

MODEL PARTICIPATION RULES GUIDANCE NOTE

INSTRUCTING PRACTITIONER ENGAGING A SUBSCRIBER (E-LODGMENT SUBSCRIBER)

1 INTRODUCTION

This guidance note aligns with Version 7 of the Model Participation Rules and explains:

- what an e-lodgment Subscriber is;
- how a Client Authorisation is completed when an e-lodgment Subscriber is engaged;
- how Verification of Identity (VOI) is conducted when an e-lodgment Subscriber is engaged;
- how verification of right to deal is conducted when an e-lodgment Subscriber is engaged;
- how certifications are made when an e-lodgment Subscriber is engaged; and
- how evidence is retained when an e-lodgment Subscriber is engaged.

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 AN E-LODGMENT SUBSCRIBER?

A conveyancer or lawyer (Instructing Practitioner) may instruct a conveyancer or lawyer who is a Subscriber to act on behalf of the Instructing Practitioner's Client to undertake work in an Electronic Lodgment Network, including creating and Digitally Signing electronic Registry Instruments and other electronic Documents. The Subscriber instructed by the Instructing Practitioner is referred to in this guidance note as an 'e-lodgment Subscriber'.

An e-lodgment Subscriber must ensure that its professional indemnity insurance covers this role, including the approach it adopts to fulfilling its obligation under the Model Participation Rules.

3 HOW IS A CLIENT AUTHORISATION COMPLETED WHEN AN E-LODGMENT SUBSCRIBER IS ENGAGED?

A Client Authorisation must be made directly between the e-lodgment Subscriber and the Client. The e-lodgment Subscriber is the Representative and should be noted on the Client Authorisation as such. The Instructing Practitioner should not sign the Client Authorisation except as set out below.

Representative Agent means a person authorised by a Representative to act as the Representative's agent including to sign the Client Authorisation. The Instructing Practitioner is not the Representative Agent and should not sign the Client Authorisation as such, unless the e-lodgment Subscriber specifically appoints the Instructing Practitioner as its Representative Agent by a written agency agreement. Where the Instructing Practitioner signs the Client Authorisation as Representative Agent, the e-lodgment Subscriber's details should still be noted in the Representative section.

The Instructing Practitioner is not the Client Agent and should not sign the Client Authorisation as such unless the Instructing Practitioner has been appointed as attorney for the Client under a power of attorney.

There must be a Client Authorisation directly between the e-lodgment Subscriber and each Client, including where those Clients are referred to the e-lodgment Subscriber by the same Instructing Practitioner.

Examples of completed Client Authorisation are annexed to this guidance note. Note that these are just examples, and consideration should be given to the particular circumstances of each case.

For further information see Model Participation Rules Guidance Note #1: Client Authorisation.

4 HOW IS VERIFICATION OF IDENTITY CONDUCTED WHEN AN E-LODGMENT SUBSCRIBER IS ENGAGED?

The e-lodgment Subscriber must take reasonable steps to verify the identity of the Client. The e-lodgment Subscriber may specifically appoint the Instructing Practitioner to undertake the verification of identity by a written agency agreement, either as an agent who must

undertake reasonable steps as required by the e-lodgment Subscriber or as an Identity Agent.

Identity Agent means a Person who is an agent of either a Subscriber, or a mortgagee represented by a Subscriber, appointed in writing, and who:

- (a) the Subscriber or mortgagee reasonably believes is reputable, competent and insured in compliance with Insurance Rule 2; and
- (b) is authorised by the Subscriber or mortgagee to conduct verification of identity on behalf of the Subscriber or mortgagee in accordance with the Verification of Identity Standard.

If the Instructing Practitioner is appointed as an Identity Agent, the e-lodgment Subscriber must ensure that the Instructing Practitioner complies with the requirements for Identity Agents under the Model Participation Rules. This includes meeting the requirements to be an Identity Agent, applying the Verification of Identity Standard and providing an Identity Agent Certification as set out in Schedule 9 of the Model Participation Rules. The e-lodgment Subscriber will need to check that the Instructing Practitioner's professional indemnity insurance covers being an Identity Agent.

