

Model Operating Requirements (MOR) Consultation Draft 6.1 Feedback

This table responds to the feedback received on Consultation Draft 6.1 of the MOR published in October 2020

#	Rule	Stakeholder Feedback	Action	ARNECC Response
MOR 2.1 – Definitions				
1.	Business Plan	<p>Changes proposed go far beyond recommendation 3 in the IGA Review final report. This recommendation did not extend to established and mature ELNOs. Once an ELNO is established and operational, it is far better placed than ARNECC to understand and monitor its own financial resources and required investments for ongoing development and maintenance.</p> <p>It is recommended to implement the IGA Review recommendation 3 as was intended:</p> <ul style="list-style-type: none"> ▪ Modify the proposed changes to the definition of Business Plan to apply only to potential ELNOs. ▪ Amend Operating Requirement 4.4 to reflect that prior to receiving Category One approval, potential ELNOs must demonstrate sufficient financial resources as demonstrated by the comprehensive Business Plan. ▪ Obligation for annual submissions to continue in line with version 5 definition of Business Plan. 	None	It is considered appropriate that Registrars have visibility over an ELNO's capacity to further develop and expand the ELNO System, meet regulatory requirements and meet the costs associated with Back End Infrastructure Connections, both at the time an ELNO applies for Approval and while an ELNO is operational.
2.	Business Plan	<p>The amendment to the definition of Business Plan goes beyond the intended scope of recommendation 3 in the IGA Review final report. The definitional change has a flow on impact to the provision of the Business Plan under other reporting requirements (e.g. Category Three, Annual Report). Recommendation 3 should only be incorporated by amendment to the Category One application criteria in Schedule 3. We note further, that as a requirement of the Annual Report, an ELNO must provide a certification as to its sufficient financial resources, which provides ARNECC with adequate protection about the financial resources of existing ELNOs.</p>	None	It is considered appropriate that Registrars have visibility over an ELNO's capacity to further develop and expand the ELNO System, meet regulatory requirements and meet the costs associated with Back End Infrastructure Connections, both at the time an ELNO applies for Approval and while an ELNO is operational.
3.	Downstream or Upstream Service and 5.6	<p>Concerned that the drafting of the separation obligation and associated definition is unclear and overbroad. Would like to engage with ARNECC to assist in finding alternative drafting acceptable to ARNECC that would meet ARNECC's competition goals but not go further to chill innovative service development which does not harm competition. This could result in a re-write of the MOR or, as ARNECC has suggested, some specific amendments, such as class exclusions.</p>	None	<p>Amendments have been made in response to specific feedback received in the last round of consultation.</p> <p>Insufficient information is currently available to further refine the requirements.</p> <p>Further changes may be considered in future versions of the MOR.</p>

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		<p>For example, ARNECC might consider class exclusions from the definition of Downstream or Upstream Services (or the application of the separation requirement) for:</p> <ul style="list-style-type: none"> ▪ Closely connected ancillary services supplied to Subscribers or their clients which are only supplied as closely connected ancillary services to core ELN services ▪ Services - the remoteness of which from ELN services, or the design of which - meant that the ELNO could not give an unfair commercial advantage to the supplier of the service. <p>The first step in such engagement would be to understand ARNECC's views more fully as to the regulatory purpose or problem to which MOR 5.6 and the definition of Downstream or Upstream Service are directed and to then see if there are amendments which can more clearly achieve that regulatory purpose. It is not agreed that case by case applications for exclusions from MOR 5.6 and the definition are workable or an effective answer. It is time consuming, involves guess work as to the intended real scope of the provisions and is inefficient for ELNOs and for ARNECC and Registrars. More regulatory certainty than the current drafting is sought.</p>		
4.	Potential ELNO	<p>It is unclear at what stage of the process a Potential Electronic Lodgment Network Operator (ELNO) becomes an 'ELNO'. Presumably at the very least, this occurs once Category 2 approval has been obtained, but should the other point of reference be the commencement of operations in one or more jurisdictions? This should be clarified.</p>	None	<p>A Potential ELNO is proposed to be defined in version 6 of the MOR as a Person who has applied for Approval. Approval is defined in the MOR as meaning in respect of an ELNO, the ELNO's approval by the Registrar pursuant to section 15 of the ECNL to provide and operate an ELN.</p> <p>Practically it is intended that an ELNO will be approved after demonstrating compliance with the requirements in Schedule 3, Category One but before demonstrating compliance with Schedule 3, Category Two.</p> <p>More information about the steps in the approval process is published online in the Approval as an ELNO – Step 1 guide.</p>
5.	Suppliers	<p>It is considered the amendment narrows the scope of the Supplier arrangements that need to be addressed, as almost all Suppliers will satisfy the new definition. It is reiterated that the drafting creates an impractical obligation for suppliers that do not have a critical or material impact on the operation of the ELN. It is suggested that "Supplier" should be defined more narrowly by reference to services critically important to the integrity and fundamental operation of the ELN, such as core computing infrastructure, or where the supplier handles and stores Land Information or Personal Information. To achieve this, ARNECC should consider a test similar to APRA's CPS 231 Outsourcing Standard for ADIs. There, a critical supplier is one who performs a "material business activity". A material business</p>	None	<p>The definition of Supplier has been significantly narrowed in consultation draft 6.1 to directly relate to services to the ELNO in relation to the development, operation, maintenance and security of the ELN.</p> <p>In light of the critical nature of these services to the security and integrity of the ELN it is considered appropriate that any person who supplies those types of services should fall within the definition.</p>

