?**

A1: You need to decide what steps to take to verify the Person's identity having regard to the available services and options under the circumstances.

One option may be to utilise the services of an Australian Embassy, High Commission or Consulate (as set out in the Appendix), coupled with further steps in order for the Subscriber or mortgagee (represented by a Subscriber) to be reasonably confident in the Person's identity.

Further steps may include: making enquiries with the Client or Client Agent or third parties, where the identity Documents are Australian using electronic verification services, where it is a foreign identity Document checking the Document looks the same as on the respective country's government website, where the identity Document is in another language having the identity Document translated by an authorised translator, or where the verification is unable to be conducted face-to-face due to remoteness conducting the verification by electronic means with further steps to satisfy yourself of the Person's identity.

**Q2: My Client or Client Agent has one name on his/her passport and an anglicised or abbreviated version of that name on his/her driver's licence. What should I do?**

A2: It is possible that Documents issued by different government departments may have differing versions of a name.

You must take reasonable steps to ensure the Person required to be identified is one and the same Person referenced in the differing Documents. Examples which may be appropriate in some circumstances are:

- sighting other types of Documents or letters issued by an employer, government agency or educational institution and showing the Person's name and other details;
- seeking confirmation from relevant organisations of the information given by the Person and whether they are aware that the Person is also known by another name; and
- asking the Person questions about the reasons for the differing names, recording their answers and recording whether and on what basis you considered those answers to be satisfactory.

**Q3: Can I store supporting evidence of the verification of identity electronically?**

A3: Yes. Verification of identity evidence can be stored electronically. However, the medium and means in which Documents supporting the verification of identity are to be retained is to be determined by the Subscriber in light of the possible need to produce those Documents as evidence to a Court. Whichever medium is utilised the evidence should be safely and securely stored. Evidence supporting the verification of identity is required to be kept for seven years from lodgment. Refer to Model Participation Rules Guidance Note #5: Retention of Evidence.

**Q4: Will verification of identity cause delays in the conveyancing process?**

A4: Verification of identity should not cause delays in the conveyancing process as it is considered part of existing prudent conveyancing practice. It is expected that some form of verification of identity is already being undertaken in the paper conveyancing process.

**Q5: Can a Mortgage Broker act as an Identity Agent for a mortgagee?**

A5: Yes. A Mortgage Broker can act as an Identity Agent for a mortgagee for the purpose of verifying the identity of a mortgagor. The Mortgage Broker must be providing Credit Services related to real property and be either a holder of an Australian Credit

Licence, a Credit Representative of a holder of an Australian Credit Licence, or an employee or director of the holder of an Australian Credit Licence or of a related body corporate of a holder of an Australian Credit Licence engaging in the Credit Service on behalf of that licensee. The Mortgage Broker must hold or be covered by insurance in accordance with legislative requirements and which includes cover for verification of identity.

**Q6: I have known some of my Clients for over 30 years and have previously used their legal names in legal Documents. Why should I verify their identity just because I have not seen them in the last two years?**

A6: If the Verification of Identity Standard is not applied, the Subscriber must determine what actions it considers would, in the circumstances, constitute the taking of reasonable steps to verify the Client or Client Agent's identity. A situation where you have known the Client or Client Agent for over 30 years may be one where you decide that the requirement to take reasonable steps to identify the Client or Client Agent is satisfied by the years of interaction with that Client or Client Agent.

**Q7: I am a Subscriber who is a financial institution. Can I use the AML/CTF Know Your Customer schema to verify the identity of my mortgagor?**

A7: A Subscriber must determine for itself what steps it considers constitute the taking of reasonable steps to verify the identity of a Client or Client Agent, or, in this case, a mortgagor. It may be reasonable, in the circumstances, to use the AML/CTF schema. The risk of determining what is reasonable in the circumstances lies with the Subscriber.

**Q8: A 92 year old in a nursing home needs to sell her home to pay an accommodation bond. She has not seen her solicitor for at least 25 years. She has never had a passport or driver's licence. How should a Subscriber determine what may constitute reasonable steps?**

A8: In this situation some matters the Subscriber may consider in deciding what steps to take to verify their Client or Client Agent's identity may include:

- Will you take your own reasonable steps or seek to apply the Verification of Identity Standard?
- Can the verification of identity be conducted face-to-face? If yes, by whom? If not, what other means can be used to verify the Client or Client Agent's identity?
- What forms of identification are available? For instance, what forms of identification were used to obtain accommodation in the nursing home?

