

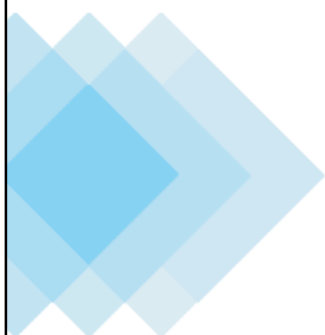


Australian Registrars National  
Electronic Conveyancing Council

INDUSTRY FORUM

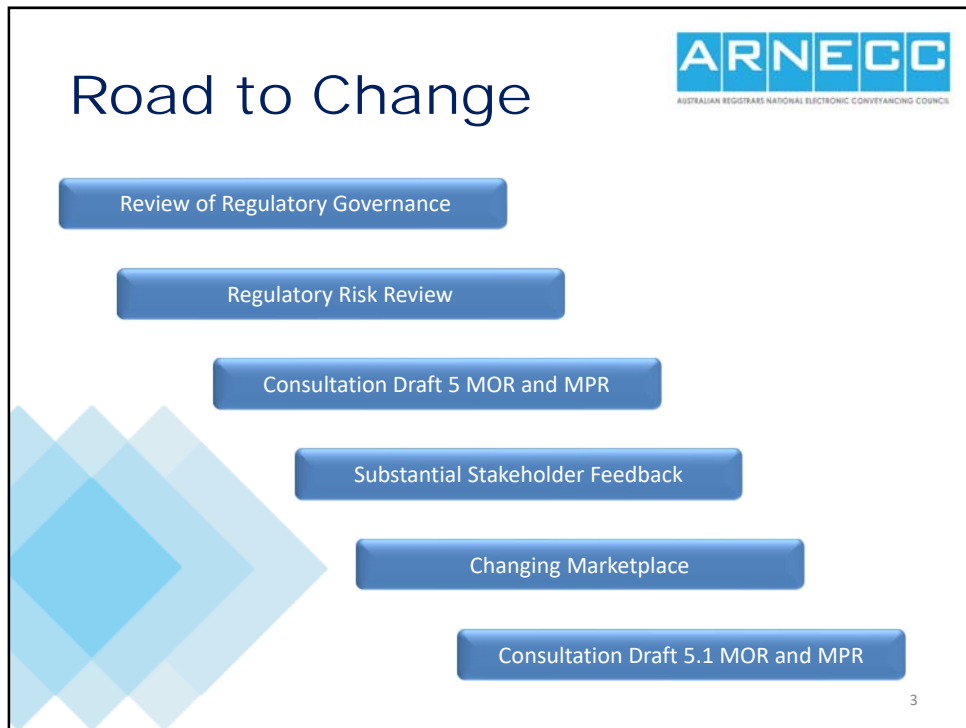
Version 5  
Model Participation Rules  
Model Operating Requirements

Melbourne, 19 September 2018





- Introduction of ARNECC and ARWG members present.
- This presentation refers to the major areas of change in the MPRs and MORs and the reasoning behind how some of these changes came about.
- Comprehensive responses were also provided to the feedback received in the tables recently published on the ARNECC website.
- Members of ARNECC and the ARWG will respond wherever possible to any questions following the presentation regarding these areas or other areas not addressed.



- In light of the fact that electronic conveyancing had become a reality in Australia and the broader marketplace was changing, including but not limited to disruptions due to digital technologies in the property and financial markets sector, the prospect of land reform in land titles registers and the potential for market competition, in mid 2016 ARNECC commissioned an independent review of the Regulatory Governance arrangements for electronic conveyancing.
- The approach adopted for this review was consultative in nature and sought to identify any issues associated with the current regime.
- The review proposed options for the possible evolution of the regulatory framework however in order to understand how best to move forward a Regulatory Risk Review was needed to understand the regulatory risks in the market.
- ARNECC commissioned an Independent Regulatory Risk Review in early 2017 with a focus on the broader electronic conveyancing market.
- The risks considered as part of the review related to:
  - National consistency risk;
  - Risk to integrity of the land registers
  - Risks to the integrity of the electronic conveyancing system;
  - Risks to the efficiency of the electronic conveyancing platform market (and its impact on the efficiency of related markets); and
  - The risks of the current governance arrangements.

- On 31 March 2017, ARNECC advised in a Notice to Stakeholders that a review of the regulatory arrangements in the ELNO marketplace would be undertaken.
- ARNECC carefully considered the findings of both the risk assessment and the regulatory review, as well as market feedback, taking into account the need to balance both registry and market risks to make informed decisions on the way forward.
- As a result, considerable amendments to the current Model Participation Rules and the Model Operating Requirements (version 4) were proposed through Consultation Draft 5 of these documents which were released for consultation in March 2018.
- As a result of the significant amount of feedback that was received from stakeholders on these consultation drafts, as well as a changing marketplace, including potential new ELNOs, substantial revisions have now been made and it was decided to publish a second consultation draft for review by stakeholders before finalising and implementing Version 5 of these important regulatory framework documents.
- ARNECC commissioned a risk assessment finalised in March 2017 focussing on the electronic conveyancing platform market as it had been 10 years since an initial risk assessment was conducted.
- Since that initial assessment was completed, electronic conveyancing has gained traction nationally, a market for platform services has developed, technology continually evolves and some governments have adopted, or are currently considering adopting, alternative operating models for land registers.