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		activity is one that has the potential, if disrupted, to have a significant impact on the regulated entity's business operations or its ability to manage risks effectively, having regard to certain factors, like an adverse effect on users.		
6.	User	In view of ARNECC's stated support for competition in electronic conveyancing services, the definition of User should remain as it is in v5. This is particularly so in the absence of any reasoning on why a change should be made, why the particular change being proposed should be made, what risk to the integrity of the Register or public confidence in the Register needs to be addressed, and why the situation in electronic conveyancing is any different from that of trading in securities and other financial products.	None	The changes to the definition of User were made to clarify what was always the intent of the definition, that the User must be under the direct control of a Subscriber. Users of an ELN have the ability to input data which directly feeds into registry instruments, which are registered in Titles Registers. This level of access requires a higher threshold than may be required in other industries.
7.	New definition – Settlement	At the present time, "settlement" is not defined in the ECNL or the MOR. A technology neutral definition of "settlement" that reflects its fundamental purpose in conveyancing needs to be included in the MOR to resolve the uncertainty about what constitutes settlement of a transaction in electronic conveyancing. This is particularly so in the context of the informal interpretation implemented by the first ELNO and its informal adoption by ARNECC inhibiting the use of alternative processes by other ELNOs, especially the use of new and alternative technologies such as real-time payment systems.	None	It is considered that it is sufficiently clear what is meant by financial settlement in the context of the MOR and accordingly appropriate that financial settlement remain undefined. Attempts to define financial settlement may result in the definition being insufficiently flexible to accommodate changes in technology.
MOR 3 – Compliance with Operating Requirements				
8.	3 (a)	It is suggested that MOR 3(a) be reviewed with the introduction of a distinction between an ELNO and a Potential ELNO in version 6. As drafted, MOR 3(a) applies to an ELNO or a Potential ELNO but applies only 'at the time the ELNO or Potential ELNO applies for Approval'. It is submitted that at the time of application, the applicant can only be a 'Potential ELNO'. The requirement would apply to both an ELNO and Potential ELNO if it were extended to apply to an application for renewal of an Approval.	None	The obligation in MOR 3(a) is an ongoing obligation, which continues to apply to an ELNO after Approval.

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MOR 4 – ELNO Eligibility Criteria - Character				
9.	4.3	<p>We encourage ARNECC to consider this reform further, given the significant enhancement to the integrity of Australia's electronic conveyancing system it would deliver. This is particularly pertinent given the growing number of ELNOs.</p> <p>Any changes to the Guidance Notes to recommend the use of statutory declarations by ELNOs should be clear that ELNOs can opt to use alternative arrangements of equivalent effectiveness.</p>	None	While provision of guidance in the MORGN is intended, it will reflect that, ultimately, ELNOs must determine the best way to satisfy themselves as to the relevant matters before providing a certification.
10.	4.3	It is queried whether the required regular review should form part of the annual review process. In the reporting requirements set out in Schedule 3, currently under Category Three for MOR 4.3.1, 4.3.1(a) and 4.3.1(b), the current requirement is '[n]o Change Certification or updated Self-Certification as required under Category One'. If an active review is required, Category Three should be amended accordingly.	The MOR have been amended	Schedule 3 has been amended to require a Self-Certification of compliance with the requirements for Category Two and Category Three.
11.	4.3	Consideration should also be given to whether the Category One and Two requirements in relation to Governance, which are currently matters for self-certification, should be reviewed and possibly changed to independent certification.	None	Imposing a more onerous requirement and cost is not considered appropriate, especially when no issues have occurred to date.
12.	4.3.1 (b)	Agree to the inclusion of 4.3.1(b) regarding the character of officers, employees, agents and contractors of an ELNO.	None	Feedback noted.
MOR 5 – Operation of an ELN – National system and electronic Registry Instrument and other electronic Document capability				
13.	5.2	<p>As previously outlined, we support the requirement for ELNOs to meet Document and functionality requirements and we believe this aligns with the commercial interests of any ELNO operating in a competitive market. However, it is a concern that the continued inclusion of 5.2(c) and 5.2(d), albeit amended, has a material impact on its existing roadmaps, commitments to its clients and approach in the electronic conveyancing market. The obligations should not be included as they immediately disadvantage new entrants to the electronic conveyancing market. ELNOs should be responsible for their own approach to market. The position of ARNECC that MOR 13.3 was to replace the requirement to deliver specified functionality in specified timeframes in MORs 5.2(c) and 5.2(d) is supported and suggest the deletion of these MORs.</p> <p>In the alternate, if MOR 5.2(c) and 5.2(d) are to be maintained, a proper period of consultation should be afforded by the Registrar to</p>	None	<p>MOR 5.2(c) and 5.2 (d) have been retained without timeframes to clarify that an ELNO will be required to deliver the full suite of electronic registry instruments and other electronic documents, together with any other functionality reasonably required by the Registrar. MOR 5.2(c) and 5.2 (d) were included to ensure Potential ELNOs and ELNOs are aware that they are required to deliver more than the minimum set of documents specified in MOR 5.2(b).</p> <p>MOR 13.3 provides for a staggered roll out to be negotiated between the ELNO and the Registrar.</p>

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		the ELNO to discuss their respective priorities, client commitments and development dependencies		
MOR 5 – Operation of an ELN – Integration				
14.	5.5	It is understood the change from 'terms and conditions' for integration to a 'set of principles', but the redrafting of MOR 5.5 appears to also suggest that an ELNO could decline to offer Integration. The basis for this change is queried.	The MOR have been amended	<p>MOR 5.5 was primarily amended to replace the requirement for an ELNO to publish Integration terms and conditions with a framework for Persons Wishing to Integrate to obtain a copy of Integration terms and conditions and /or principles. An ELNO is required to provide a copy of its Integration terms and conditions to any bona fide Person Wishing to Integrate and maintain records of each request, including any refusals.</p> <p>An ELNO remains required to treat a Person Wishing to Integrate or a Person Who Has Integrated on an Equivalent Basis under MOR 5.5.3. An ELNO will need to be transparent in its Integration terms and conditions and/or principles about when Integration may be refused.</p> <p>A new requirement for the ELNO to keep records of requests to facilitate Integration has been included in MOR 5.5.1(d)(ii) in light of this feedback.</p>
MOR 5 – Operation of an ELN – Separation				
15.	5.6	<p>Again, highlighting our concern regarding inadequate provisions for addressing downstream services to be provided by ELNO's. Changes to the MOR with regards to 5.6 Separation provision are grossly inadequate and will ultimately result in a regulatory burden for ARNECC in order to resolve emerging issues of competition.</p> <p>A situation whereby an ELNO could compete or have a proprietary interest in a Subscriber conveyancing firm is unacceptable. Downstream services, also referred to as vertical integration, has the potential to see an ELNO broaden its control of a supply channel so as to not only compete with existing Subscriber agencies but effectively reduce the number of new agencies attempting to enter the conveyancing marketplace and new smaller entrants into the ELNO marketplace.</p> <p>Rather than address the matter of vertical integration effectively, ARNECC has placed far too great a reliance upon a separation plan to be implemented by ELNO's (MOR rule 5.6.3.(c)). The matter would be addressed by broadening the definition of 'downstream service' in MOR 2.1.2 of the MOR. This outcome can be achieved by expressly excluding conveyancing services which should be</p>	None	<p>MOR 14.10 provides that an ELNO must not be a Subscriber to the ELNO's ELN.</p> <p>The legal framework for electronic conveyancing has never restricted or prevented an ELNO from providing services additional to those provided by the ELN. This is specifically acknowledged in section 17 (4) of the ECNL.</p> <p>MOR 5.6 was introduced in Version 5 of the MOR in response to concerns about an ELNO's ability to offer services like conveyancing or legal services. MOR 5.6 is designed to prevent an unfair competitive advantage and requires an ELNO to operate in a manner, which separates its ELN services from any downstream or upstream service. MOR 5.6 also requires the two entities to act independently, at arm's length. The requirements were modelled on ring fencing frameworks in place in other industries.</p> <p>It would not be consistent with the legal framework to absolutely prohibit a separate business unit or separate legal entity from providing any services additional to those provided by the ELN.</p>