- If you wish to apply the Verification of Identity Standard and the Client or Client Agent has limited identification Documents, is there someone who could provide an Identifier Declaration, such as a doctor, nurse, police officer, social worker or minister of religion?

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.

**Q9: An 18 year-old wishes to take a transfer of land he has just inherited. He has no passport or driver's licence. How should a Subscriber determine what may constitute reasonable steps?**

A9: In this situation some matters the Subscriber may consider in deciding what steps to take to verify their Client or Client Agent's identity may include:

- Will you take your own reasonable steps or seek to apply the Verification of Identity Standard?
- Can the verification of identity be conducted face-to-face? If yes, by whom? If not, what other means can be used to verify the Client or Client Agent's identity?
- What forms of identification are available?
- As this is an 18 year old who would regularly be required to prove his age, is a photo card available?
- Is there enough other evidence to apply the Verification of Identity Standard? Is there a birth certificate and Medicare card that can be used?
- If there is not enough evidence available to apply the Verification of Identity Standard, what other forms of identification are available?
- If you wish to apply the Verification of Identity Standard and the Client or Client Agent has limited identification Documents, is there someone who could provide an Identifier Declaration, such as a teacher, lecturer, employer, doctor, nurse or police officer?

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.

**Q10: A Person who lives in a remote Aboriginal community is buying land. How should a Subscriber determine what may constitute reasonable steps?**

A10: In this situation some matters the Subscriber may consider in deciding what steps to take to verify their Client or Client Agent's identity may include:

- Is this an existing Client or Client Agent?
- Will you take your own reasonable steps or seek to apply the Verification of Identity Standard?
- Can the verification of identity be undertaken face-to-face? If yes, by whom? If not, how can it be undertaken?
- What forms of identification are available?
- Is there enough other evidence to apply the Verification of Identity Standard?
- If you wish to apply the Verification of Identity Standard and the Client or Client Agent has limited identification Documents, is there someone who could provide an Identifier Declaration, such as an employer, doctor, nurse, community leader, police officer, bank manager, Centrelink officer or other government officer?

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.

**Q11: An elderly Person discovers that his or her birth has never been registered and does not have documentation regarding the birth. How should a Subscriber determine what may constitute reasonable steps?**

A11: In this situation one of the main considerations for the Subscriber is what identification documentation is available given that there are limitations regarding documentation that proves the Client or Client Agent's birth.

The Subscriber could consider if they are able to use Category 5(b) in the Verification of Identity Standard, which was included for circumstances where limited identity documentation exists. In doing so they would need to consider the following:

- Is this an existing Client or Client Agent?
- Will you take your own reasonable steps or seek to apply the Verification of Identity Standard?
- Can the verification of identity be conducted face-to-face? If yes, by whom? If not, how can it be undertaken?
- What forms of identification are available?
- Does the Client or Client Agent have a Medicare card?
- What other Documents are available to evidence the Client or Client Agent's current and former living arrangements, ownership of assets and involvement in society using the identity they claim?
- If you wish to apply the Verification of Identity Standard and the Client or Client Agent has limited identification Documents, is there someone who could provide

an Identifier Declaration, such as a doctor, nurse, police officer, bank manager, social worker or minister of religion?

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.

**Q12: Is it always necessary to use a consular office in verifying the identity of a Person overseas?**

A12: The responsibility for verifying the identity of the parties to a Conveyancing Transaction rests with the practitioner representing them in the case of vendors and purchasers. The practitioner is required to take reasonable steps in verifying the identity. What is reasonable in each circumstance is for the practitioner to determine and to be able to subsequently substantiate if required.

The procedure outlined in the Appendix to this Model Participation Rule Guidance Note using Australian Consular Offices overseas is one service a practitioner may decide is reasonable in the circumstances. It is not mandatory that the Australian Consular Office service be used.

**Q13: Does the use of video technology meet the requirements of the Verification of Identity Standard?**

A13: To comply with the Verification of Identity Standard, the Person undertaking the verification (Identity Verifier) must conduct a face-to-face in-person interview with the Person Being Identified. The face-to-face in-person interview requires the Identity Verifier and the Person Being Identified to both be physically present at the interview. The Identity Verifier must also sight originals of Documents complying with one of the Categories of identification Documents set out in paragraph 3 of the Verification of Identity Standard (see Model Participation Rules, Schedule 8). Use of video technology, such as Skype or FaceTime, would not constitute a 'face-to-face in-person interview', nor does it allow production and sighting of original Documents, as required by the Verification of Identity Standard.

