

Model Operating Requirements Version 3 Consultation Feedback

ARNECC September2015

#	Req	Issue	Action Taken	Commentary
1	2.1.2	Definition of Insolvency Event- the words “unable to pay from their own money their debts when they fall due for payment” is not the usual formulation when defining “insolvency”. The usual formulation is “unable to pay its debts as and when they fall due”. We submit that the usual formulation should be adopted.	The MOR has been amended.	The amendment has aligned the definition with the wording used in the Corporations Act.
2	2.1.2 & 7.3	The definition of “ <i>Incident</i> ” does not appear consistent with the language used to define “ <i>Suspension Event</i> ” and “ <i>Termination Event</i> ” and in clause 7.3 – Security of ELN.	None.	The definition of Incident is for the purposes of defining the minimum system performance requirements in Schedule 2. The definitions of Suspension Event and of Termination Event are for the purposes of defining unacceptable behaviour by Subscribers in using the system. The provisions in Requirement 7.3 concerning security of the system have to do with characteristics of the system that ensure its information is kept secure and any breaches of security are readily detected and dealt with.
3	2.1.2, 14.7 (c) & (d)	Excluding sub-clause (b), the definition of “Termination Event” is the same as for “Suspension Event”. Therefore, excluding the situation described in sub-clause (b), it is unclear how an ELNO should determine whether it should Suspend or Terminate a Subscriber if the events described in sub-clause (a) to (e) in the definition of “Suspension Event” and (a) in the definition of “Termination Event” occur. We seek further guidance on this issue.	None.	The definitions of Suspension Event and of Termination Event require ELNOs to take suspension action when they suspect a breach and termination action when they have knowledge of a breach.
4	7.1(d)	We request guidance around what would constitute a “material change” to the ELNO’s Information Security Management System.	None.	It is for the ELNO to decide what constitutes a material change to the ELNO’s ISMS. The MORGN has been amended to provide some advice on how this might be done.
5	7.2	Is there a need to provide for remote access maintenance of Subscriber systems so as to avoid the possibility of a compliance breach?	None.	<p>The Participation Rules require Subscribers to take reasonable steps to ensure that the ELN is only accessed by individuals authorised by a Subscriber to do so on behalf of the Subscriber. Provided the Subscriber has authorised its service provider to access the ELN and the terms of access are reasonable in the circumstances, the Subscriber will not contravene the Participation Rules.</p> <p>Under the attribution rule for digital signatures in section 12 of the Electronic Conveyancing National Law, a Subscriber will be liable for the use of its digital signature by a service provider who, without authority, digitally signs a document using the Subscriber’s digital certificate.</p> <p>In relation to Operating Requirement 7.2.1, provided the Subscriber has properly authorised its service provider to access the ELN, an ELNO will not be in breach of the Requirement.</p>
6	10.9	This requirement should be deleted in its entirety on the basis that it is unnecessary as it replicates the provisions of the <i>Duties Act</i> .	None.	The requirement is necessary as each Registrar must ensure compliance with a provision in their respective duties legislation that dealings are not to be registered unless the requirements of that legislation and of the relevant Duty