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		defined in MOR 2.1.2 to include acting as a representative or signing a registry instrument on behalf of a representative or party.		
16.	5.6	<p>A further review of the MOR shows again that implementation of adequate regulation associated with the entry or ongoing participation of an ELNO in downstream and upstream services has not been addressed. The broad objection to MOR 5.6 remains that it is not robust and does not serve vulnerable Subscriber businesses but caters more to the needs of ELNOs. There is no deterrent beyond suspension or termination of an ELNO licence for non-adherence within the MOR. There is also concern that the inclusion and compliance of ELNOs of MOR 5.6 will provide a defence against any protections afforded under the Competition and Consumer Act.</p> <p>The ability for an ELNO to use de-identified data for commercial or other purposes provides an “unfair competitive advantage” in the choice to enter a market, despite a requirement in MOR 5.6.1.</p> <p>ARNECC is called on to investigate how best to address the inadequacies of the separation plan by broadening the definition of “downstream service” in MOR 2.1.2 so as to expressly exclude conveyancing services. This exclusion should include acting as a representative or signing a registry instrument on behalf of a representative or party. It is further recommended that the exclusion extend to MOR 5.6 whereby an ELNO is prohibited to compete or have a proprietary interest in a Subscriber conveyancing firm.</p>	None	<p><u>Separation generally</u></p> <p>MOR 14.10 provides that an ELNO must not be a Subscriber to the ELNO’s ELN.</p> <p>The legal framework for electronic conveyancing has never restricted or prevented an ELNO from providing services additional to those provided by the ELN. This is specifically acknowledged in section 17 (4) of the ECNL.</p> <p>MOR 5.6 was introduced in Version 5 of the MOR in response to concerns about an ELNO’s ability to offer services like conveyancing or legal services. MOR 5.6 is designed to prevent an unfair competitive advantage and requires an ELNO to operate in a manner, which separates its ELN services from any downstream or upstream service. MOR 5.6 also requires the two entities to act independently, at arm’s length. The requirements were modelled on ring fencing frameworks in place in other industries.</p> <p>It would not be consistent with the legal framework to absolutely prohibit a separate business unit or separate legal entity from providing any services additional to those provided by the ELN.</p> <p><u>Enforcement</u></p> <p>ARNECC is currently developing a proposal for an expanded enforcement regime in accordance with the recommendations of the 2019 Review of the Intergovernmental Agreement for an Electronic Conveyancing National Law.</p> <p><u>Concerns about defence under <i>Competition and Consumer Act 2010 (Cth)</i></u></p> <p>The basis for concerns relating to the Competition and Consumer Act is not clear to ARNECC. ARNECC would welcome further details expanding on the basis for concerns that compliance with MOR 5.6 could provide a defence against protections afforded under the Competition and Consumer Act.</p>
17.	5.6	As far back as October 2018, in response to the publication of draft MOR Version 5, concern was expressed at the inclusion of ‘Downstream’ services by ELNOs, i.e.	None	MOR 14.10 provides that an ELNO must not be a Subscriber to the ELNO’s ELN.

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		<p><i>“The supply of Downstream Services is contentious. The proposed definition of ‘Related Entity’ and ‘Related Party’ does not provide any comfort to Conveyancers, as the word ‘Related’ is a contradiction. There is not confidence that an ELNO providing Downstream Services through a Related Entity can be completely ‘arm’s length’”.</i></p> <p>When Version 5 was eventually published, it included both Downstream and Upstream Services! Despite ELNOs declaring that they have no intention of offering conveyancing services, the reality is that they have the ability to do so, despite the ‘arm’s length’ rule.</p>		<p>The legal framework for electronic conveyancing has never restricted or prevented an ELNO from providing services additional to those provided by the ELN. This is specifically acknowledged in section 17 (4) of the ECNL.</p> <p>MOR 5.6 was introduced in Version 5 of the MOR in response to concerns about an ELNO’s ability to offer services like conveyancing or legal services. MOR 5.6 is designed to prevent an unfair competitive advantage and requires an ELNO to operate in a manner, which separates its ELN services from any downstream or upstream service. MOR 5.6 also requires the two entities to act independently, at arm’s length. The requirements were modelled on ring fencing frameworks in place in other industries.</p> <p>It would not be consistent with the legal framework to absolutely prohibit a separate business unit or separate legal entity from providing any services additional to those provided by the ELN.</p>
18.	5.6	<p>The blanket prohibition on ELNOs providing upstream or downstream services ignores situations where consumers have benefited from integrated service delivery. MORs 14.10 and 5.6 need to be reviewed and a more balanced view taken of the advantages and disadvantages of integrated businesses with the introduction of an effects test as the trigger for forced separation of operations, where justified, in the interests of all parties. Knowing the trigger is available will be a significant deterrent to an ELNO taking advantage of adjacent markets.</p>	None	<p>ELNOs hold a privileged position by having access to Subscriber, Client and other Conveyancing Transaction data. ELNOs who seek to perform other services potentially have a competitive advantage over other industry participants. The separation requirements in MOR 5.6 and the prohibition on an ELNO being a Subscriber to its own ELN were developed in accordance with industry consultation, which expressed strong concerns about an ELNO’s ability to offer conveyancing, legal or other ‘non-ELNO’ services.</p>
19.	5.6	<p>For the conveyancing profession, the matter of an ELNO or related entity acting as a representative or Subscriber is of gravest concern and one that must be addressed in full as a matter of priority. This issue has been consistently raised in previous submissions. It is considered that ARNECC lacks the resources to regulate the behaviours and the potential abuse of market power by an ELNO and is therefore supportive of immediate action with respect to the identification and implementation of a new regulatory model as recommended in the IGA Review. ARNECC has inadequately addressed the issue of downstream services through the provision of a separation framework in the MOR v. 6.1. The ECNL or at minimum the MOR should expressly prohibit an ELNO or any entity related to it from providing conveyancing services. It may be suggested that the MOR is not the place to attempt to regulate competition. However, a simple prohibition creates at the very least a hurdle and a statement of attitude that ensures that a license to operate as an ELNO should not be granted (and potentially that</p>	None	<p>MOR 14.10 provides that an ELNO must not be a Subscriber to the ELNO’s ELN.</p> <p>The legal framework for electronic conveyancing has never restricted or prevented an ELNO from providing services additional to those provided by the ELN. This is specifically acknowledged in section 17 (4) of the ECNL.</p> <p>MOR 5.6 was introduced in Version 5 of the MOR in response to concerns about an ELNO’s ability to offer services like conveyancing or legal services. MOR 5.6 is designed to prevent an unfair competitive advantage and requires an ELNO to operate in a manner, which separates its ELN services from any downstream or upstream service. MOR 5.6 also requires the two entities to act independently, at arm’s length. The requirements were modelled on ring fencing frameworks in place in other industries.</p>