The Verification of Identity Standard sets out procedures for how verification of identity may be performed. If the Standard is properly carried out by one of the prescribed categories of people then it will be deemed reasonable steps.

Use of the Standard is not compulsory and may not be practical in some circumstances. Accordingly, it is also possible for a Subscriber to verify the identity of a Person in some other way that constitutes the taking of reasonable steps. What constitutes reasonable steps is dependent on the circumstances of each individual

case. Where the Standard is not used and there is a dispute, the Subscriber will be required to establish that the method used to verify the identity of a Person constituted “taking reasonable steps” in the particular circumstances.

Accordingly, where the Standard is not being used, a Subscriber may consider that use of video technology, such as Skype or FaceTime, is useful in the particular circumstances. However, its use should be considered by the Subscriber who will have to justify that, in the circumstances of that particular verification of identity, use of video technology and any other measures used, constitute the taking of reasonable steps. ARNECC notes that video technology may be manipulated or forged, therefore caution is recommended. The use of this technology is at the discretion and risk of the Subscriber.

Whether or not the Standard is used to verify a Person’s identity, further enquiries should be made where doubt arises, or should reasonably have arisen, in relation to a transaction and a Person’s identity.

**Q14: What is substantial compliance with the Identity Agent Certification?**

A14: Superficial formatting changes are permitted but the wording cannot be amended.

**Q15: Can I rely on an Identity Agent Certification provided to another Subscriber?**

A15: The obligation to undertake verification of identity rests with the Subscriber. They may use an Identity Agent or other agent to undertake a verification on their behalf. A Subscriber would not normally be able to rely on another Subscriber’s Identity Agent Certification. It may be possible to do so if there is an agency arrangement between the two Subscribers.

**Q16: How do I verify the identity of a Person entitled to receive a certificate of title if I am sending it to them?**

A16: A Subscriber (or the mortgagee it represents) must take reasonable steps to verify the identity of the Person to whom they are sending the certificate of title to ensure they are the Person entitled to receive it.

**Q17: As a lawyer or conveyancer, is it acceptable for me to verify the identity of a Person who is a member of my family? I have no personal interest in the property and am not on title.**

A17: In your capacity as a lawyer or conveyancer you are permitted to verify the identity of a Person who is a member of your family providing you have taken reasonable steps to verify the identity of that Person and can give a certification in the instrument(s) that reasonable steps have been taken to verify identity.

**Q18: Is a Subscriber required to verify the identity of a practitioner requesting the handover of a paper Certificate of Title being held on behalf of a former Client?**

A18: Subscribers must take reasonable steps to verify the identity of any Person to whom they provide a paper Certificate of Title (duplicate). If the request for the Certificate is from the Subscriber's Client, such as the registered proprietor, the Subscriber is required to take reasonable steps to verify the identity of that Client. If, on the other hand, the request is from a Person other than a former Client, the Subscriber is required to take reasonable steps to verify both the identity of that Person and their right to be requesting the Certificate.

These requirements are not necessary, however, when the Certificate of Title has been declared void or cancelled.

**Q19: We are a Subscriber and must verify the identity of our Client in regional China. We note that to verify the identity of our Client our options include engaging an agent at an:**

- **Australian Embassy or Consulate; or**
- **International law firm or bank.**

**Please advise if it is acceptable to engage a Representative from the Public Notary Office of the Republic of China to carry out the verification as our agent?**

A19: The Model Participation Rules state that a Subscriber is required to take 'reasonable steps' to verify the identity of its Client or Client Agent. This could be by using the Verification of Identity Standard or some other way that constitutes taking reasonable steps.

If using the Verification of Identity Standard, a Subscriber can use an Identity Agent to undertake verification of identity on its behalf. An Identity Agent is defined in the Model Participation Rules and requirements relating to Identity Agents are set out in Model Participation Rule 6.5.5. For example, a Subscriber that engages an Identity Agent must direct the Identity Agent to use the Verification of Identity Standard.

It is also possible for you to use another type of agent but that will not be deemed to constitute reasonable steps under Model Participation Rule 6.5.6.

You need to decide what steps to take to verify the Person's identity having regard to the available services and options under the circumstances.

