

ARNECC Responses to Issues Raised in Industry Feedback on Draft v2 Model Participation Rules

Issues are listed in order of MPR Reference.

Issue Raised may be a summary or modified extract of the submission received.

#	MPR Ref.	Issue Raised	ARNECC Response	Rationale for Response
1	2.1	<p>Definitions Definitions of “digitally sign” and “digital signature” in the Electronic Conveyancing National Law need to be re-drafted as follows:</p> <p><i>“digitally sign means, in relation to an electronic communication or a document, the use of a particular person’s digital certificate to sign the communication or document”.</i></p> <p>The word “sign” should be left to its ordinary common law meaning, which takes account of context and intent.</p> <p><i>“digital signature means the product of the use of a particular person’s digital certificate so as to identify that person as the sender of an electronic communication or the signer of a document”.</i></p>	No change is to be made at this time.	<p>The definitions are contained within the Electronic Conveyancing National Law that is still in the process of being adopted in each of the jurisdictions. At the time of the Law’s drafting, the definitions were widely canvassed and all feedback received thoroughly considered.</p> <p>Recent legal advice supports the view that the existing definitions are adequate. At a time in the future when other amendments are necessary to the Law, consideration will be given to amending the definitions.</p>
2	2.1	<p>Definitions The definition of Signer should be amended to clarify that a Signer is to be a legal practitioner or licensed conveyancer, having regard to the operational roles and level of responsibility of a Signer.</p>	No change is necessary.	<p>Clause 5.3 requires the person appointed by a Subscriber as a Signer to be entitled to sign conveyancing instruments in the jurisdiction where the land is located. The Clause also requires the Subscriber to take reasonable steps to verify that the Signer is complying with the laws of the jurisdiction.</p> <p>These provisions put the onus on Subscribers to ensure the Signers they appoint are entitled to sign conveyancing instruments.</p>
3	2.1	<p>Definitions Signers should be Subscribers.</p>	No change is to be made.	<p>Signers are defined as an individual authorised by a Subscriber to certify and sign documents on behalf of the Subscriber. A Subscriber is therefore responsible for every certification and signing that takes place.</p> <p>It would not be practicable to limit Signers to Subscribers. For example, in the case of a company Subscriber, the company</p>

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				<p>itself could not be a Signer but authorised officers and employees could be.</p> <p>Subscribers are responsible for ensuring every Signer they authorise to certify and sign on their behalf is entitled to do so under the laws of the jurisdiction in which the land of the transaction is located. A Subscriber is therefore responsible for ensuring every certification and signing is by a person entitled under jurisdiction law to do so.</p>
4	2.1	<p>Definitions The definitions of Identity Declarant and Identifier Declaration relate to the same activity and should be consistent. Perhaps the Identity Declarant could be renamed the Identifier.</p>	No change is to be made.	<p>Identity Declarant refers to a person who makes a statutory declaration about another person's identity. Identifier Declaration refers to the declaration that the Identity Declarant makes.</p> <p>The Identity Declarant provides one of the pieces of evidence used to verify the identity of a person. They are neither the identifier of that person nor the verifier of the person's identity.</p>
5	2.1	<p>Definitions The definition of Signer should be varied to require the authorisation in writing.</p>	No change is to be made.	The manner in which each Subscriber authorises a person to be a Signer for them is up to the Subscriber. It would be potentially restricting on Subscribers to specify a particular method of authorisation.
6	2.1	<p>Definitions The definition of User should be varied to limit the Individual to another Subscriber or an employee of the Representative.</p>	No change is to be made.	A User is defined as a natural person authorised by a Subscriber to access and use an ELN on behalf of the Subscriber. The definition must be able to accommodate all of the ways industry currently conducts conveyancing transactions, including, for example, the use of contract staff and locums.
7	2.1	<p>Definitions The term Subscriber Agent is somewhat clumsy and appears to be jargon to the uninitiated. It is suggested that the use of Subscriber's Agent would be preferable.</p>	No change is to be made.	A Subscriber Agent may be the agent of more than one Subscriber at the same or different times. Identity verification service providers may be a Subscriber Agent to many Subscribers. Use of the term Subscriber's Agent could imply that the agent has an exclusive arrangement with a particular Subscriber.
8	2.1	<p>Definitions Signers should be a legal practitioner or licensed conveyancer.</p>	No change is to be made.	Clause 5.3(b) requires Subscribers to take reasonable steps to ensure that each of their Signers complies with the laws of the jurisdiction where the land is located regarding who can

