



AUSTRALIAN REGISTRARS NATIONAL ELECTRONIC CONVEYANCING COUNCIL

# **Model Operating Requirements**

## **- Guidance Notes -**

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## PART A – EXPLANATORY MATERIAL

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### Status of these Notes

These Guidance Notes are to assist you in complying with the Operating Requirements. They do not vary the Operating Requirements or your statutory obligation to comply with them. If there is any conflict between these Notes and the Operating Requirements, the Operating Requirements prevail.

The Notes are in two parts. PART A – this Part – consists of explanatory material that will assist you in understanding the nature and significance of the guidance provided in PART B about your compliance with individual clauses in the Operating Requirements.

The information contained in these Notes does not constitute, nor should it be treated as, legal advice. The information is current as at the date of these Notes and is based on the ECNL and its Operating Requirements as at that date. This version of the Notes is aligned with the draft Model Operating Requirements Version 2 published by ARNECC for industry consultation in January 2014.

### About the Notes

The Electronic Conveyancing National Law (ECNL), when implemented in a State or Territory of Australia, empowers the Registrar of Titles or their equivalent authority (Registrar or Land Registry) in the State or Territory to:

- approve you as an Electronic Lodgment Network Operator (ELNO), and
- determine Operating Requirements relating to your provision and operation of an Electronic Lodgment Network (ELN).

These Notes are presented from the perspective of your being or contemplating becoming an ELNO. They outline the role of the Registrar in approving you as an ELNO and in regulating your operations as an ELNO through determination of the Operating Requirements and assessment of your compliance with them. They are to be read in conjunction with the Model Operating Requirements (MOR) published by the Australian Registrars' National Electronic Conveyancing Council (ARNECC).

**The primary purpose of these Notes is to let you know what the Registrar will be looking for when assessing your compliance with the Operating Requirements.**

These Notes give you practical guidance on how you can comply with your obligations under the Operating Requirements. In particular, they set out:

- the Registrar's role in determining the Operating Requirements
- the Registrar's role in approving you to provide and operate an ELN
- the Registrar's role in assessing your compliance with the Operating Requirements
- how your compliance with the Operating Requirements will be assessed
- how you can obtain Approval to be an ELNO.

How your obligations as an ELNO can be complied with is expressed in terms of:

- **Specified Documents** to be produced by you when applying for Approval to be an ELNO, prior to your commencing operation of your ELN, and monthly and annually thereafter while you are approved to operate your ELN
- **Self-Certifications** (including **No-Change Certifications**) to be provided by you of your compliance with specific obligations in the Operating Requirements
- **Independent Certifications** to be obtained by you from an approved Independent Expert of your compliance with specific obligations in the Operating Requirements.

The emphasis in these Notes is on:

- where a Specified Document is to be produced, the expected content of that document
- where a Self-Certification is to be provided, what you are expected to have done to be able to provide that certification on an informed basis and in good faith
- where an Independent Certification is to be obtained, what is expected to have been done by you and the Independent Expert to provide a justifiable certification.

These Notes may be updated or varied by ARNECC from time to time as necessary in conjunction with changes to the MOR or separately. Any updates or variations will be made known through publication and by direct communication with you if you have been approved by the Registrar as an ELNO to provide and operate an ELN.

## Scope of the Notes

The Operating Requirements distinguish between you, your ELN and your ELNO System. You are the ELNO responsible for the provisioning and operation of your ELN and ELNO System. Your ELN is considered to be a part of your ELNO System which may also include other aspects of your operation such as your duty assessment and financial settlement arrangements for use in conjunction with your ELN in completing conveyancing transactions.

Your ELN is that part of your ELNO System that enables the preparation and lodgment of Registry instruments and other documents with the land registry in each jurisdiction.

These Notes distinguish, where necessary, the scope of each of your obligations under the Operating Requirements.

### Terms used in the Notes

Capitalised terms used in these Notes have the meanings referenced or set out here.