**Q20: Can another conveyancer or lawyer act for my client in an electronic Conveyancing Transaction?**

A20: A conveyancer or lawyer (Instructing Practitioner) may instruct a conveyancer or lawyer Subscriber (Subscriber) to act on its Client's behalf to undertake work in an Electronic Lodgment Network, including creating and Digitally Signing electronic Registry Instruments and other electronic Documents. In these circumstances, the Subscriber must obtain a Client Authorisation directly from the Client (not the Instructing Practitioner). The Subscriber will also need to take reasonable steps to verify the identity of the Client and the Client's right to deal, as well as comply with all other Model Participation Rules.

Refer to Model Participation Rules Guidance Note #9: Instructing Practitioner Engaging a Subscriber.

**Q21: I represent a company. The Client Authorisation was signed by a director but the instructions are provided by other personnel. Is there a requirement to verify the identity of all instructors?**

A21: The requirement is to verify the identity of the Person(s) who signed the Client Authorisation. There is no requirement in the Model Participation Rules to verify the identity of instructors. However, it would be prudent for the Subscriber to verify that the personnel giving the instructions have the authority to bind the Client i.e. are properly authorised to give the instructions. A Subscriber may decide for itself that, in the circumstances, verification of identity of the instructor is needed in order to confirm their authority to provide instructions. Refer to Model Participation Rules Guidance Note #1: Client Authorisations for guidance on taking reasonable steps to verify the authority of instructors.

**Q22: I am a Representative and have a validly executed Client Authorisation providing me with Standing Authority to Digitally Sign Registry Instruments for my company Client. The Client Authorisation was executed more than two years ago. Am I required to verify the identity of the signatories to the Client Authorisation again?**

A22: No. If you have a current Client Authorisation in place, there is no requirement to verify the identity of the signatories every two years if you verified the identity of the signatories prior to Digitally Signing any electronic Registry Instrument or other electronic Document on behalf of that Client under that Client Authorisation.

**Q23: My Client has produced a digital driver licence or a digital photo card, rather than their plastic card. Would this satisfy the Verification of Identity Standard?**

A23: A Digital Driver Licence (DDL) or Digital Photo Card (DPC) may satisfy the Verification of Identity Standard. However, as each Jurisdiction will have their own specific legislation supporting DDLs or DPCs it will be up to each Subscriber to ensure that the law in their respective Jurisdiction permits the use of DDLs or DPCs for verification of identity purposes. If permitted, Subscribers will still need to retain evidence of the DDL or DPC relied upon for seven years, such as a screenshot or other method that allows it to be copied and retained.

**Q24: My Client has produced a digital Medicare card, digital Centrelink card or digital Department of Veterans' Affairs card, rather than their plastic or paper card. Would this satisfy the Verification of Identity Standard?**

A24: A digital Medicare card, Centrelink card or Department of Veterans' Affairs card may be used in applying the Verification of Identity Standard. Subscribers will still need to retain evidence of the digital card relied upon for seven years, such as a screenshot or other method that allows it to be copied and retained.

**Q25: Can a Justice of the Peace be appointed as an Identity Agent?**

A25: It is important to note that a Justice of the Peace typically does not hold the level of insurance required by the Model Participation Rules. The primary role of a Justice of the Peace is to witness persons making statutory declarations or certifying copies of original documentation, rather than verifying identity.

If the Subscriber is satisfied that the Justice of the Peace holds the requisite level of insurance, and is reputable and competent to perform verification of identity, the Subscriber may appoint a Justice of the Peace as an Identity Agent. Refer to Section 5.7.1 above which outlines the requirements for appointing an Identity Agent.

**Q26: What are the requirements for verification of identity where my Client is a company and I am being engaged by a director?**

A26: You must verify the identity of the Client, being the company, and each of the signers of the Client Authorisation, including any directors who sign the Client Authorisation. If only one director signs for a multi-director company, you will need to satisfy yourself that this is permitted by the company.

Refer to paragraph 5 of Schedule 8 of the Model Participation Rules for the steps required to be undertaken by an Identity Verifier applying the Verification of Identity Standard. The Identity Verifier must confirm the existence and identity of the body corporate or company by conducting an ASIC search or other relevant search, take reasonable steps to establish who is authorised to sign or witness the affixing of the seal on behalf of the body corporate or company and verify the identity of the

Individual(s) signing or witnessing the affixing of the seal in accordance with the Verification of Identity Standard.

**Q27: Can a Subscriber acting for a Client rely on the verification of identity undertaken by another conveyancer or lawyer where verification of identity was completed less than two years prior?**

A27: A Subscriber must undertake verification of identity itself or through its own Identity Agent or other agent. It will therefore depend on whether the other conveyancer or lawyer is the Subscriber's Identity Agent or agent. The two year period only applies to verification of identity undertaken by a particular Subscriber within the previous two years.