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				<p>conduct a conveyancing transaction and digitally sign registry instruments.</p> <p>This requirement provides for existing and future regulators of legal practitioners and licensed conveyancers (including settlement agents in WA) in each jurisdiction to continue to determine who can conduct conveyancing transactions and sign registry instruments in their jurisdiction.</p> <p>It is not appropriate for Registrars to fulfil this role.</p>
9	2.1 & Sch.4	<p>Definitions The MPR provides one definition of Licensed Conveyancer and the back page of the Client Authorisation Form provides a different definition.</p>	No change is necessary.	<p>The definition in the MPR is intended for each jurisdiction to insert its legislative reference when making the Participation Rules to apply in their jurisdiction.</p> <p>The definition in the Client Authorisation, on the other hand, is intended to be part of a standard form used without alteration in all jurisdictions.</p>
10	2.1 & Sch.4	<p>Definitions There are instances where terminology is not consistent, particularly, in relation to the Client Authorisation Form and definitions of Subscriber, Client Agent and Representative.</p>	<p>The face of the Client Authorisation Form and the beginning of Term 1 are to be amended to:</p> <p><i>“The Client authorises the Subscriber to act on behalf of the Client in accordance with the terms of this Client Authorisation.”</i></p>	<p>The definitions of terms common to the MPR and the Client Authorisation differ intentionally. The MPR applies only to electronic lodgments but the Client Authorisation is intended to be used eventually for both electronic and paper lodgments and therefore uses terminology that is technology neutral.</p> <p>Client Agent is a term used only in the Client Authorisation Form. The face of the Client Authorisation Form and the beginning of Term 1 have been amended to avoid any confusion with the meaning of Subscriber.</p>
11	4.2.2(a)	<p>Eligibility Criteria: Status A body corporate is required to be a corporation registered under the Corporations Act 2001 or under any other legislation. It is suggested that the words “applicable in the Jurisdiction” be added after “legislation”.</p>	No change is to be made.	<p>A corporation includes local and foreign companies registered under the Corporations Act as well as incorporated associations registered under State or Territory legislation and statutory authorities and State-owned corporations created under State, Territory or Commonwealth legislation.</p> <p>The definition of body corporate must accommodate all types of corporations able to be Subscribers.</p>
12	5.3	<p>Subscriber who acts as a Representative It should be an absolute requirement for a</p>	No change is to be made.	The clause requires the Representative to take reasonable steps to verify that the Signer complies with the laws of the

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		Representative to ensure that a Signer complies with the laws of the jurisdiction in which the land the subject of the conveyancing transaction is situated regarding who can conduct a conveyancing transaction and digitally sign instruments.		jurisdiction where the land is located. Industry insurers have advised that an absolute requirement will constitute an unacceptable risk to them and therefore will not be insured.
13	5.3(b)	Subscriber who acts as a Representative The Subscriber should also be required to take reasonable steps to ensure that the Signer is a Legal Practitioner or Licensed Conveyancer.	No change is necessary.	Clause 5.3(b) requires Subscribers to take reasonable steps to ensure that each of their Signers complies with the laws of the jurisdiction where the land is located regarding who can conduct a conveyancing transaction and digitally sign registry instruments. This requirement provides for existing and future regulators of legal practitioners and licensed conveyancers (including settlement agents in WA) in each jurisdiction to continue to determine who can conduct conveyancing transactions and sign registry instruments in their jurisdiction, including what mutual recognition arrangements apply with other jurisdictions. It is not appropriate for Registrars to fulfil this role.
14	5.4	Responsible Subscribers The Client has entered into an arrangement with a Conveyancing firm, not a specific employee of that firm. Therefore, it is the Conveyancing firm that is liable for any lodgement fees, not a specific conveyancer. As the firm is already known there is no need to identify a Responsible Subscriber.	No change is necessary.	The Responsible Subscriber in a transaction is not a specific employee of any Subscriber participating in the transaction. The Responsible Subscriber is the only Subscriber or one of the Subscribers participating in the transaction. When there are two or more Subscribers participating in the transaction, those Subscribers must agree on who is to be the Responsible Subscriber for the lodgment case and therefore, following lodgment, liable for the lodgment fees payable and for dealing with any requisitions on the lodgment case. For example, when only a caveat is being lodged, the Responsible Subscriber is the Subscriber representing the caveator and is the only Subscriber participating in the transaction. When a discharge and a mortgage are being lodged at the same time, the Subscribers for the two financial institutions involved must agree on who is the Responsible Subscriber.

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15	5.4	<p>Responsible Subscribers</p> <p>Subscribers are responsible for the supervision and control of their employees therefore there is no need for Responsible Subscribers.</p>	No change is necessary.	<p>The clause is not about the supervision of employees within a Subscriber's business.</p> <p>The Responsible Subscriber in a transaction is the one agreed upon by all of the Subscribers participating in the transaction as responsible for lodgment fees and dealing with any requisitions from the land registry.</p>
16	5.4.2	<p>Responsible Subscribers</p> <p>This provision goes further than the current role of a lodging party and that it is unclear how a Responsible Subscriber could take on the obligation for the accuracy of information entered by other Subscribers.</p>	No change is to be made.	<p>The clause requires Responsible Subscribers to take reasonable steps to ensure that they do not pass on to the Registrar information obtained from another Subscriber participating in the transaction that it knows or suspects to be incorrect, incomplete, false or misleading.</p> <p>This is not an obligation to ensure the accuracy of information supplied by another Subscriber. It is simply an obligation to not pass on any information that it knows or suspects may be incorrect, incomplete, false or misleading.</p>
17	6.1.1	<p>Ensure User compliance</p> <p>Subscribers are required to "ensure that all of its Users are aware of these Participation Rules". Signers are Users. There is a difference between being aware of Rules and understanding the context in which the Rules operate: that context is only obtained from obtaining the relevant educational qualifications and gaining adequate supervised experience in the ethical practice of conveyancing. A Signer who is not a conveyancer is unable to understand the context upon which the practice of conveyancing relies.</p>	No change is to be made.	<p>The clause requires Subscribers to ensure all of the persons they authorise to use an ELN on their behalf are aware of the Participation Rules. The requirement can only extend to awareness. Understanding is not something Subscribers can be expected to ensure in all instances.</p> <p>Understanding requires context, education and ability commensurate with the tasks to be undertaken in compliance with the requirements. For Signers, the context, education and ability necessary to understand the requirements is provided by each jurisdiction's regulators determining who can conduct conveyancing transactions and sign registry instruments in the jurisdiction.</p>
18	6.3(b)	<p>Client Authorisation</p> <p>There will be time critical situations, such as the lodgment of caveats on behalf of clients, where it may cause detrimental delay to have to obtain a Client Authorisation prior to lodgment.</p>	<p>Clause 6.3(b) is to be amended by appending:</p> <p><i>"except for caveats"</i></p>	<p>This amendment ensures that the requirement to obtain a Client Authorisation before digitally signing documents in an ELN does not disadvantage caveators being represented by a Subscriber.</p> <p>The amendment provides that, for lodgment of caveats only, a Client Authorisation is not required to be obtained for a Subscriber representing the caveator before digitally signing</p>