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		license may be suspended) where the licensee or a related entity is to offer conveyancing services.		It would not be consistent with the legal framework to absolutely prohibit a separate business unit or separate legal entity from providing any services additional to those provided by the ELN.
MOR 6 – Testing – Further Testing				
20.	6.2	The inclusion of proposed MOR 6.2 ('Further Testing') is supported and agree that a distinction should be drawn between initial and further testing.	None	Feedback noted.
21.	6.2	Suggest clarification as to whether an obligation arises with respect to matters implemented in other jurisdictions, that is, whether regression testing is required in each jurisdiction.	None	Under MOR 6.2 an ELNO is required to undertake testing of new functionality, or new electronic Registry Instruments, in accordance with a Test Plan (a plan acceptable to the Registrar for Testing of the ELN) and otherwise to the satisfaction of the Registrar. Any requirements for regression testing will be in the Test Plan. Once determined by the Registrar under the ECNL the Operating Requirements apply in that Registrar's State or Territory. Operating Requirements can therefore only specify requirements for a single Jurisdiction.
MOR 7 – Obligations regarding System Security and Integrity – ISMS				
22.	7.1	We welcome the expansion of the requirement for an ELNO to train and monitor Users in relation to a Subscriber's security obligations.	None	Feedback noted.
23.	7.1 (b) (ii)	It is noted that 'Incident Response Plan' is defined, but a set of Incident Response Plans is not defined. The definition of 'Incident' includes a Data Breach, however, it may be beneficial to expressly provide for other scenarios such as email fraud, the Land Registry or Revenue Office being offline or issues with various ELN systems.	None	'Incident' is defined broadly as any event which causes, or may cause, the providing or operation of the ELN by the ELNO to cease, be interrupted, or which causes or may cause a reduction in the service or the quality of the services provided by the ELNO. It is proposed that some guidance will be included in the MOR Guidance Notes about possible Incident Response Plans along the lines suggested. However, it is considered that ELNOs will be in the best position to determine which types of Incidents are most likely to occur and therefore be the subject of Incident Response Plans. The definition of Incident Response Plan applies to Incident Response Plans in accordance with MOR 2.2.3.
24.	7.1 (b) (ii)	It is noted that concerns have been expressed with ARNECC's proposed obligations for Subscribers to obtain appropriate cybersecurity awareness training under MOR 7.1(b)(ii)(D). It is felt inappropriate for ARNECC to impose education standards on Subscribers and was noted that it is more appropriate for the	None	This requirement is an expansion of the existing requirement in MOR 7.1(b)(ii)D for an ELNO's Subscriber security policy to include training and monitoring of Users in relation to a Subscriber's security obligations. In light of the impact that cyber security issues and insecure use of electronic communication can

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		<p>regulator and the law societies to recommend and deliver the relevant training in cybersecurity, in order to ensure it is up-to-date, relevant and is delivered by practitioners with relevant expertise. Accordingly, the preference is for ARNECC to increase their compliance check and audit function to ensure Subscribers are complying with their MPR and MOR obligations. In the event that they are not, then the proper educative and disciplinary measures should be taken to ensure that Subscribers are aware of the liability risks associated with non-compliance.</p>		<p>have on connected systems such as an ELN, it is considered appropriate that the ELNOs specify the content of the training as part of their security policy.</p> <p>ELNOs are currently required under MOR 14.7 to review Subscriber's compliance with Participation Rule 7, which imposes requirements in relation to compliance with the ELNOs security policy.</p> <p>It is not clear that all professional regulators are in a position to provide this type of training and keep it up to date.</p>
25.	7.1 (b) (ii) D and E	<p>The inclusion of MOR 7.1 (b) (ii) D and E is welcomed, requiring Users to be trained in cyber security awareness but reiterates a view expressly previously, that without ARNECC putting some rigour or expectation around the minimum requirements we risk having inconsistent advice and education being provided to industry.</p> <p>Echoing the previous recommendation that ARNECC impose specific requirements regarding cyber security awareness training, in terms of course content and the training provider(s). It is important that the training provider is suitably qualified and independent of the ELNO's. However, the provider should be approved by the ELNO's. There are concerns that one ELNO may support one training provider but the other ELNO does not. For this reason, it is important that the ELNOs agree on the training provider(s) and the course content. This is necessary to ensure Subscribers only need to undertake one course – otherwise red tape and cost will be an impediment. It is also important to ensure a consistent and up to date message and advice is being provided across the property industry.</p>	None	<p>ARNECC's role and expertise is generally limited to land titling and related matters. ARNECC does not have the appropriate skills or expertise to prescribe course content or accredit training provider(s) for cyber security awareness training.</p> <p>In light of the impact that cyber security issues and insecure use of electronic communication can have on connected systems such as an ELN, it is considered appropriate that the ELNOs specify the content of the training as part of their security policy.</p> <p>It is not considered appropriate to require ELNOs to have the same course content. ELNOs may assess risks differently and tailor training accordingly.</p>
MOR 7 – Obligations regarding System Security and Integrity – Digital Certificates				
26.	7.6	<p>The move away from restricted Community of Interest Digital Certificates is supported, particularly in light of likely transitioning to interoperable ELNs.</p> <p>It is noted that as drafted it appears that an ELNO is not required to issue open Digital Certificates, allowing them to be used in an alternative ELN, but the ELNO must accept the use of open (as well as Community of Interest) Digital Certificates.</p> <p>Consideration should be given to a transitional provision allowing current Community of Interest Digital Certificates to expire and be replaced with open Digital Certificates.</p>	None	<p>Feedback noted. The feedback correctly identifies that the intent of the amendment is to require an ELNO to permit a Subscriber to use an open Digital Certificate, subject to any reasonable requirements in the ELNO's Subscriber security policy. The amendment does not prohibit the use of a closed Digital Certificate should that be the Subscriber's preference. Accordingly, it is not considered necessary to include a transitional provision allowing current community of interest Digital Certificates to expire.</p>

