



AUSTRALIAN REGISTRARS NATIONAL ELECTRONIC CONVEYANCING COUNCIL

National Electronic Conveyancing Legal Framework

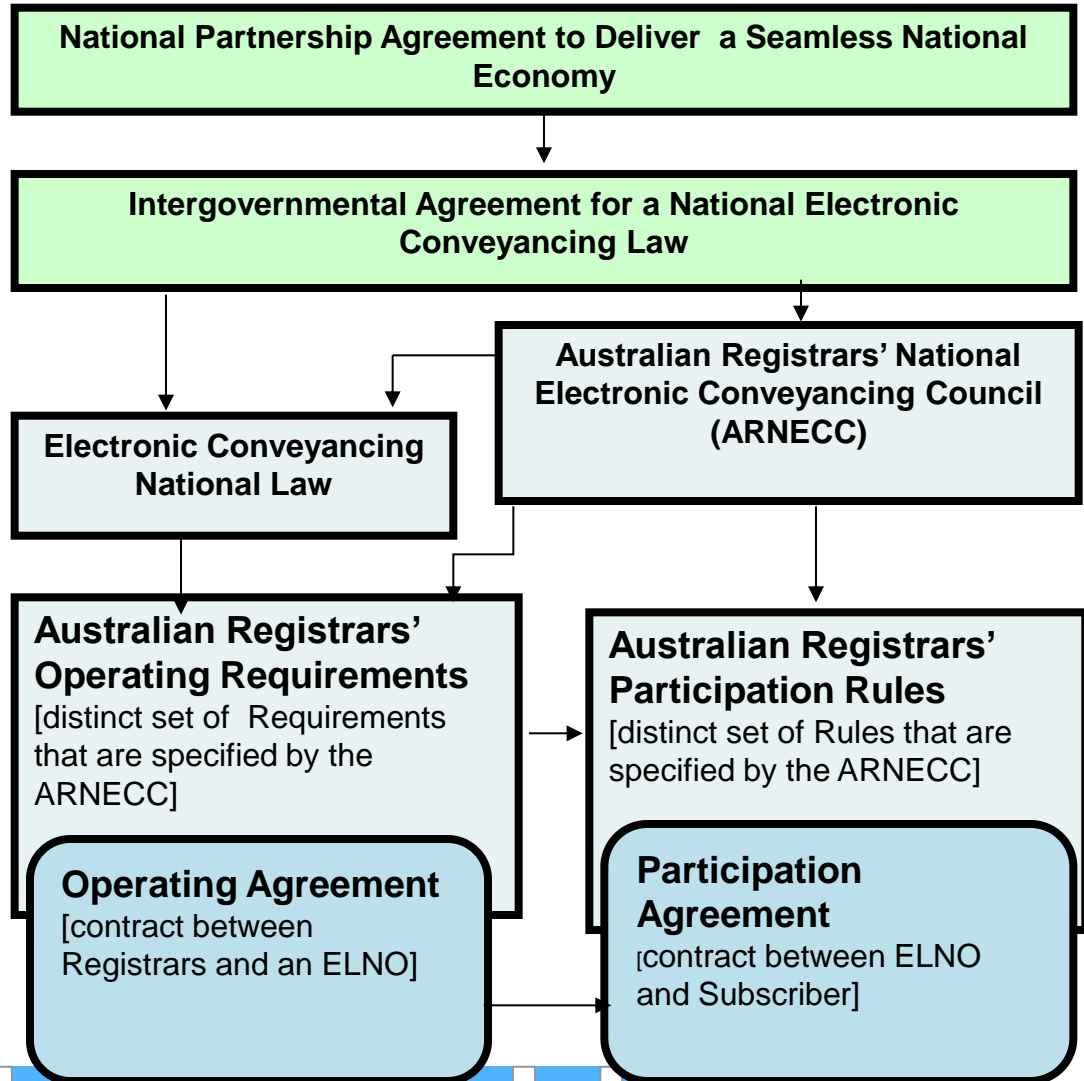
First Stakeholder Meeting

SYDNEY

16 May 2011

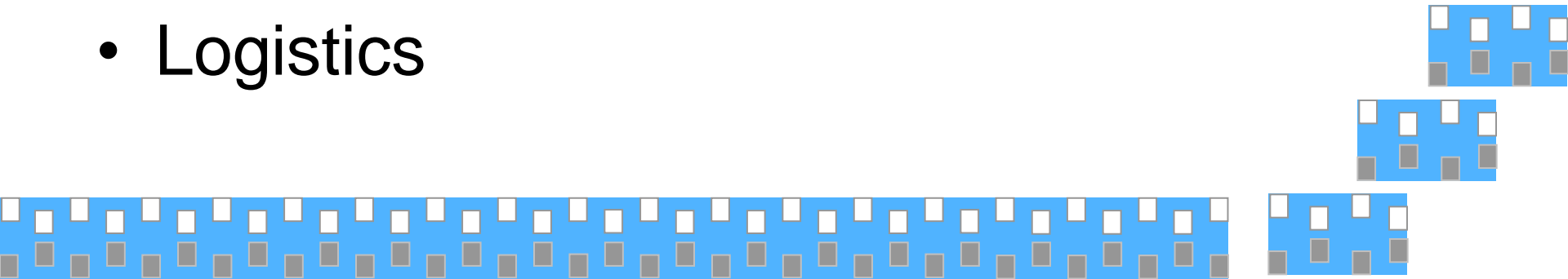


National Electronic Conveyancing Legal Framework



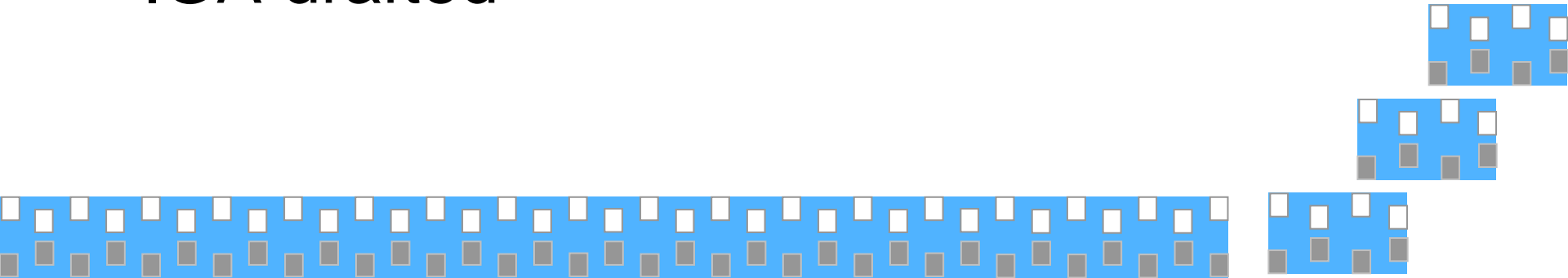
Background to Development of Legal Framework -Issues

- Jurisdiction for Land and Conveyancing Matters
- Jurisdiction Torrens/ Conveyancing Law
- Electronic Conveyancing development funding
- Logistics



Development of Legal Framework - Progress

- NECO CU Report
- SPT development of Framework
- ARNECC Charter and Consultation Policy developed
- IGA drafted



Development of Legal Framework - Progress (Cont)

- Electronic Conveyancing National Law draft progressing
- RIS draft progressing after comments by OBPR
- Model Operating Requirements and Model Participation Rules early stages of drafting

National Partnership Agreement to Deliver a Seamless National Economy

- The Commonwealth, States and Territories acknowledge that they have a mutual interest in the creation of a seamless national economy, reducing costs incurred by business in complying with unnecessary and inconsistent regulation across jurisdictions and need to work together to achieve this objective.

