

MPR Guidance Notes #1, 2 & 3 Consultation Feedback Issues Table

ARNECC September 2015

#	Note	Section	Issue	Action Taken	Commentary
1	#2 (Vol)	4 paragraph, left column, page 3	<p>Reads: For a body corporate, the Subscriber or <i>Subscriber Agent</i> must confirm the existence of the body corporate take reasonable steps to establish who is authorised to sign for the body corporate etc.</p> <p>The words Subscriber Agent should be removed where they appear in this section.</p> <p>It should be the Subscribers role to establish the party who has the right (or authority) to deal and the Subscriber Agent then being responsible to verify the identity of the person so determined by the Subscriber.</p> <p>Conflicts with MPR Section 6.4 RIGHT TO DEAL which correctly requires the Subscriber to take reasonable steps to establish that its client is a legal person and entitled to enter into the conveyancing transaction.</p>	The MPR and the Guidance Note have been amended.	<p>The amendment to Rule 6.5.6 provides ability for the Identity (Subscriber) Agent to conduct part of the Verification of Identity Standard and the Subscriber to conduct the other parts of the Verification of Identity Standard.</p> <p>There may be Identity (Subscriber) Agents who are directed to</p> <ul style="list-style-type: none"> confirm the existence of a body corporate, and take reasonable steps to establish who is authorised to sign for the body corporate and verify their identity. <p>Alternatively the Subscriber could:</p> <ul style="list-style-type: none"> confirm the existence of the body corporate, and take reasonable steps to establish who is authorised to sign for the body corporate, and then direct an Identity (Subscriber) Agent to verify the identity of those individuals. <p>The MPR and Guidance Note have been amended to cater for both these scenarios.</p> <p>A corporation's and a represented person's right to deal is a separate matter from verifying the identity and authority of the representative and remains the responsibility of the Subscriber to determine.</p>
2	#2 (Vol)	General	If the Standard is not amended to include Script Validated Video Identity as an alternative to the face-to-face regime it is proposed that in the guidance notes is included an acknowledgement of this as an emerging Australian designed technology and that ARNECC tends to keep abreast of the development of this technology in the market and consider its suitability for property transactions accordingly.	None.	Technological developments in identity verification will be kept under review and incorporated into the Guidance Note where appropriate.
3	#2 (Vol)	General	<p>We encourage ARNECC to make specific reference in the Guidance note to encouraging the use of fraud prevention services.</p> <p>ARNECC rules have been designed to address one opportunity for fraud- identity takeover. Forgery of signature, counterfeit Certificates of Title and abuse of vulnerable relatives are other potential sources. There are a variety of fraud detection services that can provide critical protection, depending on circumstances. For</p>	None.	Use of additional verification services in association with identity verifications is encouraged, especially if there is reason to believe an identity verification may not be genuine. These services will be kept under review and incorporated into the Guidance Note where appropriate.