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27.	7.6.3	It is understood from the change to MOR 7.6.3 of the MOR and ARNECC's further comments, that ARNECC supports the adoption of open Digital Certificates. This position is supported as it will reduce costs for Subscribers who wish to switch to a different ELN. This approach also reduces the risks associated with Users storing multiple Digital Certificate credentials. It is requested that ARNECC provide further guidance on open Digital Certificates for Subscribers.	None	Feedback noted. In relation to the request that ARNECC provide further guidance on open Digital Certificates for Subscribers, it is noted that the Digital Transformation Agency (DTA) is the regulator of the Gatekeeper Public Key Infrastructure Framework. The DTA would be the appropriate authority to provide information to Subscribers on open Digital Certificates, should that be required.
28.	7.6.3	We note the comment from ARNECC that the change at MOR 7.6.3 intends to capture open Digital Certificates. We reiterate our position, that for the reasons set out below, that the MOR require that any Digital Certificates issued by ELNOs must be open for Subscribers to use with any ELNO: <ul style="list-style-type: none"> ▪ it reduces switching costs for Subscribers who wish to use a different ELNO; ▪ it reduces the risks associated with Users maintaining and keeping secure multiple digital certificate credentials; and ▪ it aligns with the key object of the electronic conveyancing reform, to promote efficiency throughout Australia in property conveyancing. 	None	Feedback noted. The feedback correctly identifies that the intent of the amendment is to require an ELNO to permit a Subscriber to use an open Digital Certificate, subject to any reasonable requirements in the ELNO's Subscriber security policy. The amendment does not prohibit the use of a closed Digital Certificate should that be the Subscriber's preference.
29.	7.6.3	The requirement that ELNOs accept open environment certificates as well as closed environment certificates is unnecessary and contradictory to the existing requirement that ELNOs must ensure that the certificates they accept for digital signing are issued by a Certification Authority that is independent of them. This is particularly so at a time when ARNECC is promoting competition between the two existing ELNOs and seeking new market entrants.	None	The MORs do not and have never prohibited the use of Digital Certificates restricted to closed environments or communities of interest. It is understood that there are currently Digital Certificates used to Digitally Sign electronic Registry Instruments, which are restricted to closed environments or communities of interest. These closed Digital Certificates are issued by independent Certification Authorities, in accordance with MOR 7.6.1. The intent of the amendment is to require an ELNO to permit a Subscriber to use an open Digital Certificate, subject to any reasonable requirements in the ELNO's Subscriber security policy.
30.	7.6.3	The amendment to be "subject to any reasonable requirements of the ELNO's Subscriber Security Policy" is supported.	None	Feedback noted.
MOR 7 – Minimum System Requirements – Vulnerability Assessment and Penetration Testing				
31.	7.13	The proposed amendment is supported.	None	Feedback noted.

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MOR 10 – Minimum System Requirements – Presentation once financial settlement is irrevocable				
32.	10.8	Three requirements in the MOR use the word “irrevocable”, MORs 10.8, 10.9 and 10.10(a). “Irrevocable is not defined in the MOR or the ECNL. The word “irrevocable” needs to be replaced with “completed” in MOR 10.8 to resolve the uncertainty currently existing about when the instruments of a settlement transaction are to be presented to the Registrar for lodgement. This resolution of the current uncertainty is payments technology neutral and leaves the other instances of “irrevocable” unaffected.	The MOR have been amended	Feedback noted, however, ‘irrevocable’ and ‘completed’ do not have the same meaning. ‘Irrevocable’ means that funds are committed to financial settlement but financial settlement itself may not have occurred. The heading has been amended for clarity.
MOR 13 – Change Management – Implementation Plan				
33.	13.3	The ELNO System is beyond scope for Registrars and Registrars do not require detailed plans in relation to non-ELN systems. It is respectfully submitted that Registrars are overreaching in the proposal to “request” changes to plans affecting non-ELN systems. Either: (a) remove MOR 13.3 and rely solely on amended definition for Business Plan; (b) amend MOR 13.3.1(a) to replace the reference to “ELNO System” with “ELN”; or (c) limit MOR 13.3.1(a) to “ELN” and any detail of when back end infrastructure connections are scheduled. In the case of (c), Registrars should not have the ability to request changes to the plan in respect of the ‘roadmap’ for back end infrastructure connections. Any ability for Registrars to request changes to the plan should be limited to that current ability to discuss and agree at ARWG when Registry-related changes (such as new Registry Instruments) should be scheduled (and only then with the agreement of other Registrars in accordance with the existing ARWG process).	The MOR have been amended	MOR 13.3.1 has been limited to releases of the ELN and any detail of when Back End Infrastructure Connections are scheduled in accordance with feedback. The Registrar’s ability to request changes to the implementation plan under MOR 13.3.2 has been limited to changes related to the ELN and the Back End Infrastructure connection between the ELNO and the Land Registry. Once determined by the Registrar under the ECNL, the Operating Requirements apply in that Registrar’s State or Territory. Operating Requirements can therefore only specify requirements for a single Jurisdiction and accordingly references to multi-jurisdiction working groups or processes cannot be included. An express requirement for good faith consultation, however, has been included.
34.	13.3	The current drafting of the new MOR 13.3 would require the delivery of a large volume of information, on a rolling basis, which would require significant effort for the Registrar to review and which could be meaningless, without assistance in terms of interpretation. Guidance is required from ARNECC in relation to what the Registrars are practically looking to receive, to ensure the information is beneficial and achieves the objects of the Registrars in requesting the implementation plan.	The MOR have been amended	The requirement in MOR 13.3 is for the implementation plan to cover proposed future releases of the ELNO system. ‘Proposed’ is intended to cover releases where the changes included have been agreed at the ELNO level for inclusion in the release. There is no requirement to update the implementation plan as a result of initial discussions about possible new Registry Instruments or functionality. It is anticipated that this requirement will align with the existing informal process of the ELNO providing a roadmap.