If the e-lodgment Subscriber appoints the Instructing Practitioner as an agent (not as an Identity Agent), the Instructing Practitioner does not need to apply the Verification of Identity Standard but must verify identity in some other way that constitutes taking reasonable steps. If this is the case, the e-lodgment Subscriber cannot rely on the deeming provision in Model Participation Rules 6.5.6.

For further information see Model Participation Rules Guidance Note #2: Verification of Identity.

5 HOW IS VERIFICATION OF THE RIGHT TO DEAL CONDUCTED WHEN AN E-LODGMENT SUBSCRIBER IS ENGAGED?

The e-lodgment Subscriber must take reasonable steps to verify that the Client is a legal Person and has the right to enter into the Conveyancing Transaction. This verification must be undertaken by the e-lodgment Subscriber, not the Instructing Practitioner, unless the Instructing Practitioner has been appointed as the e-lodgment Subscriber's agent. The e-lodgment Subscriber will need to check that the Instructing Practitioner's professional indemnity insurance covers being such an agent.

For further information see Model Participation Rules Guidance Note #4: Right to Deal.

6 HOW ARE CERTIFICATIONS MADE WHEN AN E-LODGMENT SUBSCRIBER IS ENGAGED?

The e-lodgment Subscriber must provide the certifications as to Identity, Authority, Evidence and Correctness when Digitally Signing electronic Registry Instruments and other electronic Documents. These certifications are made by the e-lodgment Subscriber, not the Instructing Practitioner.

For further information see Model Participation Rules Guidance Note #3: Certifications.

7 HOW IS EVIDENCE RETAINED WHEN AN E-LODGMENT SUBSCRIBER IS ENGAGED?

Under the Model Participation Rules, the e-lodgment Subscriber, not the Instructing Practitioner, must retain the supporting evidence for the transaction for at least seven years.

For further information see Model Participation Rules Guidance Note #5: Retention of Evidence.

8 FREQUENTLY ASKED QUESTIONS

- Q1: Is the e-lodgment Subscriber or Instructing Practitioner responsible for responding to and complying with a Compliance Examination?
- A1: It is the e-lodgment Subscriber who must respond to a Compliance Examination and who must comply with any requirements of a Compliance Examination, including producing all the requested documentation.
 - For further information see Model Participation Rules Guidance Note #6: Compliance Examinations.
- Q2: I am an e-lodgment Subscriber. Can I enter into a single Client Authorisation for each Instructing Practitioner that refers work to me?
- A2: The Client Authorisation operates between you and the Client, not between you and the Instructing Practitioner. Therefore, you will need a properly completed Client Authorisation for each Client. If the Instructing Practitioner has a particular Client with multiple matters that will be referred to you, you could seek to complete a Standing Authority or Batch Authority Client Authorisation and have that signed by the Client.

For further information see Model Participation Rules Guidance Note #1: Client Authorisation.

- Q3: I am a conveyancer and Subscriber to an Electronic Lodgment Network. I have been engaged by a law firm (Instructing Practitioner) to prepare and lodge documents on behalf of their Client. They have instructed me to prepare and lodge a type of document that is not permitted to be prepared by a conveyancer under my jurisdiction's legislation. Is it okay to proceed given that the Instructing Practitioner is suitably qualified to prepare that document type and they are providing the instructions?
- A3: No. A Subscriber must always comply with all relevant legislation (Acts and Regulations). To submit these documents, the Instructing Practitioner would need to either engage a Subscriber that is suitably qualified to prepare and lodge the document type or become an ELNO Subscriber to prepare and submit for lodgment their own documents.

ABC Pty Ltd (e-lodgment Subscriber) completes the Client Authorisation which is signed by Frederick Albert Bloggs and Freda Amy Bloggs (Clients) and Eric Lodge, an employee of ABC Pty Ltd.

