



# Queensland eConveyancing Subscriber Compliance Plan

Titles Queensland

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Version 4

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## 1. Definitions

<b>ARNECC</b>	Australian Registrars' National Electronic Conveyancing Council
<b>SCP</b>	Subscriber Compliance Program
<b>ECNL</b>	Electronic Conveyancing National Law
<b>ELN</b>	Electronic Lodgment Network
<b>ELNO</b>	Electronic Lodgment Network Operator

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

## 2. Background

The Participation Rules determine the rules that Subscribers must comply with to be registered as a Subscriber with an ELNO and while continuing to be registered and use the ELNO's ELN.

Section 33 of the ECNL provides the Registrar (as defined in the ECNL) in each Jurisdiction with the power to conduct a Compliance Examination in relation to a Subscriber for the purpose of ascertaining whether or not the Participation Rules are being or have been complied with; and / or investigating any suspected or alleged case of misconduct with respect to the use of an ELN. Under section 34 of the ECNL a Subscriber is obliged to cooperate fully in a Compliance Examination, whilst Schedule 5 of the Participation Rules sets out the Compliance Examination Procedure.

ARNECC has developed a Subscriber Compliance Program (SCP) in consultation with industry as a national program.

A key objective of the SCP is to ensure the program assists Subscribers in meeting their obligations and responsibilities under the Participation Rules and to build trust and confidence with Users of an ELN.

The purpose of the SCP is to ensure that:

- all Subscribers and each Registrar (as defined in the ECNL) have confidence in the operation of the ELN; and
- to assist Subscribers to achieve the highest level of quality in conducting their conveyancing business.

The SCP will be supported by ongoing proactive communications with industry on Compliance Examination responsibilities and related issues.

### 2.1. Scope

Consistent with the SCP, the scope of the plan is to monitor that the obligations and practices that support the certifications of a Subscriber acting on its own behalf, or on behalf of a Client, are being met in the following areas:

- Client Authorisation
- Verification of Identity
- Verifying the Right to Deal of a Client or Mortgagor
- Retention of supporting evidence

### 2.2. National links

A member of the Queensland Compliance Examination team will represent Queensland on the national SCP network. A strong network of Compliance Examination Teams will ensure

maximum leverage from Compliance Examination findings including identification of any emerging national trends or weaknesses in the environment.

## 3. Procedure

### 3.1. Compliance Examination responsibilities

The Compliance Examination team has responsibility to ensure that Subscribers have a clear understanding of the scope of the Compliance Examination and the process to be followed, including providing each Subscriber to be examined with [Model Participation Rules Guidance Note #6 – Compliance Examinations](#).

Both parties must enter into the Compliance Examination in good faith.

### 3.2. Compliance Examination selection process

Subscribers examined may be selected at random or may be targeted 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 raising issue(s). The notification may be received from another Subscriber, an ELNO, an Identity Agent, a Subscriber's Client or another Party
- A problem being identified with a transaction during the examination of a dealing
- The volume, value or complexity of transactions the Subscriber is Lodging
- Any potential threat to the operation, security, integrity or stability of an ELN

In normal circumstances the Compliance Examination will be conducted post registration. Depending on the circumstances under which a targeted Compliance Examination is conducted, the Compliance Examination may need to be completed before registration proceeds.

### 3.3. Compliance Examination process

For a Subscriber selected for Compliance Examination a small sample of Registry Instruments, not being more than 10 Registry Instruments, will normally be chosen for examination.

The Compliance Examination will be initiated by a notice under paragraph 1.2 of Schedule 5 of the Participation Rules to the Subscriber identifying the scope of the Compliance Examination and including a checklist (see the appendix of [Model Participation Rules Guidance Note #6 – Compliance Examinations](#)) that must be completed for each Registry Instrument or other Document identified.