MPR Guidance Notes #1, 2 & 3 Consultation Feedback Issues Table

ARNECC September 2015

#	Note	Section	Issue	Action Taken	Commentary
			<p>example, if a fraudster initiates on-line contact with their conveyancer claiming to be in a certain destination they can have their true IP address detected and flagged.</p> <p>Other fraud prevention services include checking certain data element (mobile number or address) to see if they have been used in other suspected frauds.</p>		
4	#2 (Vol)	Further checks	Additional information regarding the important obligation to make further checks with Schedule 8, Rule 10 should be added to the guidance note.	The Guidance Note has been amended.	The amendment provides additional information on further checks as part of an identity verification that can be taken where there is reason to believe a verification may not be genuine.
5	#2 (Vol)	Mortgagor Identification	There are concerns with the second paragraph under the heading "Mortgagor." A Subscriber is not presently excused under the MPRs from identifying the mortgagor merely because the mortgagee has taken steps to identify him or her.	The Guidance Note has been amended.	The amendment aligns with the updates to Rule 6.5 of the MPR that a Subscriber representing a mortgagee must be reasonably satisfied that the mortgagee has taken reasonable steps to verify the identity of each mortgagor.
6	#1 (CA)	Attached form	The full terms of the Client Authorisation have been omitted in the copy of the Client Authorisation annexed to the guidance note. It is expected that a full copy of the Client Authorisation will be included in the final version and confirmation is sought regarding this.	The Guidance Note has been amended.	The amendment includes the terms of the Client Authorisation in the example annexed to the Guidance Note.
7	#3 (Certs)	Certification related to duplicate title	The certification required from a Subscriber in relation to the retrieval and secure destruction or making invalid the duplicate (paper) certificate of title appears to be inconsistent with prescribed requirements in NSW requiring a party giving a CoRD Holder Consent in respect of a paper certificate of title to retain the duplicate certificate of title and not mark it as cancelled or destroy it.	The Guidance Note has been amended.	<p>The amendment includes a FAQ explaining that the CT certification is only required in Vic and WA, and is therefore not inconsistent with prescribed requirements for CoRD Holders in NSW.</p> <p>A table outlining the applicable certifications for each of the main documents has also been included for clarity.</p>
8	All	Defined Terms	Language used in the Guidance Notes is not consistent with the MPR. Some terms (eg 'Client') are capitalised and defined in the MPR but not necessarily capitalised in the Guidance Notes. Also, references to terms defined in the MPR appear in the Guidance Notes in general language (eg a Subscriber or Subscriber Agent and "the conveyancer or lawyer (or their agent)").	None.	It is not considered necessary to include defined terms in the Guidance Notes. The Guidance Notes are intended to be read and easily understood by a wider range of industry participants and their clients than the MPR.
9	#1 (CA)	Question 4	Would benefit from the insertion of the words 'and I am' before "representing myself".	The Guidance Note has been amended.	The amendment inserts the additional words suggested.
10	#1 (CA)	Answer 6	Should be expanded to state that the usual retainer	The Guidance Note	Although the Client Authorisation is a prescribed form and cannot

MPR Guidance Notes #1, 2 & 3 Consultation Feedback Issues Table

ARNECC September 2015

#	Note	Section	Issue	Action Taken	Commentary
			agreement or authority to act cannot be inconsistent with the Client Authorisation. Whilst this may appear obvious, it should be stated for the avoidance of doubt (for a practitioner) and clarity (for the Client).	has been amended.	be affected by any retainer agreement, the amendment has been included for clarity.
11	#2 (Vol)	What are reasonable steps?	There is an almost complete lack of guidance for what may amount to reasonable steps for an identity verification. This absence has already led to great uncertainty, lack of rigour and wilful lack of compliance. Without good guidelines, Subscribers do not know how far they need to go, resulting in some being overzealous (at unnecessary cost to clients) and others giving up because it appears too hard.	The Guidance Note has been amended.	The amendment enhances the explanation of reasonable steps, making it clear that the Vol Standard is one instance of reasonable steps.
12	#2 (Vol)	What are reasonable steps?	The Guidance Notes should state at the very least that the Standard is the benchmark against which reasonable steps is to be measured. It should also be acknowledged that it will not always be possible or even be necessary to comply with the Standard so long as an alternative process that confirms the identity and legal name of the Person Being Identified is undertaken.	No change	The Vol Standard is an instance of reasonable steps rather than a benchmark. .
13	#2 (Vol)	What are reasonable steps?	The Guidance Notes mention two factors that may be taken into account when determining the reasonable steps. This is grossly inadequate, particularly when the Subscriber is carrying the liability for a defective verification. Outside the Standard, the Subscriber will face a very steep and costly uphill battle to establish that reasonable steps were taken in the circumstances.	The Guidance Note has been amended.	The amendment is to enhance the explanation of reasonable steps,
14	#2 (Vol)	What are reasonable steps?	One of the factors mentioned as relevant to reasonable steps is the length of time the person has been known. However, that factor must be qualified in the Guidance Notes by the confirmation of the legal name of the Person Being Identified.	No change	When situations are encountered where a person's legal name differs from their commonly known name it is incumbent upon the person conducting the identity verification to make all necessary enquiries to satisfy themselves that they are one and the same person. How this is done will depend upon the circumstances.
15	#2 (Vol)	What are reasonable steps?	The Guidance Notes should suggest alternative mechanisms for conducting an interview where the processes set out in the Standard are not available.	The Guidance Note has been amended.	The Guidance Note has been amended to suggest some alternative mechanisms for conducting an interview where the processes set out in the Standard are not available. Guidance for verification of identity overseas and the ability to use a person who is not an Identity Agent when not relying on the Verification of Identity Standard is included.
16	#2 (Vol)	When can a Subscriber	In the light of notable attempts to contract out of liability for services rendered as a Subscriber Agent, it is	No change.	The MPR regulates the amount of insurance required by an Identity (Subscriber) Agent, the Guidance Note is not the