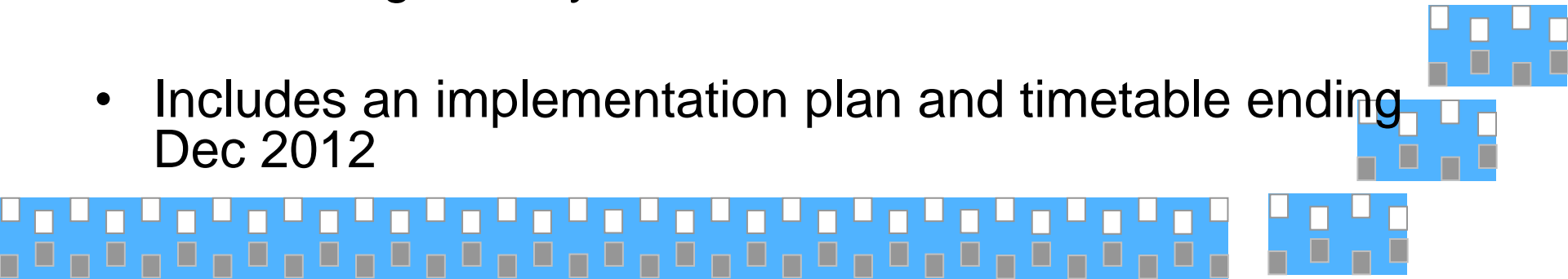




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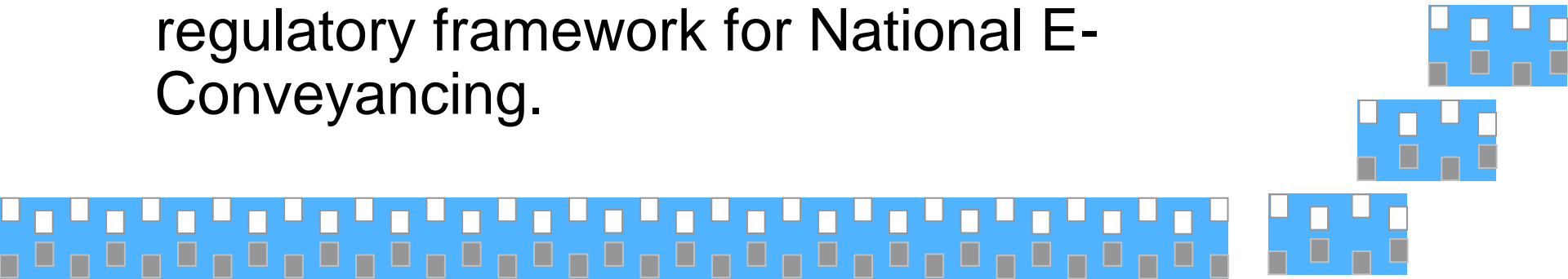
National Partnership Agreement to Deliver a Seamless National Economy

- Commits States and Territories to the implementation of a national electronic conveyancing system that will establish a single electronic system for completing property transactions and lodging land title dealings.
- Electronic Conveyancing one of 27 initiatives
- Provides for some funding towards achieving the initiatives generally
- Includes an implementation plan and timetable ending Dec 2012



Draft Intergovernmental Agreement for an Electronic Conveyancing National Law

- Parties agree to cooperate on implementation of National EC
- Provides a framework for managing the Electronic Conveyancing National Law and any amendment.
- Formally establishes ARNECC to facilitate the implementation and ongoing management of the regulatory framework for National E-Conveyancing.

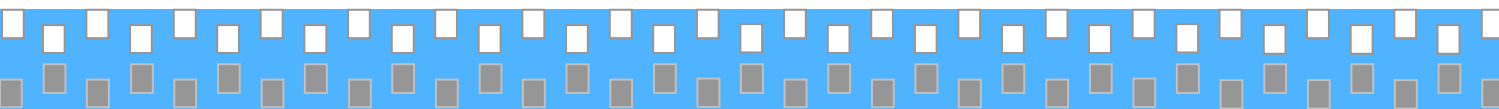




AUSTRALIAN REGISTRARS NATIONAL ELECTRONIC CONVEYANCING COUNCIL

Australian Registrars' National Electronic Conveyancing Council

- Comprises the Registrar of each Australian jurisdiction or their nominee
- ARNECC's role is to:
 - Advise on the National Law and EC generally.
 - Ensure, as far as is practicable, that business practices with respect to National E-Conveyancing are implemented consistently.
 - Develop Model Operating Requirements and Model Participation Rules that will apply nationally.