		CLIENT AUTHORIS	ATION Version 7		
V	hen this form i	is signed, the Representative is authorised to act fo	or the Client in a Conveyancing Transaction(s).		
Priv	vacy Collectio	n Statement: The information in this form is collectining publicly searchable registers and indexes.	ted under statutory authority and used for the		
		eference: BLOGGS-16-4-15 CLIENT 1	CLICAT 2		
_ 0	NAME	FREDERICK ALBERT BLOGGS	CLIENT 2 FREDA AMY BLOGGS		
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ETA	LAND TITLE	11/53 ALBERT ST, BRISBANE 71011681	10/100 QUEEN ST, BRISBANE		
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TRANSACTION DETAILS	CONVEYANCING TRANSACTION(S)	✓ TRANSFER ☐ MORTGAGE ☐ CAVEAT ☐ PRIORITY ☐ DISCHARGE/ ☐ WITHDRAWAL	✓ TRANSFER ☐ MORTGAGE ☐ CAVEAT ☐ PRIORITY ☐ DISCHARGE/ ☐ WITHDRAWAL OF		
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		CLIENT 1 / CLIENT AGENT 1	CLIENT 2 / CLIENT AGENT 2		
		I CERTIFY that:			
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IGN		behalf, or where I am a Client Agent to act on			
		behalf of the Client, in accordance with the term			
(c) if I am acting as a Client Agent that I have no notice of the revocation of my author on behalf of the Client. I AUTHORISE the Representative to act on my behalf, or where I am a Client Agent to behalf of the Client, in accordance with the terms of this Client Authorisation and any Participation Rules and any Prescribed Requirement to: (a) sign documents on my behalf as required for the Conveyancing Transaction(s); a (b) submit or authorise submission of documents for lodgment with the relevant Land					
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יי בי		I/We CERTIFY that reasonable steps have been to signed by each of the persons named above as Cl	lient or Client Agent.		
א ע ע	SIGNATURE OF REPRESENTATIVE OR REPRESENTATIVE AGENT IF APPLICABLE:				
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SIGNATORY NAME:

CAPACITY:

ERIC LODGE

ABC Pty Ltd (e-lodgment Subscriber) appoints Lamb Lawyers (Instructing Practitioner) as its Identity Agent and Lawrence Lawyer, an employee of Lamb Lawyers, verifies the identity of Frederick Albert Bloggs and Freda Amy Bloggs (Clients) and ABC Pty Ltd completes the Client Authorisation which is signed by Frederick Albert Bloggs and Freda Amy Bloggs in person and Eric Lodge, an employee of ABC Pty Ltd.

CLIENT AUTHORISATION Version 7						
When this form is signed, the Representative is authorised to act for the Client in a Conveyancing Transaction(s).						
Privacy Collection Statement: The information in this form is collected under statutory authority and used for the purpose of maintaining publicly searchable registers and indexes.						
		eference: BLOGGS-16-4-15				
		CLIENT 1	CLIENT 2			
_ U	NAME	FREDERICK ALBERT BLOGGS	FREDA AMY BLOGGS			
	ACN/ARBN ADDRESS	11/53 ALBERT ST, BRISBANE	11/53 ALBERT ST, BRISBANE			
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CLIENT AUTHORISATION AND SIGNING	behalf, or where I am a Client Agent to act on s of this Client Authorisation and any ment to: or the Conveyancing Transaction(s); and ts for lodgment with the relevant Land Registry; on the Conveyancing Transaction(s); and Conveyancing Transaction(s). Freda Amy Bloggs DATE 16/11/19 CLIENT/CLIENT AGENT FREDA AMY BLOGGS NAME CAPACITY If applicable AUSTRALIAN CONSULAR OFFICE WITNESS or IDENTITY AGENT (if not a Representative Agent) NAME Lawrence DATE Lawrence DATE Lawrence DATE Lawrence 16/11/19					
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25 15 15 15 15 15 15 15 15 15 15 15 15 15		DATE 16/11/19 SIGNATORY NAME: ERIC LODGE	SIGNATORY DATE //			
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ABC Pty Ltd (e-lodgment Subscriber) appoints Lamb Lawyers (Instructing Practitioner) as its Representative Agent and Lawrence Lawyer, an employee of Lamb Lawyers, completes the verification of identity and the Client Authorisation which is signed by Frederick Albert Bloggs and Freda Amy Bloggs (Clients) and Lawrence Lawyer.