**Model Participation Rules**

**ARNECC**  
AUSTRALIAN REGISTRARS NATIONAL ELECTRONIC CONVEYANCING COUNCIL

**Subscriber as Attorney**

- The Attorney is a Subscriber
- This does not apply to conveyancers and lawyers, nor in South Australia
- A Power of Attorney needs to be in place to satisfy the laws of agency
- A Client Authorisation needs to be in place to satisfy the attribution rule in section 12 of the Electronic Conveyancing National Law

4


The major change to the MPRs is the concept of Subscribers acting as attorneys as introduced in Consultation Draft 5 of the MPR. In paper conveyancing, attorneys sign instruments for individuals, corporations, financial institutions, property developers and statutory bodies. Stakeholders had requested this paper process be replicated in electronic conveyancing which can be put in place. However, this means that the donor is a Subscriber and provides digital signing rights to its attorneys as individual users which is not always possible due to the eligibility requirements; or desirable due to an attorney potentially having several different digital signing tokens. Taking into consideration the feedback received during the first round of consultation, an alternative proposal has been presented in Consultation Draft 5.1 that includes:

- The Attorney is a Subscriber.
- This does not apply to conveyancers and lawyers, nor in South Australia.
- A Power of Attorney needs to be in place to satisfy the laws of agency.
- A Client Authorisation needs to be in place to satisfy the attribution rule in section 12 of the Electronic Conveyancing National Law.

If a Subscriber is an Attorney, the Subscriber must use:

1. The Client Authorisation – Attorney form (in Schedule 4)
2. Take reasonable steps to verify the identity of the Donor or their Donor Agent
3. Take reasonable steps to verify the Donor is a legal person and has the right to deal
4. Provide Certification 7 (Schedule 4) for each electronic document signed that the Certifier has taken reasonable steps to ensure that signing the instrument is

authorised and they have no notice of revocation of the power.



# Model Operating Requirements

## Pricing

- Limited to CPI increase for 3 years
- Review to be conducted at the end of this period

## Integration

- Standard integration terms and conditions to be published
- Any person wishing to integrate is treated on an equivalent basis

## Separation

- Framework to balance the need for some control while still allowing flexibility to structure operations

5

It was recommended in the reviews mentioned earlier that industry-specific regulation of ELNO access and pricing under the legal framework established by the Electronic Conveyancing National Law be implemented to achieve national consistency. The proposed new pricing, integration (access) and separation frameworks were the main areas where substantial changes were introduced.

ARNECC has held extensive discussions with the ACCC on whether the Competition and Consumer Act 2010 (Cth) could be used as the tool for regulating anti-competitive behaviours. The advice received was that competition law should not be the starting point for a regulatory framework - competition law is a last resort rather than the principal foundation for regulating. It was recommended that the best approach is for ARNECC to incorporate requirements and statements of expectation into the MORs.

**OR 5.4 ELNO Service Fees:** In response to industry concerns for the need to more effectively regulate ELNO service fees beyond what was provided for in the current Model Operating Requirements (version 4), the inclusion of a set of pricing principles to provide increased transparency and rigour regarding the ongoing cost structures for delivery of an ELN was incorporated in Consultation Draft 5. However, this new pricing regime was proposed at a time when a single ELNO existed in the marketplace and since then, two potential ELNOs have successfully met the MOR Schedule 3, Category 1 requirements to now commence negotiations with each State or Territory for their approval to provide and operate an Electronic Lodgment Network. Therefore in this second consultation draft (5.1), the pricing principles have been amended to limit price

increases to CPI for three years with a review conducted at the end of this period. The review would then determine whether further regulation for pricing is required or if it can be self-managed through the existence of a competitive marketplace.

**OR 5.5 Integration (access):** Integration was introduced to ensure there were no barriers to enable Subscribers to interface with an ELN on appropriate and reasonable terms.

Integration was sometimes confused with interoperability. For clarity, Integration refers to a system integrating with an ELN so that it can supply a (non ELN) service.

Interoperability refers to system to system communication between two or more ELNs to exchange data and is not being addressed in this version of the MOR. Taking into account the feedback received, Integration has now been limited to imposing an obligation on an ELNO to publish standard integrations terms and conditions and treat any person wishing to integrate on an equivalent basis (now defined in consultation draft 5.1).

**OR 5.6 Separation:** In response to concerns that an ELNO could potentially operate with an unfair competitive advantage, a separation framework was proposed for an ELNO wishing to offer upstream or downstream services within the same entity that holds the ELNO licence. The ECNL does not preclude an ELNO from offering additional services, or choosing to establish a separate company in which to supply competitive services, and under the proposed separation framework, it can do this but must comply with the separation requirements. The revised drafting for Separation is a balance between the need for some controls on an ELNOs conduct while still allowing them the flexibility to structure their operations.

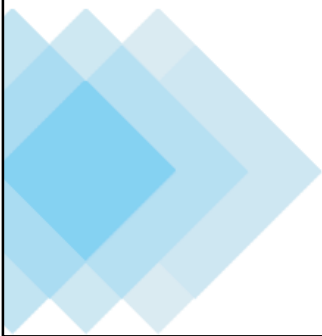


# Q&A Session



## ARWG Panel Members

- Brad Warneke
- Jane Allan



## Next Steps



- Feedback and submissions to be sent by email to [chair@arnecc.gov.au](mailto:chair@arnecc.gov.au)
- Consultation period closes **3 October 2018**
- Feedback reviewed by the ARWG **17-18 October 2018**
- Final drafting of Version 5 MOR and MPR completed by **30 November 2018**
- Version 5 MOR and MPR approved for release by ARNECC **14 December 2018**
- Version 5 MOR and MPR published **21 December 2018**
- Effective Date **25 January 2019**

7

Indicative timeframe



## Thank you for attending

we look forward to receiving further feedback and submissions at

[chair@arnecc.gov.au](mailto:chair@arnecc.gov.au)