Electronic Conveyancing National Law

- National Applied Law Scheme
- Currently being drafted by Parliamentary Counsels' Committee
- NSW host jurisdiction





AUSTRALIAN REGISTRARS NATIONAL ELECTRONIC CONVEYANCING COUNCIL

Electronic Conveyancing National Law

Key Provisions

Provides for:

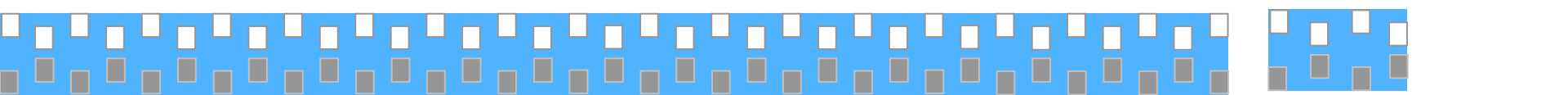
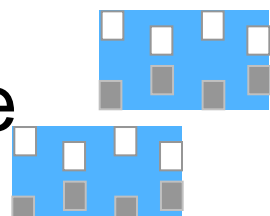
- Electronic Lodgment of land dealings and their status
- Use and Effect of Client Authorisations
- Use and reliance on Digital Signatures



Electronic Conveyancing National Law

Key Provisions^(continued)

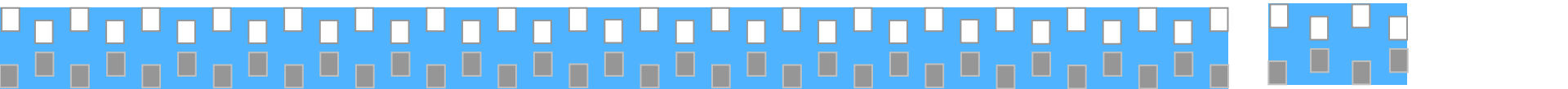
- Electronic Lodgment Networks (ELN)
 - An ELN is an electronic system that enables the lodging of registry instruments and other documents in electronic form for the purposes of the land titles legislation
- Registrars to set Operating Requirements and Participation Rules
- Registrar may approve a person to operate an ELN - an Electronic Lodgment Network Operator (ELNO)



Electronic Conveyancing National Law

Key Provisions (continued)

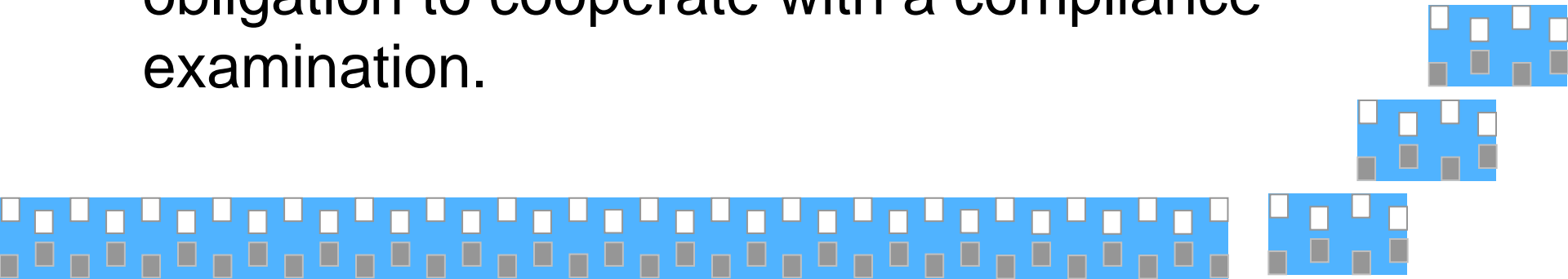
- ELNO must comply with Operating Requirements set by Registrars
- Subscribers must comply with Participation Rules set by Registrars
- Registrar must make current and superseded Operating Requirements and Participation Rules publicly available.



Electronic Conveyancing National Law

Key Provisions (continued)

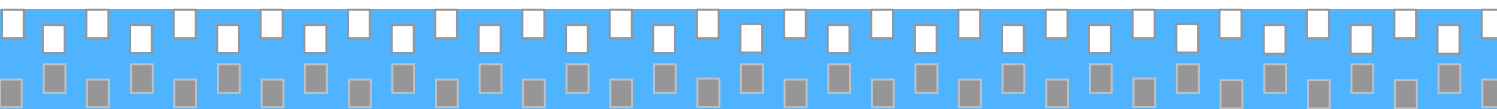
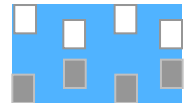
- Registrar may conduct a compliance examination to determine that Operating Requirements and/or Participation Rules are being complied with.
- ELNOs and Subscribers will have a general obligation to cooperate with a compliance examination.