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				the caveat document in the ELN.
19	6.4	<p>Right to Deal Establishing that the client (or mortgagor) of a Subscriber is a legal person is not necessary as this is considered to be part of the overall obligation of mortgagees.</p>	No change is to be made.	<p>The clause is in two parts.</p> <p>Clause 6.4(a) refers to the clients of Subscribers and requires that the Subscriber establish that the client is a legal entity and entitled to enter into the transaction.</p> <p>Clause 6.4(b) applies only to Subscribers who are mortgagees and requires that the Subscriber establish that the mortgagor is a legal entity and entitled to grant the mortgage.</p> <p>The distinction between the two sub-clauses is necessary because mortgagors are not clients of their mortgagees.</p> <p>The requirement in both parts that the Subscriber establish that the client or mortgagor is a legal entity is an essential part of ensuring that they are entitled to enter into the transaction.</p>
20	6.4	<p>Right to Deal Would the NSW Land and Property Information CoRD requirements be integrated into the MPR, for example, in clause 6.4 and/or Schedule 3?</p>	No change is to be made.	<p>The present CoRD requirements in NSW are the means adopted in that jurisdiction for determining the right to deal in a particular land title. They are unique to NSW.</p> <p>The provisions of Clause 6.4 and Schedule 3 are for uniform application nationally. In conjunction with the introduction of electronic conveyancing, all jurisdictions are working towards a consistent means for Subscribers and others to determine the right to deal in a particular land title.</p>
21	6.5	<p>Verification of Identity New sub-rules are required to:</p> <ul style="list-style-type: none"> • create a defence or otherwise remove liability where a Subscriber has reasonably relied upon a face-to-face verification of identity by a Subscriber Agent; • require a Subscriber Agent to agree to comply with the MPR and be liable for the performance of any face-to-face verification of identity conducted by it; and • prevent a Subscriber Agent from limiting its liability for negligence or fraud to less than the 	No change is necessary.	<p>All three suggested sub-rules are already provided for.</p> <p>Clause 6.5.2 deems compliance with the Verification of Identity Standard in Schedule 8 as taking reasonable steps to verify an identity. As the principal, a Subscriber is responsible for the acts of its Subscriber Agent.</p> <p>The Verification of Identity Standard requires Subscribers when using a Subscriber Agent to apply the Standard to direct the Subscriber Agent to comply with the Standard. Requiring a Subscriber Agent to agree to comply with the Participation Rules and be liable for any verification of identity it conducts is</p>

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		amounts specified for negligence or fraud in the Insurance Rules and rendering void any provision in any agreement with a Subscriber that seeks to limit its liability below such amounts.		<p>a matter for the contract between the Subscriber and the Subscriber Agent. Under the Electronic Conveyancing National Law, the Participation Rules are incorporated into the contract (Participation Agreement) between the ELNO and the Subscriber. A Subscriber Agent is not a party to this contract.</p> <p>Schedule 6 requires Subscriber Agents to have the same minimum levels of insurance as Subscribers.</p> <p>Clause 9(b) of the Verification of Identity Standard in Schedule 8 requires Subscribers to ensure their Subscriber Agent does not limit their liability to the Subscriber for negligence or fraud to less than the minimum amounts they are required to be insured for.</p>
22	6.5.1(e)	<p>Verification of Identity There is no current process proposed for verifying the identity of the person nominated by the mortgagor to whom to hand over the CT.</p>	No change is necessary.	<p>The clause requires Subscribers who hand a CT to any other person who is not a Subscriber to take reasonable steps to verify the identity of that person.</p> <p>Subscribers can use either their own interpretation of reasonable steps or employ the safe harbour procedure in the MPR's Verification of Identity Standard.</p>
23	6.5.2	<p>Verification of Identity For the sake of clarity, it is requested that Clause 6.5.2 be amended by inserting the words "<i>by the Subscriber or the Subscriber Agent</i>" after the words "<i>Verification of Identity Standard</i>".</p>	No change is to be made.	Under the Electronic Conveyancing National Law, the Participation Rules are incorporated into the contract (Participation Agreement) between the ELNO and the Subscriber. A Subscriber Agent is not a party to this contract. As a result, the obligation to take reasonable steps to verify identity is on the Subscriber, not the Subscriber Agent.
24	6.5.2	<p>Verification of Identity Clause 6.5.2 intimates compliance with the Vol Standard will be deemed to be reasonable steps. This does not appear to extend to the Subscriber Agent. Accordingly, we suggest that Clause 6.5.2 be amended to include the Subscriber Agent complying with the Vol Standard.</p>	No change is necessary.	<p>Under the Electronic Conveyancing National Law, the Participation Rules are incorporated into the contract (Participation Agreement) between the ELNO and the Subscriber. A Subscriber Agent is not a party to this contract. As a result, the obligation to take reasonable steps to verify identity is on the Subscriber, not the Subscriber Agent.</p> <p>Clause 6.5.2 deems compliance with the Verification of Identity Standard in Schedule 8 as taking reasonable steps to verify an identity. The Verification of Identity Standard requires Subscribers when using a Subscriber Agent to apply the</p>