**Q28: Do I need to verify the identity of Signers, Subscriber Administrators and other Users every two years?**

A28: No. There is no requirement to verify the identity of Signers, Subscriber Administrators or other Users again after they had their identity verified in accordance with Model Participation Rule 6.5.1 (d), (e) or (f). This means that:

Signer: A Signer's identity must be verified before being given their Digital Certificate.

Subscriber Administrator: A Subscriber Administrator's identity must be verified before being appointed as a Subscriber Administrator.

User: Other Users that are not Signers or Subscriber Administrators must have their identity verified before being given access to an ELN.

**Q29: I represent a company. If I verify the identity of the directors or company secretary of the company, or an attorney appointed under a power of attorney, and there is a current Standing Authority Client Authorisation in place, would I be required to re-verify the identity of the company if the directors, company secretary or attorney subsequently left the company?**

A29: If you verified the identity of the company, and those who signed the Client Authorisation for the company before Digitally Signing an electronic Registry Instrument or other electronic Document, you do not need to re-verify the identity of the company or its directors, secretary or attorney where you have a current Client Authorisation in place.

**Q30: I am a bank Subscriber. Can I rely on steps taken by a Mortgage Broker to verify the identity of the mortgagor?**

A30: A financial institution can choose to rely on steps taken by a Mortgage Broker as part of the bank's reasonable steps in undertaking verification of identity. Whether or not those steps were reasonable will ultimately be up to a court to decide.

In order for the bank to have the benefit of the deeming provision in the Model Participation Rules (i.e. for it to be deemed reasonable steps), the Mortgage Broker must:

- be appointed in writing as the bank's Identity Agent
- have the required insurance as set out in Schedule 6 of the Model Participation Rules
- apply the Verification of Identity Standard as set out in Schedule 8 of the Model Participation Rules
- provide the Identity Agent Certification in Schedule 9 of the Model Participation Rules.

## Appendix

### Australian Embassy/High Commission/Consulate Overseas Verification of Identity and Witnessing Process

- 1 A client or mortgagor located overseas contacts a Subscriber or mortgagee concerning a conveyancing transaction relating to Australian land.
- 2 The Subscriber or mortgagee takes initial instructions from the client or mortgagor and conducts preliminary enquiries – full name and contact details for the client or mortgagor, land description, transaction details (sale, purchase, mortgage etc).
- 3 The Subscriber or mortgagee reviews with the client or mortgagor what identification documents they have available to them and determines the highest document category in the Verification of Identity Standard they can satisfy.
- 4 The Subscriber or mortgagee advises the client or mortgagor that they will need to have their identity verified and signature witnessed by an employee at an Australian Embassy, High Commission or Consulate (Australian Consular Office). The Subscriber or mortgagee advises the client or mortgagor to find out where the nearest Australian Consular Office is located, to make preliminary contact with the Australian Consular Office to make an appointment (where necessary) and to notify the Subscriber or mortgagee of the Australian Consular Office location.
- 5 The Subscriber or mortgagee takes reasonable steps to determine the client or mortgagor's right to deal as a particular party to the conveyancing transaction.
- 6 The Subscriber or mortgagee prepares a Client Authorisation or mortgage and the approved Australian Embassy/High Commission/Consulate Identity/Witnessing Certification (Certification) and sends them to the client or mortgagor with written instructions advising of the process and what original and current identification documents are to be produced at the nominated Australian Consular Office (passport, driver's licence etc). The format of the Certification is at the end of this Appendix and the Certification Form is available from the ARNECC website.
- 7 The client or mortgagor attends the nominated Australian Consular Office with the prepared Client Authorisation or mortgage and Certification, original identification documents and the Subscriber or mortgagee's written instructions.
- 8 The Australian Consular Office satisfies itself that the photos on the identification documents produced by the client or mortgagor are a reasonable likeness of the client or mortgagor. If this is not possible, the Australian Consular Office service is terminated.
- 9 When reasonable likeness is confirmed, the Australian Consular Office:
  - prepares endorsed copies of all original identification documents produced by the client or mortgagor;
  - asks the client or mortgagor to sign the Client Authorisation or mortgage and the Australian Consular Office witnesses the client or mortgagor's signature on the Client Authorisation or mortgage; and
  - completes, signs, dates and endorses the Certification for the client or mortgagor.
- 10 The Australian Consular Office hands to the client or mortgagor the:
  - original identification documents;
  - signed Client Authorisation or mortgage,