Electronic Conveyancing National Law

Key Provisions (continued)

- For an appeal to a specified Court where a Registrar:
 - refuses to renew an ELNO's approval to operate.
 - suspends an ELNO's approval to operate (for a breach of the Operating Requirements).
 - revokes an ELNO's approval to operate (for a breach of the Operating Requirements).



Electronic Conveyancing National Law

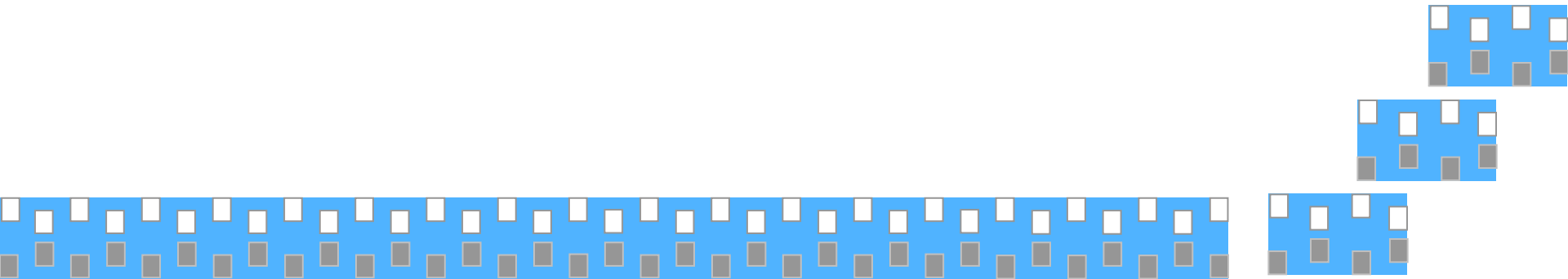
Key Provisions (continued)

- No obligation to conduct a compliance examination and Registrar not liable for loss caused by decision to conduct or not to conduct a compliance examination.
- A schedule providing for standard interpretation of various matters



Regulatory Impact Statement

- Based on COAG requirements.
- 2 stage process
 - 1 Consultation RIS
 - 2 Decision RIS



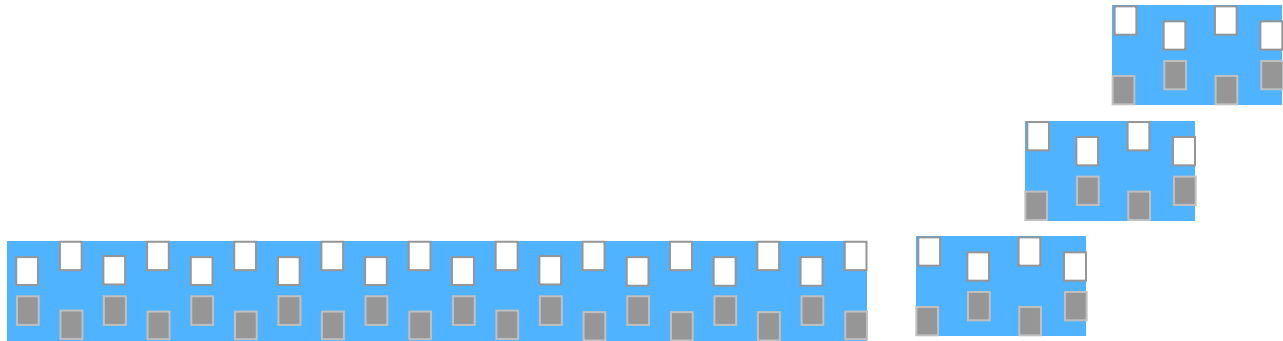


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Model Operating Requirements



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Model Operating Requirements - Overview