MPR Guidance Notes #1, 2 & 3 Consultation Feedback Issues Table

ARNECC September 2015

#	Note	Section	Issue	Action Taken	Commentary
		Agent be used?	suggested that this section should include a statement that a Subscriber Agent must not contract out of its liability for its services.		appropriate mechanism to include such an obligation.
17	#2 (Vol)	What is the Vol Standard?	It should be stated that compliance with the Standard includes taking further steps if required.	The Guidance Note has been amended.	The amendment references the obligation in the Vol Standard to take further steps to verify an identity when there is any doubt to be resolved.
18	#2 (Vol)	Face-to-face verification	In an appropriate place in the Guidance Notes (perhaps under Face-to-face verification) it should be stated that the person conducting the interview (Subscriber or Subscriber Agent) must carefully inspect the documents used to verify the identity to ensure: <ul style="list-style-type: none"> the documents are current and original; and any photographs on the documents reasonably correspond with the appearance of the Person Being Identified. 	The Guidance Note has been amended.	The amendment reinforces the obligation of a person conducting an identity verification to use their best endeavours to ensure the identity documents are genuine originals and that any photograph they contain is a reasonable likeness of the person whose identity is being verified.
19	#2 (Vol)	Verification of identity in a foreign country	It states that a Subscriber or Subscriber Agent shall undertake the verification of a person who is NOT an Australian Citizen.	The Guidance Note has been amended.	The amendment: includes reference to identity verification of Australian and non-Australian residents and citizens overseas as part of reasonable steps procedures determined by Subscribers.
20	#2 (Vol)	Verification of identity in a foreign country	The MPR does not appear to exclude a Foreign Country Witness (defined in MPR Schedule 8 as an Australian Consular/Diplomatic Officer (or a person authorised by them) and, for a Member of the Defence Force, a Competent Officer) from persons who may undertake the verification of a person who is NOT an Australian Citizen.	The MPR has been amended.	The amendment removes references to Foreign Country Witness from the Client Authorisation form at Schedule 4.
21	#2 (Vol)	Verification of identity in a foreign country	The availability of Subscribers and Subscriber Agents to undertake identity verifications overseas is extremely limited unless cost is disregarded. From a skill-based perspective, it is desirable to include a Foreign Country Witness or at least an Australian Consular/Diplomatic Officer and any person authorised by them) as persons who may undertake this task.	No change.	The exclusion of consular and defence force staff from conducting identity verifications according to the Vol Standard has been necessary because those officers are not able to provide services equivalent to those of Identity (Subscriber) Agents and give the certification required by the Standard. It is however possible for Subscribers to rely on certified copies of identity documents produced at a consular office or to competent officers of the defence force as part of their reasonable steps procedures. The guidance note has been amended to include guidance on

MPR Guidance Notes #1, 2 & 3 Consultation Feedback Issues Table

ARNECC September 2015

#	Note	Section	Issue	Action Taken	Commentary
					verification of identity overseas.
22	#2 (Vol)	Previous verification of identity	Unless the person who undertakes the later face-to-face interview is the same person who undertook the original interview, there is great scope for fraud. It is suggested that if the person undertaking the later face-to-face interview is not the individual who undertook the original interview, the Subscriber should be obliged to take reasonable steps to verify the identity. Given that the identity has already been apparently verified, those reasonable steps should be less onerous than for an original verification.	The Guidance Note has been amended.	The amendment advises that it is expected the Subscriber would review the documentation of the previous verification in order to be able to satisfy themselves that they are dealing with one and the same person.
23	#2 (Vol)	Client authorisation	The requirement that the Client Authorisation is signed at the same interview as the verification of identity should be removed.	The Guidance Note has been amended.	The amendment reflects the amendment to the MPR removing the requirement for concurrent signing of the Client Authorisation but inserting a requirement that reasonable steps be taken to ensure the same person signs the Client Authorisation.