- signed, dated and endorsed copies of the original identification documents produced; and
  - signed, dated and endorsed Certification.
- 11 The client or mortgagor delivers the signed Client Authorisation or mortgage, endorsed copies of the original identification documents produced and the Certification to the Subscriber or mortgagee. (The means of delivery are to be arranged between the client or mortgagor and the Subscriber or mortgagee.)
- 12 If the Subscriber or mortgagee has any reason to doubt the authenticity of any of the documents received from the client or mortgagor, copies of the Australian Consular Office endorsements and Certification can be referred to the Department of Foreign Affairs and Trade (DFAT) by email for confirmation that the signatures and stamps appearing on the documents are that of a DFAT officer. For example, if the documents don't bear a stamp of the Australian Consular Office, the name of the Australian Consular Office officer is not clear or there are other circumstances surrounding the transaction that cause doubt, such as signatures of clients not matching.

The following process applies for these referrals:

- The Subscriber or mortgagee emails the Australian Consular Office officer who made the endorsements and certification using the standard email format  [<firstname>.<lastname>@dfat.gov.au](mailto:<firstname>.<lastname>@dfat.gov.au)  (or in the same format with  [@austrade.gov.au](mailto:@austrade.gov.au)  for those consulates run by Austrade) supplying details of the service provided to the client or mortgagor and requesting confirmation that the Australian Consular Office provided the service. The request is to include copies of the endorsed document copies and the Certification supplied by the client or mortgagor. The reason for the referral is to be included in the request to allow DFAT to determine whether any aspect of the Australian Consular Office's service gave rise to the referral.
- The Australian Consular Office will, if work demands allow, reply to the request providing confirmation of the service provided. Alternatively, the Subscriber or mortgagee will receive an automatic read receipt email confirming that the Australian Consular Office officer exists as an employee of DFAT.
- If the Subscriber or mortgagee receives no response or cannot for any reason determine the name of the Australian Consular Office officer who made the endorsements or Certification (for example, when the Australian Consular Office stamp obscures part of the Australian Consular Office officer's name), the Subscriber or mortgagee should email DFAT's Consular Policy Unit at  [consular.policy@dfat.gov.au](mailto:consular.policy@dfat.gov.au)  requesting confirmation of the service provided by an Australian Consular Office and, when no response has been received from a request made directly to the Australian Consular Office, attaching a copy of that request.

In responding to confirmation requests DFAT is confirming that the Australian Consular Office officer's signature and the Australian Consular Office stamp on a document are from an authorised officer.

- 13 The process for paper transactions is the same by substituting paper instrument for Client Authorisation and by substituting Australian Legal Practitioner, Law Practice or Licensed Conveyancer for Subscriber.

**Australian Embassy/High Commission/Consulate Identity and Witnessing Certification**

"I, \_\_\_\_\_ [full name of consular/diplomatic officer or authorised consular employee]

of \_\_\_\_\_ [Australian Embassy/High Commission/Consulate]

being a consular officer, diplomatic officer or an authorised consular within the meaning of *Section 3 of the Consular Fees Act 1955 (Cth)* hereby certify that:

(a) the identification/witnessing relates to

\_\_\_\_\_ [full name of the person being identified] ('the person being identified'); and

- (b) the verification of identity/witnessing was carried out on \_\_\_\_\_ [date]; and
- (c) the current identification documents as listed below were produced to me and copies of these documents signed, dated and endorsed by me as true copies were provided to the person being identified; and
- (d) the verification of identity/witnessing was conducted in accordance with the Department of Foreign Affairs and Trade policy for verification of identity, witnessing signatures on documents and making of endorsed copies; and
- (e) the person being identified was physically present for the verification of identity and the witnessing of the document(s) listed at paragraph (g); and
- (f) I am not a party to the transaction; and
- (g) I witnessed the person being identified execute the following document(s)

\_\_\_\_\_ (eg, Client Authorisation, transfer of land, mortgage of land); and

(h) this signed, dated and endorsed certification; the signed, dated and endorsed copy identity documents (listed below); and the witnessed document(s) listed in paragraph (g); were returned to the person being identified.

.....  
Signature of consular officer, diplomatic officer or authorised consular employee

| Post Stamp

List of identification documents produced (see (c) above):

Description of identity documents produced and endorsed