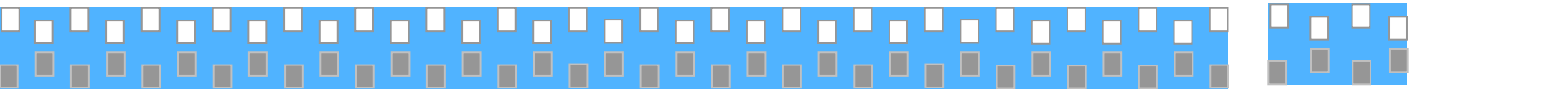
- The Registrar may set Operating Requirements (ORs) that an ELNO must comply with when operating an ELN
- State Project Team (SPT) responsible for drafting the ORs
- The SPT has considered an outline of the ORs and feedback is being collated from the 8 jurisdictions for discussion next week by the SPT legal sub-group

Model Operating Requirements – Legislative Basis

ECNL Bill provides for Operating Requirements for ELNOs

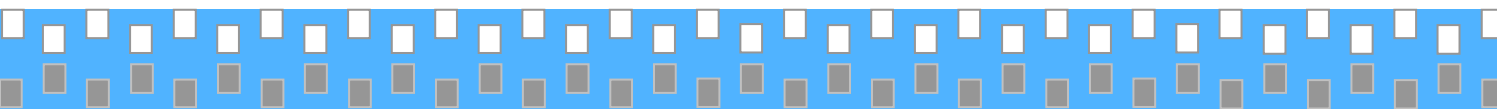
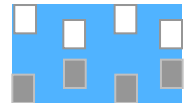
The Bill will provide:

- The Registrar may determine, in writing, requirements relating to the operation of an ELNO
- ORs may include provisions relating to:
 - the financial standing of an ELNO
 - compliance with the participation rules, including (without limitation):
 - (i) requiring an ELNO to use a participation agreement when authorising persons to use an ELN, and
 - (ii) requiring participation agreements to incorporate the participation rules



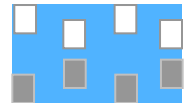
Model Operating Requirements – Legislative Basis

- ORs may include provisions relating to (continued):
 - the technical and operational requirements for an ELN
 - the insurance cover to be held by an ELNO
 - the circumstances in which the Registrar may suspend or revoke the approval of a person as an ELNO
 - the giving of directions to an ELNO by the Registrar, for example a direction to restrict, suspend or terminate a subscriber's or other person's use of an ELN



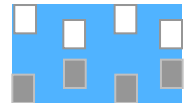
Model Operating Requirements - Outline of Provisions

- Status and capacity of ELNO
 - Corporate status
 - Constituting documents
 - ABN and GST
- General Obligations
 - Conduct of business
 - Due skill care and diligence
 - Maintain reasonable resources
 - Comply with applicable laws



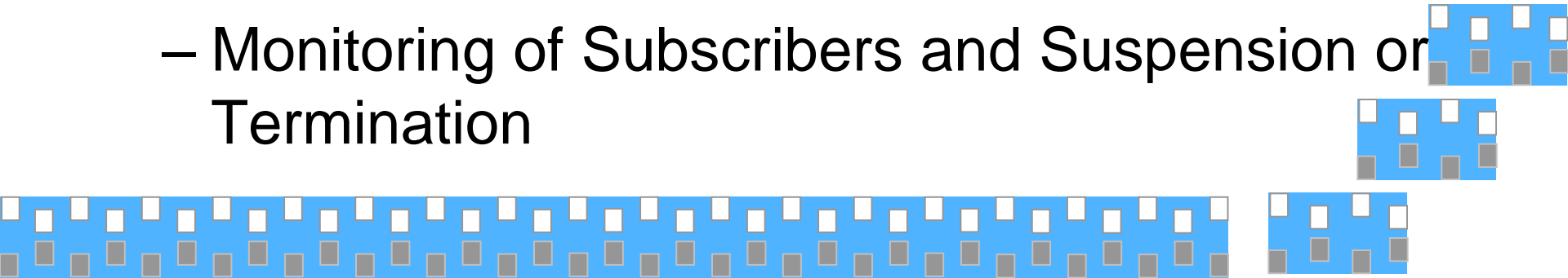
Model Operating Requirements - Outline of Provisions

- System Operation
 - Digital signatures
 - Electronic Document Preparation and Lodgment
 - Land Registry Fees and Duty
 - Provision of transaction lists