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		CLIENT 1	CLIENT 2			
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CLIENT AUTHORISATION AND SIGNING	(g) I am the Client or Client Agent; and (h) I have the legal authority to instruct the Representative in relation to the Conveyanci Transaction(s); and (i) if I am acting as a Client Agent that I have no notice of the revocation of my authority on behalf of the Client. I AUTHORISE the Representative to act on my behalf, or where I am a Client Agent to a behalf of the Client, in accordance with the terms of this Client Authorisation and any Participation Rules and any Prescribed Requirement to: (i) sign documents on my behalf as required for the Conveyancing Transaction(s); and (j) submit or authorise submission of documents for lodgment with the relevant Land R and (k) authorise any financial settlement involved in the Conveyancing Transaction(s); and (l) do anything else necessary to complete the Conveyancing Transaction(s). Frederick Albert Bloggs DATE 16/11/19 CLIENT/CLIENT AGENT FREDERICK ALBERT BLOGGS NAME CAPACITY If applicable AUSTRALIAN CONSULAR OFFICE WITNESS or IDENTITY AGENT (if not a Representative Agent) NAME DATE If applicable AUSTRALIAN CONSULAR OFFICE WITNESS OR IDENTITY AGENT (if not a Representative Agent) NAME DATE					
Ą		REPRESENTATIVE	REPRESENTATIVE AGENT (if applicable)			
S.	NAME ACN/ARBN	ABC Pty Ltd 101 469 148	Lamb Lawyers 101 469 147			
TAIL	ADDRESS	1/100 KING STREET, BRISBANE	1/100 QUEEN STREET, BRISBANE			
REPRESENTATIVE DETAILS AND SIGNING		I/We CERTIFY that reasonable steps have been to signed by each of the persons named above as C SIGNATURE OF REPRESENTATIVE OR REPRESENTATIVE AGENT AS IT	Client or Client Agent.			
SE		DATE //	Lawrence Lawyer DATE 16/11/19			
REPRE		SIGNATORY NAME:	SIGNATORY Lawrence Lawyer NAME: CAPACITY			

Frederick Albert Bloggs and Freda Amy Bloggs (Clients) appoint Lawrence Lawyer as a Client Agent through a power of attorney and ABC Pty Ltd (e-lodgment Subscriber) verifies the identity of Lawrence Lawyer and completes the Client Authorisation which is signed by Lawrence Lawyer (Client Agent) and Eric Lodge, an employee of ABC Pty Ltd.

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Privacy Collection Statement: The information in this form is collected under statutory authority and used for the purpose of maintaining publicly searchable registers and indexes.						
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		CLIENT 1 / CLIENT AGENT 1	CLIENT 2 / CLIENT AGENT 2			
		I CERTIFY that:				
CLIENT AUTHORISATION AND SIGNING	(i) I am the Client or Client Agent; and (k) I have the legal authority to instruct the Representative in relation to the Conveyancing Transaction(s); and (l) if I am acting as a Client Agent that I have no notice of the revocation of my authority to on behalf of the Client. I AUTHORISE the Representative to act on my behalf, or where I am a Client Agent to act behalf of the Client, in accordance with the terms of this Client Authorisation and any Participation Rules and any Prescribed Requirement to: (m) sign documents on my behalf as required for the Conveyancing Transaction(s); and (n) submit or authorise submission of documents for lodgment with the relevant Land Regard (o) authorise any financial settlement involved in the Conveyancing Transaction(s); and (p) do anything else necessary to complete the Conveyancing Transaction(s). Lawrence Lawyer Lawrence Lawyer					
NAME	Δ	REPRESENTATIVE BC Pty Ltd	REPRESENTATIVE AGENT (if applicable)			
ACN/ARBN ADDRESS	۱ 1	01 469 148 /100 KING STREET, BRISBANE				
REPRESENTATIVE DETAILS AND SIGNING SEAUDON SEA	I/ s	We CERTIFY that reasonable steps have been to igned by each of the persons named above as Communication of REPRESENTATIVE OR REPRESENTATIV	T IF APPLICABLE:			
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RES	S	IGNATORY NAME: ERIC LODGE	SIGNATORY DATE //			
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