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				<p>Standard to direct the Subscriber Agent to comply with the Standard.</p> <p>It is for the Subscriber in every instance to direct the Subscriber Agent on how the identity verification is to be undertaken.</p>
25	6.6 & Sch.3, 3	<p>Supporting Evidence and Document Retention Subscribers taking reasonable steps to verify the identity of a mortgagor should not be required to certify to having obtained, considered and securely retained originals or copies of all evidence supporting its reasonable steps.</p>	No change is to be made.	<p>The clause and the certification place the same obligation on mortgagees verifying the identity of their mortgagors as on Subscribers generally verifying the identity of their clients.</p> <p>Whether Subscribers rely on reasonable steps or the safe harbour in the Verification of Identity Standard, they are still required to retain evidence in an appropriate form supporting what they did in the event that it becomes necessary for them to demonstrate that reasonable steps were taken.</p>
26	6.7	<p>Compliance with laws and Participation Rules The Subscriber Agent should be added to the Subscriber as a person who must comply with the applicable laws and the MPR. Irrespective of the Safe Harbour, a Subscriber Agent should be required to comply with these laws and the MPR.</p>	No change is to be made.	<p>Under the National Law, the Participation Rules are incorporated into the contract (Participation Agreement) between the ELNO and the Subscriber. A Subscriber Agent is not a party to this contract. As a result, the obligation to take reasonable steps to verify an identity is on the Subscriber, not the Subscriber Agent.</p> <p>Subscriber Agents have obligations to the Subscriber appointing them only.</p>
27	6.10	<p>Protection of information A Subscriber Agent should also be required to protect any information that it receives.</p>	No change is to be made.	<p>Subscriber Agents have obligations to their appointing Subscriber only and the Subscriber appointing them is responsible for ensuring that any information collected by or provided to the Subscriber Agent is protected from unauthorised use, reproduction or disclosure.</p> <p>The Privacy Act 1988 also applies to Subscriber Agents.</p>
28	6.11	<p>Information A Subscriber Agent should also be required to take reasonable steps to ensure the information that it provides is correct, complete and not false or misleading.</p>	No change is to be made.	<p>Subscriber Agents have obligations to their appointing Subscriber only and the Subscriber appointing them is responsible for ensuring that any information collected by or provided to them by the Subscriber Agent is correct, complete and not false or misleading.</p>

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29	6.13.1(a)	<p>Mortgages To accommodate future granting of mortgages to mortgagees by mortgagors electronically, clause may be better worded as “<i>ensure that it holds a mortgage, signed or accepted by the mortgagor, on the same terms as the electronic mortgage</i>”</p>	<p>Clause 6.13.1(a) is to be amended to: <i>“ensure that it <u>holds a valid mortgage from the mortgagor, on the same terms as the electronic mortgage</u>”</i></p> <p>To be consistent, Certification 5 in Schedule 3 is to be amended to: <i>“(b) <u>holds a valid mortgage from the mortgagor, on the same terms as this Registry Instrument.</u>”</i></p>	<p>These amendments avoid use of the word “signed” and provide mortgagees with greater flexibility in the means by which they obtain a mortgage.</p> <p>It is for the mortgagee to ensure that a mortgage has been validly granted in each case.</p>
30	6.13.1 & Sch.3, 5	<p>Mortgages Clause 6.13.1(a) provides that an executed mortgage must be held by the mortgagee. However, Certification 5 of Schedule 3 provides that the Subscriber or the mortgagee it represents may hold the executed mortgage.</p>	<p>Clause 6.13.1 is to be amended to: <i>“<u>the mortgagee or mortgagee’s Representative must.</u>”</i></p>	<p>Amending the clause to be consistent with the certification removes an inconsistency and any doubt as to what is required.</p>
31	6.13.1 & Sch.3, 5	<p>Mortgages Clause 6.13.1 and Certification 5 in Schedule 3 have been drafted in neutral terms so as to permit the mortgage signed by the mortgagor to be in paper or electronic form. It might be useful to provide a footnote to this effect, to avoid the risk of argument about this issue.</p>	<p>No further change is necessary.</p>	<p>The clause and certification wording as amended are both technology neutral as to the form of the mortgage granted by the mortgagor and held by the mortgagee and the manner in which it is granted.</p> <p>It is for the mortgagee to ensure a mortgage has been validly granted in each case.</p>
32	6.13.1	<p>Mortgages It is important to specify when the signed mortgage must be held by the mortgagee or the Subscriber representing the mortgagee. This should be at the time of the certification and possibly settlement of the dealing. This is because afterwards the signed mortgage may be passed to third parties for custody or because of sale or other dealings with the mortgagee’s interest.</p>	<p>No change is to be made.</p>	<p>The clause requires the mortgagee or mortgagee’s Representative to provide the certification while holding a valid mortgage from the mortgagor. The relevant time is the time of giving the certification.</p>
33	6.13.1	<p>Mortgages Any instruments requiring witnessing cannot be</p>	<p>No change is necessary.</p>	<p>The Electronic Conveyancing National Law allows electronic instruments to be digitally signed without witnessing.</p>