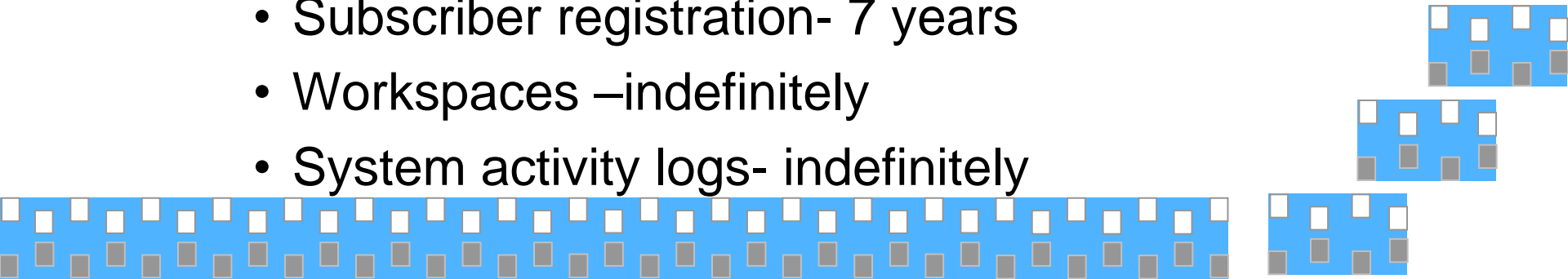
Model Operating Requirements - Outline of Provisions

- **Subscribers**
 - Subscriber eligibility and registration
 - Subscriber insurance
 - Participation Agreement and Participation Rules
 - Training of Subscribers
 - Monitoring of Subscribers and Suspension or Termination



Model Operating Requirements - Draft Provisions

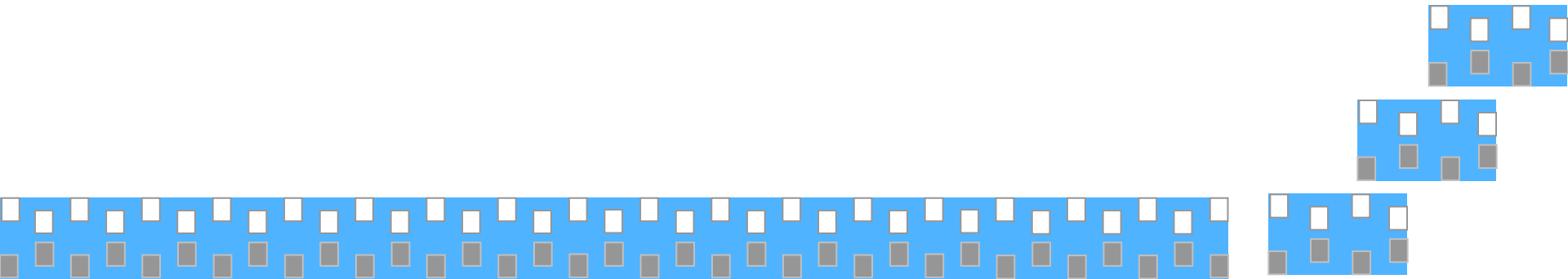
- Reporting and Compliance
 - Compliance Monitoring and Investigations
 - Power to Request Documents
 - Inspection and Retention of Documents
 - Data retention
 - Transaction records- 7 years
 - Subscriber registration- 7 years
 - Workspaces –indefinitely
 - System activity logs- indefinitely





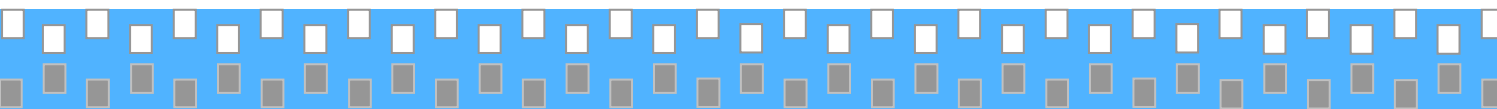
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Model Participation Rules



Model Participation Rules- Overview

- The Registrar is empowered to determine Participation Rules (PRs) with which Subscribers to an ELN must comply
- SPT responsible for drafting the PRs
- The SPT will consider an outline of the PRs next week through the SPT legal sub-group