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				Authority (Office of State Revenue) relating to duty payment have been complied with.
7	22 & Sch. 6, 1	Clause 22 and Schedule 6 enable Operating Requirements to be different in each jurisdiction. This is contrary to the IGA.	None.	The IGA recognises that there may be differences among the jurisdictions as regards to the implementation of electronic conveyancing but commits all jurisdictions to minimising any inconsistencies. So far no differences have arisen in relation to the Operating Requirements for ELNOs.
8	Sch.2	We believe that 4 hours to restore the ELNO System in a disaster recovery situation where PEXA invokes its Business Continuity and Disaster Recovery Plan is unrealistic. We request that 4 hours be increased to 8 hours.	None.	The existing requirement of restoration of Service Availability within 4 hours of declaring a disaster recovery situation is considered reasonable and in line with contemporary practice for high availability systems.
9	Sch.2	Where a service disruption occurs in a non-disaster recovery situation, restoration to full Service Availability within 40 minutes is unrealistic and therefore unworkable. We request that 40 minutes be increased to 4 hours.	None.	The existing requirement of restoration of Service Availability within 40 minutes of a service disruption when a disaster recovery situation is not declared is considered reasonable and in line with contemporary practice for high availability systems.
10	Sch.2	We request that the requirements to restore Service Availability after a service disruption be on the basis of taking reasonable endeavours only within the respective disaster recovery and non-disaster recovery service restoration times.	None.	The Performance Target is a maximum time to restore Service Availability after a disruption and it is not considered appropriate for it to be qualified by the effort applied to achieving that outcome.
11	Sch. 2	We submit the Incident Resolution requirements should cater to varying severities of potential incidents. One reading of the current requirements is that "full Service Availability" does not make allowances for situations where some services are not working correctly, there is limited functionality or there is a service not available but there is a workaround in place. In these situations, a longer period should be available for resolution. We would be happy to provide further drafting suggestions as required.	The MOR has been amended.	The amendment has deleted the word "full" before Service Availability where it appears both times to remove any confusion that there might be more than one level of Service Availability. As set out in Schedule 2, Service Availability means the availability of all functionality provided by the ELNO System, including functionality dependent on external communications and systems except when those external communications or systems are not available.
12	Sch. 2	"Core Hours" is currently defined as "the time from 6:00am to 10:00pm on each Business Day." It is proposed that the definition of "Core Hours" be amended to "the time from 8:00am to 8:00pm AEST on each Business Day then extended by 1 hour during AEDT" as these hours are relevant to the operating environment and Financial Settlement availability times.	The MOR has been amended.	The amendment has linked the definitions of Core Hours and of Non-core Hours to AEST and AEDT times and to clarify that the ELN must be available during Core Hours in each State and Territory on a business day in that State or Territory.
13	Sch.7, 4.3	It is not clear what form "copies" can take in order to meet the new requirement.	None.	The medium and means in which documents are to be retained is to be determined by ELNOs based on the nature of the documents and the possible need to produce those documents as evidence to a Court.

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14	Sch.7, 4.3	It is not clear for how long copies will need to be retained. We seek guidance on this issue.	None.	Requirement 19.1(d) requires all documents received or created in connection with a Subscriber's registration to be retained indefinitely.
15	Sch.7, 4.1	Documents produced for Vol must be current " <i>except for an expired Australian Passport which has not been cancelled and was current within the preceding 2 years.</i> " However, how is an ELNO to ascertain that a passport has been cancelled?	None.	<p>The currency of a passport can be verified at any time with the issuing authority, the Department of Foreign Affairs and Trade, either directly or through use of the Australian Government's Document Verification Service (DVS). If there is reason to believe that a passport may have been cancelled, such a check must be undertaken.</p> <p>The acceptance of Australian Passports that have been expired for less than 2 years has been standard practice in identity verification since the development of the 100-point check in the 1980s.</p>
16	Sch.7, 4.1	What liability attaches to an ELNO who inadvertently uses a cancelled passport to verify the identity?	None.	<p>An ELNO is required, under Requirement 14.1(b), to verify the identity of an applicant to become a Subscriber in accordance with the Subscriber Identity Verification Standard in Schedule 7. Schedule 7 requires identity documents to be current, except for an Australia Passport expired within less than 2 years of the date of identity verification.</p> <p>If the passport appears to be current based on the information in the passport, it would be reasonable for an ELNO to rely on that information, unless there is a reason to suspect that the passport has been, or may have been, cancelled. In this case, further enquiries should be made. In the case of an Australian passport, this may include using the Document Verification Service (DVS) to check that the passport has not been cancelled. Alternatively, the issuing authority (or its representative in Australia, such as the relevant embassy) could be contacted to confirm whether or not the passport is valid.</p> <p>The liability of an ELNO for a breach of the Operating Requirements would be determined, as between the Registrar/Land Registry, under the Operating Requirements and the Operating Agreement and, as between an ELNO and a Subscriber, under any contractual arrangement between the ELNO and a Subscriber, such as a Participation Agreement and any applicable legislative scheme.</p>
17	Sch.7, 9(a)	We submit that the proposed requirement that the ELNO Agent maintain policies of professional indemnity insurance and fidelity insurance equivalent to that required by the ELNO should be a matter for the ELNO as principal to determine. Whether the ELNO requires the agent to be insured and the level of that insurance under commercial arrangement should be determined between the parties.	None.	It is considered that because the ELNO Agent is acting in the shoes of the ELNO when conducting identity verifications it should have at least the same level of insurance cover.