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		signed electronically. In order to facilitate electronic conveyancing, we suggest that State and Territory laws are amended to make it clear that execution of mortgages (and all other instruments to be registered) do not need to be witnessed.		All jurisdictions are reviewing the need for witnessing of paper mortgages executed by mortgagors in conjunction with developing a uniform national mortgage form.
34	7.1(a)(ii)	Protection Measures The ELNO is allowed to specify what virus protection software a Subscriber is required to maintain.	No change is to be made.	The specification of security requirements, including virus protection software, for systems used by Subscribers to access an ELN is the responsibility of the ELNO. If an ELNO is of the view that a specific virus protection product is necessary to protect its system from virus attack, it is the ELNO's responsibility to require its Subscribers to install that product.
35	7.4.1	Signers A requirement should be inserted that the Subscriber take reasonable steps to ensure that the Signer is a Legal Practitioner or Licensed Conveyancer.	No change is to be made.	Clause 5.3(b) requires Subscribers to take reasonable steps to ensure each of their Signers complies with the laws of the jurisdiction where the land is located regarding who can conduct a conveyancing transaction and digitally sign registry instruments. It is for the State and Territory legislatures to continue to determine who can conduct conveyancing transactions and sign registry instruments in their jurisdiction.
36	7.5	Digital Certificates There is no apparent limitation on the number of Digital Certificates that may be issued to a Subscriber. As a matter of risk management, the MPR should provide that a Subscriber should not obtain more Digital Certificates than the number of Signers that it has appointed.	No change is to be made.	Clause 7.6.2(b)(iii) of the Operating Requirements requires ELNOs to only issue digital signature certificates to individuals authorised by the Subscriber to digitally sign documents on behalf of the Subscriber. Although a Signer may hold more than one digital signature certificate, every digital signature certificate issued must be associated with a particular individual. It is not possible for a Subscriber to have a digital signature certificate that is not associated with any individual.
37	7.7.1(b)	Notification of Jeopardised Conveyancing Transactions Subscribers are required to notify the ELNO where a conveyancing transaction has been	No change is to be made.	The means by which Subscribers comply with this requirement is for each Subscriber to determine in the circumstances, having regard for the notification to be immediate.

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		jeopardised and the documents cannot be unsigned. The process of how this notification is to be made should be included.		It is expected that an ELNO will establish how each notification will be achieved. In most instances, it is expected that a telephone call will be appropriate and sufficient.
38	7.9.2(b)	Compromised Security Items Subscribers are required to notify the ELNO where security has been compromised and the documents cannot be unsigned. The process of how this notification is to be made should be included.	No change is to be made.	The means by which Subscribers comply with this requirement is for each Subscriber to determine in the circumstances, having regard for the notification to be immediate. It is expected that an ELNO will establish how each notification will be achieved. In most instances, it is expected that a telephone call will be appropriate and sufficient.
39	10	Compliance There should be penalties for a breach of the MPR.	No change is to be made.	There are penalties for breach of the Participation Rules. A Subscriber may have their access to an ELN restricted, suspended or terminated by the Registrar or by the ELNO at the Registrar's direction. Schedule 7 sets out the events that can give rise to restriction, suspension or termination of a Subscriber's access to an ELN.
40	Sch.3, 6	Certification Rules Further industry agreement needed on the implications of making invalid the duplicate certificates of title held within the document storage facilities of financial institutions.	No change is to be made.	For the major financial institutions and other mortgagees with significant holdings of CTs, bulk conversion of their CTs to an electronic record will eliminate the need to retain CTs in secure storage and obviate the need for CTs to be retrieved and made invalid or destroyed. Arrangements for the bulk conversion of their CTs are currently underway with the major financial institutions.
41	Sch.3, 6	Certification Rules To accommodate mortgagees storage practices for CTs and remove the need to retrieve each CT when providing the certification, the wording of the Certification would be better worded as: <i>"The Subscriber has:</i> (a) retrieved; and (a) either securely destroyed or retained in a secure location pending destruction; <i>or</i> <i>(b) made invalid</i> <i>the (duplicate) certificate(s) of title for the folio(s) of the Register listed in this Registry Instrument or</i>	No change is to be made.	For the major banks and other mortgagees with significant holdings of CTs, bulk conversion of their CTs to an electronic record will eliminate the need to retain CTs in secure storage and obviate the need for CTs to be retrieved. Until that time, the jurisdictions that require the certification (Vic and WA) require each CT to be retrieved from storage to ensure it is being held by the mortgagee or other Subscriber on the mortgagee's behalf.