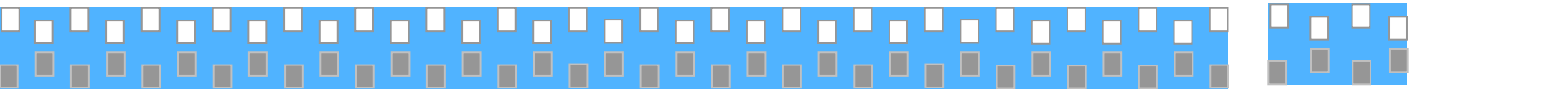


Model Participation Rules – Legislative Basis

ECNL Bill provides for Participation Rules

The Bill will provide:

- The Registrar may determine, in writing, rules relating to access to and the use of an ELN
- The participation rules may (without limitation) include provisions relating to the following matters:
 - the eligibility criteria for subscribers
 - the obligations of subscribers, including (without limitation) any representations or warranties they are required to give
 - the circumstances in which a subscriber's authority to use the ELN may be suspended or terminated



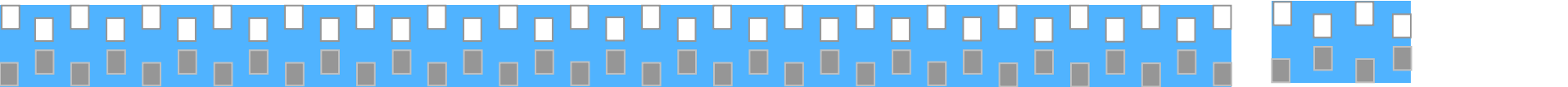
Model Participation Rules – Legislative Basis

- The participation rules may (without limitation) include provisions relating to the following matters (continued):
 - client authorisations, including (without limitation) the form of client authorisations
 - the obligations of subscribers to verify the identity of their clients
 - the certification of registry instruments and other documents for use in connection with the ELN



Model Participation Rules – Legislative Basis

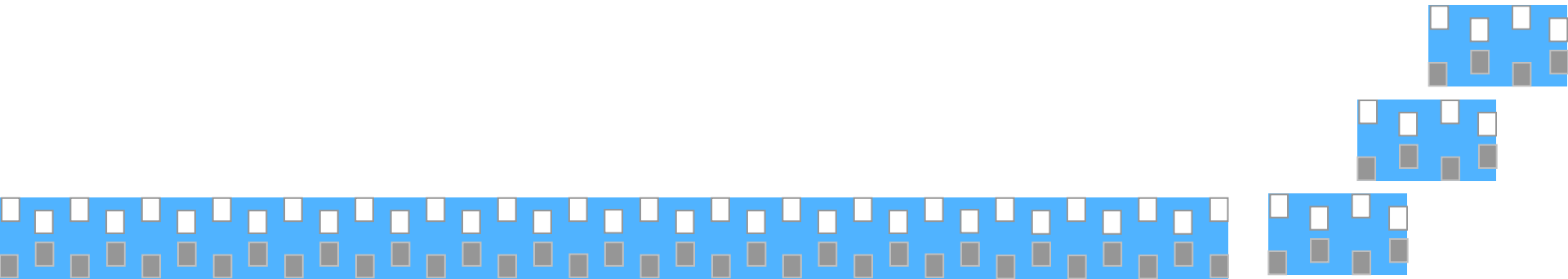
- The participation rules may (without limitation) include provisions relating to the following matters (continued):
 - digital signatures, including the attribution rule
 - the retention of documents created or obtained in connection with a subscriber's use of an ELN



Development of Legal Framework

Key Dates

- In principle approval of ECNL & IGA Early Ay
- Release of RIS 9 September 2011
- Introduce ECNL to NSW Parliament early Nov 2011
- Application of ECNL to other jurisdiction Parliaments from early 2012





AUSTRALIAN REGISTRARS NATIONAL ELECTRONIC CONVEYANCING COUNCIL

Contacts for further Questions

- **ARNECC**

Bruce Roberts, Chair ARNECC

Ph: 08 9273 7366

Bruce.Roberts@landgate.wa.gov.au

- **Legal Framework**

Greg Channell

Ph: 02 9228 6834

Greg.Channell@lpma.nsw.gov.au