The Subscriber must provide within the time specified in the Compliance Examination Notice (not less than 10 Business Days) the Documents and/or information outlined in the checklist for the following requirements under the Participation Rules:

- Client Authorisation
- Verification of identity
- Verification of the right to deal
- Supporting evidence

The Compliance Examination team will initially conduct an assessment of the submitted documentation. If further Documents and/or information are required, a request for further Documents and/or information will be issued to the Subscriber outlining the further Documents and/or information to be provided and the timeframe in which they must be provided.

Failure, without reasonable excuse, to comply with a Compliance Examination Notice constitutes a Suspension Event under the Participation Rules. The Suspension and Termination Procedure in Schedule 7 of the Participation Rules may then be used.

Depending on the circumstances an extension of time in which to respond may be granted.

If the Compliance Examination team is satisfied that all of the required Documents and/or information have been provided, a desktop evaluation of the Documents and/or information submitted against the Registry Instrument(s) or other Document(s) selected for examination will be undertaken.

The desktop evaluation will as a minimum comprise the following assessment:

#### Client Authorisation form (if applicable)

- Participation Rules form used (including correct version)
- Form properly completed including:
  - Client Details match the lodged Dealing(s)
  - Transaction Details match the lodged Dealing(s)
  - Correctly signed and dated by the Client/Client Agent
  - Subscriber details (and Subscriber Agent details if applicable) completed
  - Correctly signed and dated by the Subscriber or the Subscriber's Agent
- Details and supporting evidence of 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 provided
- Form signed by the Client/Client Agent before the Subscriber signed the lodged dealing(s)

#### Verification of Identity

- Details and supporting evidence of steps taken to verify the identity of each Client provided
- Evidence supporting any justification for a change of name provided
- Evidence matches the Client details in the lodged dealing(s) and (if applicable) the Titles Register
- Verification of identity conducted at or before the signing of any Client Authorisation Form. If not, how did the Subscriber satisfy itself that it dealt with one and same person
- Verification of identity conducted before the signing of the lodged dealing(s)

#### Verification of the Right to Deal

- Details and supporting evidence of steps taken to verify the right to deal of each Client provided
- Evidence matches the Client details in the lodged dealing(s) and (if applicable) the Titles Register
- Verification of right to deal conducted before the signing of the lodged dealing(s)

## Supporting Evidence

- Mortgage granted by mortgagor on same terms as that of the lodged Mortgage

The Subscriber will be notified by the Compliance Examination team as to the results of the Compliance Examination and any recommendation(s) or corrective action(s) that may be required.

The corrective action may include the requirement for the Subscriber to provide further documentary evidence and/or an explanation in writing regarding the deficiencies in the Compliance Examination team's findings and the controls to be implemented to prevent a re-occurrence.

In particular circumstances of gross deficiency in the Compliance Examination findings a face-to-face interview with the Subscriber or a site visit may be required to the Subscriber's office. Where a site visit to a Subscriber's office is deemed necessary, before the site visit occurs the scope and approach will be communicated and agreed with the Subscriber.

### **3.4. Compliance Examination outcome**

Following completion of a Subscriber Compliance Examination the findings must be recorded detailing the extent of the Compliance Examination and the Compliance Examination team's findings, including recommendations given or corrective actions requested.

Subscribers will be notified of the outcome of a Compliance Examination in writing within 10 Business Days of the completion of the Compliance Examination.

Where the finding is unsatisfactory and the recommendation includes the requirement for a face-to-face meeting or site visit, the Compliance Examination findings must be provided to the Subscriber at least 10 Business Days prior to these events occurring.

If the Compliance Examination results in knowledge or a reasonable suspicion/belief that a Suspension Event or Termination Event has occurred, the Suspension and Termination Procedure in Schedule 7 of the Participation Rules may be used.

The Compliance Examination review team will maintain a database of all Compliance Examinations containing the Subscriber details, Compliance Examination review date, examined Registry Instruments or other Documents and the outcome of the Compliance Examination recorded.