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		<i>Document.”</i>		
42	Sch. 4	<p>Client Authorisation Suggest that the indemnity in Term 2 is removed from the Client Authorisation as it will be confusing to consumers, and can be appropriately dealt with between the mortgagee and the Subscriber outside the Client Authorisation.</p>	<p>Term 2 of the Client Authorisation is to be re-drafted to:</p> <p><i>“Where:</i></p> <p>(a) <u><i>the Subscriber represents the Client in the Client’s capacity as mortgagee, and</i></u></p> <p>(b) <u><i>the Client represents to the Subscriber that the Client has taken reasonable steps to verify the identity of the mortgagor</i></u></p> <p><u><i>the Client indemnifies the Subscriber for any loss resulting from the Client’s failure to take reasonable steps to verify the identity of the mortgagor”</i></u></p>	<p>It is essential that the Registrar know who is taking responsibility for verifying the identity of the mortgagor when the mortgagee is represented by a Subscriber in the transaction rather than participating in the transaction directly as a Subscriber.</p> <p>Re-drafting Term 2 of the Client Authorisation makes it clear that it only applies when Subscribers are representing a mortgagee and the mortgagee has verified the identity of the mortgagor.</p>
43	Sch.4	<p>Client Authorisation The Transaction Types and Special Instructions fields do not add any value to the completion of the Client Authorisation Form.</p>	No change is to be made.	These fields are included on the Form to enable the Client (or Client Agent) to as far as possible indicate at the time of signing what the authorisation is for. The authorisation when signed does however authorise the Subscriber to do anything else necessary to complete the transaction.
44	Sch.4	<p>Client Authorisation Within the Subscriber Details and Signing Panel of the Client Authorisation form remove references to Client Agent as it is the Client who is being identified and is providing the certification.</p>	No change is to be made.	<p>A Client Agent is a person acting for the transacting party Client (under delegated authority or power of attorney) in giving the Client Authorisation to a Subscriber. Client Agents are persons acting for companies and persons acting for absent or incapacitated persons.</p> <p>In such instances, the Client Agent has their identity and their authority to act for the Client verified.</p>
45	Sch.4	<p>Client Authorisation All of the definitions in the Terms of the Client Authorisation except for Specific Authority, Standard Authority and Batch Authority should be removed as they are not relevant and will only confuse the user.</p>	No change is to be made.	Inclusion of the definitions in the terms under which each Client Authorisation is given is considered important in ensuring that when the form is separated from the Participation Rules there is the least possible risk of mis-interpretation. In due course the Client Authorisation may be introduced to paper transactions where the Participation Rules do not apply.

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46	Sch.6	Insurance Rules A sub-clause should be added to Clauses 1 and 2 of Schedule 6 to require Signers to hold professional indemnity insurance and fidelity Insurance for specified amounts per claim that are comparable to those required of Subscriber Agents.	No change is to be made.	Signers at all times act on behalf of the Subscriber who authorised them and it is the Subscriber who must be insured.
47	Sch.6	Insurance Rules The issue of a time limit on insurance claims should be reviewed by ARNECC to determine what time period is appropriate given the service provided and the nature of claims that may be made after settlement has occurred, from a national perspective.	No change is to be made.	Professional indemnity insurance policies generally require that the event giving rise to the claim occurred while the policy was in force and that the claimant was insured at the time the claim was made. Except for any relevant provisions in limitations of actions legislation, there is no time limit on a claim provided the policy is in force and the claimant is insured at both the time the event took place and the time the claim is made.
48	Sch.8, 1	Verification of Identity Standard In the definitions, 'Identity Declarant' should be after 'Foreign Country' not after 'Court Officer'.	The relevant definitions are to be re-ordered.	The definitions are intended to be in alphabetical order.
49	Sch.8, 1	Verification of Identity Standard To reflect recent developments in several jurisdictions, the Proof of Age Card in the Verification of Identity Standard should be a Photo Card and be defined as: <i>"a card issued by any State or Territory showing a photograph of the holder and enabling the holder to evidence their age or their identity"</i> .	The definition of Proof of Age Card in Clause 1 of Schedule 8 is to be amended to: <i>"Photo Card is a card issued by any State or Territory showing a photograph of the holder and enabling the holder to evidence their age or their identity"</i> . Consequential amendments are to be made throughout Schedule 8.	The amendment brings the Verification of Identity Standard up to date with terminology being adopted in the jurisdictions.
50	Sch.8, 1	Verification of Identity Standard A definition of "domestic partner" appears to be required.	No change is to be made.	A domestic partner is generally taken to mean a person who lives in a close personal relationship with another person. It is not considered that a definition will increase understanding of the term in the context of the Verification of Identity Standard.
51	Sch.8, 2	Verification of Identity Standard Face to face identification should be dispensed with as an essential feature.	No change is necessary.	Face to face identity verification is a requirement of the Verification of Identity Standard only. Subscribers are able to dispense with face to face procedure in any reasonable steps