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		<p>Further, we request the following amendments to the MORs:</p> <ul style="list-style-type: none"> ▪ the implementation plan is to cover the proposed future releases of the ELNO system for the proceeding 12 months following the delivery of the plan; ▪ a time frame to be included for the delivery of the implementation plan. It is suggested, at a minimum, the MOR be qualified by way of an annual cadence in its delivery; ▪ any updated version of the implementation plan, following original delivery, be limited to those changes that are material; ▪ an ELNO should be afforded a proper period of consultation with the Registrar prior to any changes being reasonably requested by the Registrar. Such consultation needs to be requested in a reasonable time frame following receipt of the implementation plan or any notification of a material change to the plan; and ▪ changes to the implementation plan that are reasonably requested by the Registrar must be notified to the ELNO in writing. An ELNO will require sufficient time to implement any changes, following such written notification. 		<p>A two year time period rather than the proposed 12 months has been adopted to align with the Land Registry roadmap.</p> <p>A requirement for the Registrar to request changes in writing following consultation has been adopted in accordance with feedback.</p>
MOR 14 – Subscribers				
35.	14.1	<ol style="list-style-type: none"> 1. MOR 14.1.2 has been reframed in terms of a 'Potential Subscriber' rather than the 'applicant'. The rationale for this change is unclear. In the absence of further information, the current wording of MOR 14.1.2 is preferred. 2. The changes made to MOR14.1.2(b)(i) (changing 'or' to 'and') may be read as meaning that all partners in a law firm (the 'Potential Subscriber') will need to have their identity verified at the initial registration to use the ELNO, rather than just the partner who will be signing the Participation Agreement to register the firm as a Subscriber. If this is the intent, there are concerns with the practical implications of this change and the increased cost of compliance. 3. The identity of the partners and staff being allocated User and Signer roles will be verified in accordance with MPR 6.5.1 before they are given User or Signer privileges. That is the appropriate time for such verification to be undertaken. The identity of an entire partnership – especially partners having no involvement in the firm's participation as a Subscriber – does not need to be verified at the point of registration with the ELNO. Clarification of the rationale for the change to MOR 14.1.2(b)(i) would be appreciated. 	None	<ol style="list-style-type: none"> 1. 'Potential Subscriber' is now a defined term and was previously defined in the Subscriber Identity Verification Standard. 2. The Persons who must be verified by an ELNO in accordance with the Subscriber Identity Verification Standard is specified in paragraph 2 of that standard. Where the Potential Subscriber is a partnership, the ELNO is required to verify the identity of the authorised Person or Persons signing the Participation Agreement on behalf of the partnership. The change from 'or' to 'and any' is intended to reflect in some circumstances there will not be any person representing the Potential Subscriber i.e. where the Subscriber is an individual. 3. As above, there is no requirement to verify the identity of all partners. 4. As above, the change from 'or' to 'and any' is intended to reflect in some circumstances there will not be any person representing the Potential Subscriber i.e. where the Subscriber is an individual.

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		4. Revised MOR 14.1.2(b)(ii) is also problematic because the Potential Subscriber will be the firm and it does not need authority from itself. Only the person acting on behalf of the firm requires the authority to bind the firm in the Participation Agreement. The interplay with MOR 14.1.2(d) also needs to be considered.		
36.	14.6	The concept of 'secure usage' and the extent of the ELNO's obligations under revised MOR 14.6 are unclear, in particular in relation to the extent of the obligation to provide resources and information regarding the 'usage of email'.	MOR Guidance Notes will be updated	Further guidance will be included in the MORGN, however, the wording is intended to provide some flexibility for ELNOs who are best placed to understand the security issues facing their systems. Secure usage of email is generally understood to include things like: <ul style="list-style-type: none"> ▪ The use of strong (multi character), unique passwords. ▪ The use of multi-factor authentication methods where possible. ▪ Awareness in relation to phishing scams, links in emails and attachments. ▪ Care where using public networks and computers.
37.	14.6 (b)	Agree to the inclusion of (b) to expand on ELNOs' obligations to ensure Subscribers undertake security awareness.	None	Feedback noted.
38.	14.10	The prohibition contradicts ARNECC's professed desire for competition among ELNOs, both existing and new. At a time when ARNECC is encouraging competition among ELNOs and in particular the entry of new ELNOs to provide that competition, it makes no sense at all to continue the prohibition. It is the ultimate consumers of conveyancing services that will be disadvantaged by not doing so. Possible solutions to this issue include: <ul style="list-style-type: none"> ▪ removing the current prohibition ▪ continuing the prohibition with an exemption for mortgage processors ▪ replacing the current blanket prohibition with a prohibition on Subscribers who are also ELNOs sourcing more than 15% of their matters from other than mortgage lenders ▪ modifying the current blanket prohibition with an effects test requiring evidence of a substantial lessening of competition to invoke the prohibition. A means needs to be found to deal with the conveyancing sector's perceived concerns without adversely impacting legal practices undertaking mortgage processing for lender clients. This could most easily be done by framing an exemption to MOR 14.10 that a Subscriber whose principal existing or intended business is the representation of mortgage lenders in completing financed	None	ELNOs hold a privileged position by having access to Subscriber, Client and other Conveyancing Transaction data. ELNOs who seek to perform other services potentially have a competitive advantage over other industry participants. The separation requirements in MOR 5.6 and the prohibition on an ELNO being a Subscriber to its own ELN were developed in accordance with industry consultation, which expressed strong concerns about an ELNO's ability to offer conveyancing, legal or other 'non-ELNO' services. ELNOs are also the only entity capable of monitoring certain aspects of Subscriber compliance and conduct. Permitting an ELNO to be a Subscriber to its own ELN would create a potential conflict between the ELNO's interests as a Subscriber and duties as an ELNO.

