

# PARTICIPATION RULES WAIVER

New South Wales

## Section 27 *Electronic Conveyancing National Law (NSW)*

### Title

This instrument is Participation Rules Waiver PR 2/2016 – Subscriber Insurance for Australian Credit Licence holders who are not ADIs and replaces Participation Rules Waiver PR 1/2016 which is revoked on the commencement of this Waiver.

### Enabling Provisions

1. Under sections 23 and 25 of the Electronic Conveyancing National Law (NSW) (the National Law) the Registrar General (“Registrar”) has determined and published Version 3 of the Participation Rules relating to use of an Electronic Lodgment Network (Participation Rules) which came into effect on and from 9 November 2015.
2. Section 27 of the National Law permits the Registrar to waive compliance with all or any provisions of the Participation Rules if the Registrar is satisfied that granting the waiver is reasonable in all the circumstances.

### Affected Requirement

Participation Rule 4.4 and Schedule 6.

### Explanatory Statement

Under Participation Rule 4.4, a Subscriber must maintain insurance that complies with the Insurance Rules set out in Schedule 6.

The Registrar understands that some mortgagees who are not ADIs but who hold an Australian Credit Licence (ACL) hold insurance that does not comply with the insurance required by Schedule 6 because:

- the insurance is held by one of a number of associated companies and the policy covers all of the members of that group, or
- the aggregate insurance cover is less than \$20 million
- the policy has an excess per claim greater than \$20,000.

The Registrar is of the view that these organisations that are active in the mortgage market currently, should not be excluded from electronic conveyancing and that the risk presented by their insurance arrangements is no greater than at present.

The Registrar has determined that a waiver should be granted to allow these companies to operate in electronic conveyancing as they do in the current paper system.

## **Waiver**

Subject to the Conditions, the Registrar grants all mortgage lenders who are Australian Credit Licence holders, or Credit Representatives of an Australian Credit Licence holder, but are not ADIs a partial waiver of the obligation to comply with Participation Rule 4.4.

## **Conditions**

The Partial waiver of Participation Rule 4.4 for mortgage lenders who are holders of an Australian Credit Licence, or Credit Representatives of an Australian Credit Licence holder but are not ADIs to become Subscribers is granted on the condition that, the following insurance requirement is complied with:

### **Insurance for mortgage lenders who are ACL holders but not ADIs**

1. The Subscriber must not act as a Representative pursuant to Rule 5.3 of the Participation Rules.
2. The Subscriber must, have in place *adequate compensation arrangements* pursuant to section 48 of the *National Consumer Credit Protection Act 2009 (Cth)*.
3. Where the *adequate compensation arrangement* is in the form of professional indemnity insurance, the Subscriber must either hold or be covered by, either singly or as part of a related group:
  - a) professional indemnity insurance and fidelity insurance, or
  - b) professional indemnity insurance which provides cover for third party claims arising from dishonest and fraudulent acts.
4. That insurance must:
  - a) be with an Approved Insurer; and
  - b) comply with the insurance requirements prescribed by the Australian Securities and Investments Commission for ACL holders; and
  - c) provide coverage for third party claims arising from dishonest and fraudulent acts; and
  - d) include coverage for Conveyancing Transactions; and
  - e) not include terms which limit compliance with the above.

## **Commencement**

This waiver commences on 18 November 2016.

## **Period during which this waiver applies**

This waiver operates until the earlier of:

- (a) an amended version of the Participation Rules which contains the above as an insurance rule for mortgage lenders who are Australian Credit Licence holders, or Credit Representatives of an Australian Credit Licence holder but are not ADIs; or
- (b) the publication of a revocation of this waiver by the Registrar.

**Dated:** 15 November 2016

**Signed by:**

  
**Jeremy Cox**  
**Registrar General**