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				procedure provided they assume the risk of a false verification.
52	Sch.8, 2.1	<p>Verification of Identity Standard The safe harbour procedure in Schedule 8 is only available to Subscribers and Subscriber Agents. This means that there is no safe harbour procedure provided for non-Subscriber mortgagees.</p> <p>It is suggest that the safe harbour procedure in Schedule 8 is amended so that it refers to and is available to non-Subscriber mortgagees.</p>	No change is necessary.	Clause 6.5.1(c) provides for non-Subscriber mortgagees to take reasonable steps to identify their mortgagor (which may be the safe harbour procedure in Schedule 8) in lieu of the mortgagee's Subscriber doing so.
53	Sch.8, 3.4	<p>Verification of Identity Standard Document Categories 1 and 2 of the Verification of Identity Standard require an Australian passport or a foreign passport and an Australian visa grant notice evidencing an Australian resident visa. There is no explanation of what an Australian visa grant notice is or how it is obtained.</p>	No change is to be made.	<p>Australian Visa Grant Notices are now issued by the Commonwealth Department of Immigration and Border Protection in lieu of visa labels in passports. They are issued electronically to holders of foreign passports who are outside Australia and are the equivalent of a visa label. For more details, see http://www.immi.gov.au/Services/Pages/electronic-travel-authority-online-applications.aspx.</p> <p>Australian Visa Grant Notices can be checked for validity at any time free of charge using the Department's Visa Entitlement Verification Online (VEVO) service at http://www.immi.gov.au/Services/Pages/vevo.aspx.</p>
54	Sch.8, 3.4	<p>Verification of Identity Standard The wording of Document Categories 2 to 4 needs to be clarified. The word "or" needs to be inserted everywhere a choice exists, so it is very clear what the minimum level of documentation required is.</p>	Amendments are to be made as suggested.	Insertion of the word "or" wherever a choice of documents is provided for makes it clearer what the minimum requirement is.
55	Sch.8, 4.4	<p>Verification of Identity Standard Limiting the people who can provide an Identifier Declaration will make the identity verification task more difficult, particularly in remote areas.</p>	No change is to be made.	The list of persons able to provide Identifier Declarations is considered broad enough at this time to cover all situations but will be kept under review.
56	Sch.8, 8.1	<p>Verification of Identity Standard Requiring an Australian Consular Officer or Australian Diplomatic Officer to conduct</p>	Clause 8.1 of Schedule 8 is to be amended to provide for a Subscriber or Subscriber Agent to conduct a	The amendment increases the options available to Subscribers representing Clients in foreign countries.

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		<p>verification whenever a person is located outside of Australia is an unnecessary burden on businesses which will harm productivity. Significant difficulties have already been encountered working with WA VOI. Some locations do not have any such Australian officer.</p> <p>It would be reasonable to allow any Subscriber Agent complying with clause 9 of Schedule 8 to conduct identification in a foreign country, particularly given the insurance requirements.</p>	verification of identity in a foreign country as well as a consular official or defence force member.	A law firm, for example, could use an international branch of its firm or appoint another law firm in the foreign country to be its Subscriber Agent for the purposes of identity verification.
57	Sch.8, 9(a)	<p>Verification of Identity Standard The requirement for all Subscriber Agents to have professional indemnity insurance will severely limit who can be appointed to perform the Vol.</p>	No change is to be made.	The insurance requirement for Subscriber Agents is considered necessary for Subscribers to obtain the reasonable steps benefit of the Verification of Identity Standard. Use of uninsured persons as Subscriber Agents would potentially leave the Subscriber and their insurer exposed to unrecoverable costs in the event of negligence, fraud or dishonesty by the Subscriber Agent.
58	Sch.8, 9(a)	<p>Insurance Rules Australia Post limits its liability for fraud or negligence in an identity verification to \$10,000,000 per year in aggregate.</p>	No change is to be made.	The minimum insured liability for a Subscriber Agent is intentionally set the same as for Subscribers so that in the event of a claim by a transacting party the Subscriber is not disadvantaged in not being able to fully recover from the Subscriber Agent.
59	Sch.8, 9(b)	<p>Verification of Identity Standard Subscriber Agents may not be able to meet the insurance requirement of at least \$1.5 million per claim in relation to negligence and fraud limiting the availability of Subscriber Agents, the attractiveness of lodging electronically and the take-up of electronic conveyancing.</p>	No change is to be made at this time.	The obligation is on Subscribers to ensure their Subscriber Agent is adequately insured. The situation will be kept under review to ensure sufficient persons are available as Subscriber Agents.
60	Sch.8, 9(c)	<p>Verification of Identity Standard Does Clause 9(c) of Schedule 8 mean that a Subscriber Agent can only be used when the Verification of Identity Standard is being applied?</p>	<p>The beginning of Clause 9 in Schedule 8 is to be amended to:</p> <p><i>“Where the Subscriber <u>uses the Verification of Identity Standard and engages a Subscriber Agent to verify the identity of a Person Being Identified and any Identity Declarant</u></i></p>	<p>The amendment makes it clear that what follows in Clause 9 applies only when a Subscriber uses the Verification of Identity Standard <u>and</u> engages a Subscriber Agent.</p> <p>Subscribers can also use Subscriber Agents to conduct identity verifications using steps, other than the Standard, which the Subscriber considers reasonable in the circumstances.</p>