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		transactions can also be an ELNO. The justification for this approach is that the integrated service provision of mortgage processors involved has not given rise to any negative outcomes during the century and a half duration so far of the Torrens system of perfecting title.		
39.	14.10	The blanket prohibition on ELNOs providing upstream or downstream services ignores situations where consumers have benefited from integrated service delivery. MORs 14.10 and 5.6 need to be reviewed and a more balanced view taken of the advantages and disadvantages of integrated businesses with the introduction of an effects test as the trigger for forced separation of operations, where justified, in the interests of all parties. Knowing the trigger is available will be a significant deterrent to an ELNO taking advantage of adjacent markets.	None	<p>ELNOs hold a privileged position by having access to Subscriber, Client and other Conveyancing Transaction data. ELNOs who seek to perform other services potentially have a competitive advantage over other industry participants. The separation requirements in MOR 5.6 and the prohibition on an ELNO being a Subscriber to its own ELN were developed in accordance with industry consultation, which expressed strong concerns about an ELNO's ability to offer conveyancing, legal or other 'non-ELNO' services.</p> <p>ELNOs are also the only entity capable of monitoring certain aspects of Subscriber compliance and conduct. Permitting an ELNO to be a Subscriber to its own ELN would create a potential conflict between the ELNO's interests as a Subscriber and duties as an ELNO.</p>
40.	14.10.2	It is submitted that an Independent Expert review of a Related Entities application to become a Subscriber under MOR 14.10.2 is unnecessary when MOR 7.2.4 of the MOR already requires that an ELNO treat all Subscribers on an Equivalent Basis. It is requested that MOR 14.10.2 be deleted on the basis that it is unnecessary. In the alternate, if an ELNO was required to publish the standard form Participation Agreement for a Subscriber of this type and a Related Entity enters into that standard form Participation Agreement, there should be no requirement for MOR 14.10.2.	None	It is considered important to the integrity of the Titles Register and the conveyancing process that Subscriber applications be assessed by an independent entity.
MOR 19 – Data and Information Obligations - Use				
41.	19.3	<p>It is strongly suggested that privatised/partially commercialised Land Registries were not considered when MOR 19.3 was initially drafted and that it is now the opportune time to reconsider the currently adopted position within the MOR.</p> <p>It is preferred that ultimately 19.3 (e) is updated in such a way that an ELNO has no ability to use the data it collects to create products/services for commercialisation. It is a preferred approach that the use of the data is referred through to the Private Operators who have commercial rights and/or through other consistent commercial channels for each State and that the ELNO remains as an ELNO only, meeting the initial COAG initiative, not obtaining a market position more advantageous to other competitors purely by</p>	None	<p>MOR 19.3 has been in the Model Operating Requirements since version 1, which was determined in 2013. Agreements with private providers of land registry services were made subsequently.</p> <p>The current scope of MOR 19.3, including the requirement for approval from the Registrar, is considered appropriate.</p>

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		<p>its position of being an ELNO, without paying any consideration or licence fee as other market participants.</p> <p>It is proposed that MOR 19.3 be amended to remove the ability to use the data collected/stored for the creation of products/services for commercialisation.</p>		
MOR 20 – Registrar’s Powers				
42.	20 (iii)	<p>Concern is noted with the ability for the Registrar to suspend or terminate an ELNO’s approval in the time frame, where a State or Territory joins after the ELNO commences operating or where a State is not in a position to commence operations with an ELNO</p>	The MOR have been amended	The requirement has been changed to permit suspension or termination either within five years from the date the ELNO commences operating, or two years from the date a jurisdiction becomes operational in light of feedback.
MOR Schedule 3 – Reporting Requirements				
43.	Category 3	<p>It is proposed that Schedule 3, Category 3 as part of the Annual Report to the Registrar and on renewal of Approval, as it relates to MOR 19.3 be amended to:</p> <p>Remove the Self-Certification requirement stating ‘Compliance with restrictions’ and replace with an Independent Certification requirement. This would need to be from an ARNECC approved, independent, third party provider with the appropriate audit rights granted to enable the issuance of the Certification.</p>	None	<p>Changes are not considered appropriate as there have not been any instances of ELNOs having used Land Information without approval.</p> <p>The Registrar could investigate further if an allegation was made that an ELNO was not complying with MOR 19.3.</p>
MOR Schedule 6 – Amendment to Operating Requirements Procedure				
44.	Schedule 6	<p>It is suggested that the reference to ‘the ELNO’ in MOR 1.1 should be amended to allow for consultation with multiple ELNOs and Potential ELNOs. It would also be appropriate to reflect that consultation occur with industry in general and with the Land Registries (particularly where privatised).</p>	The MOR have been amended	<p>Under MOR 2.2.3 a reference to ‘the ELNO’ is a reference to all ELNOs.</p> <p>New requirement introduced to reflect that the Registrar may consult with Potential ELNOs, a representative group of Subscribers and, Subscribers’ local and national professional associations, regulators and insurers or any other Person (as reasonably determined by the Registrar). As per the current process, ARNECC proposes to continue publishing consultation drafts and receiving feedback from any stakeholder who makes a submission. However, ELNOs remain the stakeholder most affected by the MOR. Some proposed amendments may only necessitate direct consultation with the ELNOs.</p>