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			<i>and witness the signing of the properly completed Client Authorisation where applicable,”</i>	
61	Sch.8, 9(d)	<p>Verification of Identity Standard There is no provision for witnessing the Client’s signature, and so the Subscriber would need a separate declaration by the Subscriber Agent that the Client Authorisation was signed in the presence of the Subscriber Agent.</p>	<p>Schedule 8 is to be amended by inserting as Clause 2.3:</p> <p><i>“Where a Client Authorisation is required, the Subscriber or the Subscriber Agent must ensure that the completed Client Authorisation is signed:</i></p> <p><i>(i) by the Person Being Identified in the presence of the Subscriber or the Subscriber Agent; and</i></p> <p><i>(ii) by the Subscriber or the Subscriber Agent.”</i></p>	<p>The amendment makes it clear that where a Client Authorisation is required and the identity verification is being undertaken in accordance with the Verification of Identity Standard (ie the safe harbour), the completed Client Authorisation is to be signed by the person whose identity has been verified in the presence of the Subscriber or Subscriber Agent <u>and</u> by the Subscriber or Subscriber Agent.</p> <p>This provision makes the Subscriber or Subscriber Agent the witness for the Client’s signing of the Client Authorisation as well as ensuring that the signature is that of the person whose identity has been verified as either the Subscriber’s Client or an agent of that client.</p>
62	Sch.8, 9(d)	<p>Verification of Identity Standard The Client Authority provides space for both the Subscriber and Subscriber Agent to sign. The Rules do not specify who is required to sign.</p> <p>It is suggested that an amendment be made to specify that when a Subscriber Agent is used, only the Subscriber Agent is to sign the Client Authorisation form. In these circumstances the Subscriber Agent is the person best suited to certifying that reasonable steps have been taken to ensure the Client Authorisation was signed by the Client or Client Agent.</p>	<p>Clause 9(d) in Schedule 8 is to be amended to:</p> <p><i>“where a Client Authorisation is required, receive from the Subscriber Agent the completed Client Authorisation signed:</i></p> <p><i>(i) by the Person Being Identified in the presence of the Subscriber Agent; and</i></p> <p><i>(ii) by the Subscriber Agent”</i></p>	<p>The amendment makes it clear that where a Client Authorisation is required and a Subscriber Agent has conducted the verification of identity, the Subscriber must ensure that the Client Authorisation is signed by the person identified in the presence of the Subscriber Agent <u>and</u> by the Subscriber Agent.</p>
63	Sch.8, 9(e)	<p>Verification of Identity Standard As a company can be appointed as a Subscriber Agent, and since a company can only act through its representatives, any appointed individual acting on behalf of a Subscriber Agent company can sight the original documents, be present while a Client Authorisation is being signed, and provide the certification statement. The</p>	No change is necessary.	<p>Any duly authorised person can represent a company appointed as a Subscriber Agent by a Subscriber.</p> <p>While it is possible for more than one duly authorised person to properly complete the identity verification and client authorisation process, it is expected that for integrity purposes one person will undertake the whole process.</p>

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		certification statement could be signed by the representative who conducted the VOI or by any other representative of the company. Is this correct?		
64	Sch.8, 10	<p>Verification of Identity Standard Section 10 of Schedule 8 touches on the question of document authenticity, requiring that the Subscriber or the Subscriber Agent must undertake further steps if they know or ought reasonably to know that any identity document produced by the person being Identified or the Declarant is not genuine.</p> <p>This vulnerability in the MPR can be addressed and the system of VOI made much stronger, with little cost or regulatory burden, by allowing for alternative comprehensive eVOI services to constitute as "reasonable steps" in the MPR.</p>	No change is to be made at this time.	<p>The Verification of Identity Standard in Schedule 8 is considered adequate at this time. The Standard requires Subscribers and Subscriber Agents to take further steps to verify an identity when they have reason to believe that an identity document may not be genuine. Use of electronic document verification services including the Commonwealth Government's Document Verification Service (DVS) in such circumstances may assist in resolving the uncertainty.</p> <p>Whether electronic document verification services including the DVS should be made a mandatory part of the Standard will be kept under review.</p>
65	Sch.8, 10	<p>Verification of Identity Standard The Federal Government's revived Document Verification Service should also be available to Participants in the national electronic conveyancing system.</p>	No change is to be made at this time.	<p>The Commonwealth Government's Document Verification Service (DVS) is available to Subscribers as part of their reasonable steps procedure. It is not at this time a mandatory part of the Verification of Identity Standard (the safe harbour procedure) in Schedule 8.</p> <p>However, the Standard does require Subscribers to take further steps to verify an identity when they have reason to believe that an identity document may not be genuine. Use of the DVS in such circumstances may assist in resolving the uncertainty.</p>
66	Sch.8	<p>Verification of Identity Standard It is not made clear that a Subscriber using a Subscriber Agent for a verification of identity has taken reasonable steps in the event of negligence or fraud by the Subscriber Agent.</p>	No change is necessary.	<p>The Verification of Identity Standard in Schedule 8 requires a Subscriber using a Subscriber Agent to conduct an identity verification to direct the Subscriber Agent to conduct the verification in accordance with the Standard.</p> <p>Clause 6.5.2 deems compliance with the Verification of Identity Standard in Schedule 8 as reasonable steps by the Subscriber.</p>
67	Sch.8	Verification of Identity Standard	No change is necessary.	Under the Electronic Conveyancing National Law, the

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		Subscriber Agents should be required to comply with the Participation Rules.		<p>Participation Rules are incorporated into the contract (Participation Agreement) between the ELNO and the Subscriber. A Subscriber Agent is not a party to this contract. As a result, the obligation to take reasonable steps to verify identity is on the Subscriber, not the Subscriber Agent.</p> <p>Subscriber Agents are appointed by Subscribers as their agents in conducting identity verifications. Subscribers are responsible for who they appoint as Subscriber Agents and must reasonably believe them to be reputable, competent and adequately insured. Subscribers are also responsible for directing their Subscriber Agents on how they wish the identity verification to be undertaken. If Subscriber wants an identity verification undertaken by a Subscriber Agent in accordance with the Verification of Identity Standard in Schedule 8, they must direct the Subscriber Agent to do so.</p> <p>Subscriber Agents have a relationship with their Subscribers only. They cannot access an ELN nor represent parties to a conveyancing transaction in their role of Subscriber Agent. There is no need for them to be required to comply with the MPR.</p>