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Additional Comments				
45.	Cyber Security	It is pleasing to see the tightening of cyber security requirements imposed on ELNOs and Subscribers.	None	Feedback noted.
46.	Cyber Security	The greater focus on cybersecurity and education reflected in MOR Consultation Draft Version 6 is supported.	None	Feedback noted.
47.	General	We again propose that the MOR document recognise that SROs may impose requirements or obligations on ELNOs that compliment or are supplementary to the requirements contained within the MOR. It is important the MOR does not in any way constrain the ability of SROs to impose such requirements that are seen as necessary for Revenue Offices e.g. collection of duty revenue, implementation of legislative changes, cost recovery models, business continuity models, change management and additional insurance policy requirements for example.	None	The ECNL limits the scope of the MOR. ARNECC would welcome information about whether any of the existing requirements have been identified as constraining Revenue Offices.
48.	Consultation	Supportive of ARNECC in its role to review and evolve the MPR & MOR. With regards to future draft proposals it would be appreciated and recommend that accompanying notes be provided by ARNECC so as to provide some further understanding of the context in which the amendments are being made	None	Feedback noted. Consideration will be given to providing explanatory notes on substantive changes in the future.
49.	Consultation	Enhance the current consultation process by issuing explanatory notes on substantive changes proposed in Consultation Draft MOR and MPR version and issue Consultation Draft Guidance Notes during consultation rounds, to assist industry to understand the ARNECC's position on policy drivers and anticipated approach to implementation.	None	Feedback noted. Consideration will be given to providing explanatory notes on substantive changes in the future. Guidance notes are revised once the MOR are settled to reflect the final position.
50.	Consultation	Industry would also benefit greatly if ARNECC began consulting on proposed changes to Guidance Notes. This could occur at the same time as consultation on Consultation Draft MOR and MPR versions, to further assist industry participants to understand how ARNECC envisages ELNOs and Subscribers will comply with obligations once finalised.	None	Feedback noted. Consideration will be given to providing explanatory notes on substantive changes to the MOR in the future. Guidance notes are revised once the MOR are settled to reflect the final position.
51.	Resourcing	Again, raising concerns that ARNECC are increasing their regulatory burden without having communicated how they intend to be resourced and effect adequate compliance. In this regard, it would be welcomed and encouraged for ARNECC to be more forthcoming in outlining how it will meet its regulatory and compliance resourcing challenges.	None	Feedback noted.

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52.	Interoperability	The implementation of an interoperable ELNO market by ARNECC and the industry is supported. An interoperable ELNO market structure is crucial for Subscribers as new market entrant ELNO's are established. It is requested that the implementation of an interoperable market structure remains a priority for ARNECC, and that ARNECC consider a delay in the publication and effective date of the MOR to allow for adequate time and resources to be applied to interoperability implementation.	None	Feedback noted. Version 6 contains important clarifications and improvements, which need to be implemented. Interoperability will be considered in future versions.
53.	Interoperability	The investment of time and resources by the industry into establishing the interoperable market structure and the future of the electronic conveyancing market is noted. It is suggested that ARNECC consider a delay in the publication and effective date of the MOR v6.1 to give preference to the implementation of the regulatory framework for interoperability, as it addresses the key findings following the Review of the Intergovernmental Agreement for an Electronic Conveyancing National Law.	None	Feedback noted. Version 6 contains important clarifications and improvements, which need to be implemented. Interoperability will be considered in future versions.
54.	Settlement	<p>Apart from MOR 10.8, the MOR is silent on the requirements for an adequate and acceptable electronic settlement solution. Since the first ELNO commenced operations, an entirely new payments technology has become available. It is widely recognised in the financial services industry that there will be significant developments in electronic payments technology in the foreseeable future. The prescription of requirements for electronic settlement solutions needs to be framed in terms of required outcomes such as the following:</p> <ul style="list-style-type: none"> ▪ technology-independent, meaning not dependent on any particular technology ▪ solution-neutral, meaning not preferencing on any particular way of working ▪ customer-focussed, meaning accurate and reliable with consumer protections ▪ contemporary performance, meaning safe, secure, resilient and fast ▪ best practice governance, meaning robust, transparent and monitored. <p>It is essential that requirements be added to the MOR that prescribe the minimum acceptable characteristics and performance of electronic settlement solutions provided by ELNOs. These characteristics and performance must be prescribed in a technology-independent and solution-neutral manner so as to maximise the opportunities for new and existing ELNOs to innovate in the way they provide their settlement solutions. Endorsement</p>	None	Feedback noted. No changes proposed in this draft.

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		and monitoring by an independent financial systems regulator is necessary in the absence of such expertise within ARNECC.		
55.	Innovation	There needs to be a structured process in the MOR for aspirant ELNOs to confidentially share their thinking on alternative business and service delivery models and obtain no-prejudice feedback on their acceptability within the regulatory framework for electronic conveyancing. This could be done most simply by prescribing a pre-application stage that allowed for interactive sessions with the panel that will ultimately assess an application.	None	<p>Feedback noted. The MOR sets out eligibility requirements and Potential ELNOs need to demonstrate compliance with the requirements.</p> <p>The level of detail in an application is necessary for proper assessment. ARNECC has historically engaged with Potential ELNOs in advance. Assessment panels provide significant feedback to Potential ELNOs.</p>
56.	Independent Review of Decisions	The ECNL at s.28 provides for certain ARNECC decisions to be reviewed by a responsible tribunal with a pre-requisite being that reasons have been given for the decision. Presumably, the "responsible tribunal" is a State or Territory Administrative Appeals Tribunal. This arrangement for the review of ARNECC's decisions has a formality and cost to it that effectively deters challenging decisions. There needs to be a process in the MOR for ELNOs, including aspirant ELNOs, to have ARNECC's decisions and advice reviewed by a panel well versed in the industry's ways of working and the requirements of the MOR. One means of achieving this is to include a provision for decisions and advice to be reviewed by a mutually agreed panel made up of a Registrar and an experienced industry participant. Reviews would be non-binding on ARNECC but both parties would be committed to implementing them wherever possible.	None	<p>Feedback noted. 'Responsible tribunal' is defined in each Jurisdiction's Application Law.</p> <p>Suggestion for a review by a panel including an industry participant not adopted. Registrars are required to be the decision maker under the ECNL and make decisions in accordance with legislation and usual principles of administrative decision making.</p>