**AASB** means the Australian Accounting Standards Board

**ABN** has the meaning given to it in the Operating Requirements

**Access Credential** has the meaning given to it in the Operating Requirements

**Annual Report to the Registrar** has the meaning given to it in the Operating Requirements

**Approval** has the meaning given to it in the Operating Requirements

**APRA** means the Australian Prudential Regulation Authority

**ASIC** means the Australian Securities and Investments Commission

**Transition Plan (TP)** has the meaning given to it in the Operating Requirements

**Business Continuity and Disaster Recovery Management Program (BCDRMP)** has the meaning given to it in the Operating Requirements

**Business Plan** means a documented plan setting out how it is intended to achieve widespread industry use of your ELN and realisable economic efficiencies for your Subscribers

**Certificate Policy Specification (CPS)** has the meaning given to it in the Operating Requirements

**Change Management Framework (CMF)** has the meaning given to it in the Operating Requirements

**Change Management Plan (CMP)** means a specific management plan made in accordance with the CMF

**Compliance Examination** has the meaning given to it in the ECNL

**Compliance Examination Procedure** has the meaning given to it in the Operating Requirements

**Compliance Program** means a program of activity intended to ensure that one or more requirements in the Operating Requirements are complied with

**Compliance Risk Assessment** means a Risk Assessment of a Compliance Program to assure the Program continues to be effective



**Desirable Recommendation** has the meaning given to it in the Operating Requirements

**Digital Certificate** has the meaning given to it in the Operating Requirements

**Digital Signature** has the meaning given to it in the ECNL

**Electronic Conveyancing National Law (ECNL)** means the law set out in the Appendix to the Electronic Conveyancing (Adoption of National Law) Act 2012 (NSW) as adopted or implemented by an Australian State or Territory

**Electronic Lodgment Network (ELN)** has the meaning given to in the ECNL

**Electronic Lodgment Network Operator (ELNO)** has the meaning given to in the ECNL

**Essential Recommendation** has the meaning given to it in the Operating Requirements

**Gatekeeper** has the meaning given to it in the Operating Requirements

**GST** has the meaning given to it in the Operating Requirements

**Incident** has the meaning given to it in the Operating Requirements

**Independent Certification** has the meaning given to it in the Operating Requirements

**Independent Expert** has the meaning given to it in the Operating Requirements

**Information Security Management System (ISMS)** has the meaning given to it in the Operating Requirements

**Land Information** has the meaning given to it in the Operating Requirements

**Land Registry** has the meaning given to it in the Operating Requirements

**Land Title Reference Verification** has the meaning given to it in the Operating Requirements

**Lodgment Fees** has the meaning given to it in the Operating Requirements

**Lodgment Verification** has the meaning given to it in the Operating Requirements

**Monthly Report** has the meaning given to it in the Operating Requirements

**No-Change Certification** has the meaning given to it in the Operating Requirements

**Operating Agreement** means an agreement between the Registrar or Land Registry and an ELNO for the operation of an ELN

**Participation Agreement** has the meaning given to it in the ECNL

**Participation Rules** has the meaning given to it in the ECNL

**Party** has the meaning given to it in the Operating Requirements

**Performance Levels** has the meaning given to it in the Operating Requirements

**Pricing Policy** means the set of principles used for determining an ELNO's fees and charges

**Registrar** has the meaning given to it in the ECNL

**Registry Information Supply** has the meaning given to it in the Operating Requirements

**Renewal of Approval** means the renewal of an Approval

**Risk Management Framework (RMF)** has the meaning given to it in the Operating Requirements

**Risk Assessment** has the meaning given to it in the Operating Requirements

**Risk Treatment Plan** has the meaning given to it in the Operating Requirements

**Security Item** has the meaning given to it in the Operating Requirements

**Self-Certification** has the meaning given to it in the Operating Requirements

**Signed Document Verification** means a process by which relying parties can readily determine who signed a digitally signed document and that the signed document has not been altered since it was signed

**Specified Document** has the meaning given to it in the Operating Requirements

**Standard** has the meaning given to it in the Operating Requirements

**Standards Authority** means either or both of Standards Australia Ltd and International Organisation for Standardisation

**Subscriber Registration Process (SRP)** has the meaning given to it in the Operating Requirements

**Subscriber Security Policy** means a policy issued by you to your users setting out their obligations in protecting the security of your ELN

**Test Plan** has the meaning given to it in the Operating Requirements

**Title Activity Check** has the meaning given to it in the Operating Requirements

**Titles Register** has the meaning given to it in the Operating Requirements

**Transaction Audit Records** has the meaning given to it in the Operating Requirements.

## **Standards Referenced in the Notes**

**AS8000:2003** Corporate Governance – Good governance principles

**AS8001:2003** Corporate Governance – Fraud and corruption control

**AS8015:2005** Corporate Governance of information and communication technology

**AS27001:2013** Information Technology – Security techniques – Information security management systems

**AS31000:2009** Risk Management – Principles and guidelines

**AS3806:2006** Compliance programs

**AS5050:2010** Business continuity – Managing disruption-related risks

**ISO24762:2008** Information technology – Guidelines for information and communications technology disaster recovery services

**AS10002:2006** Customer satisfaction - guidelines for complaints handling in organizations

**ISO17021:2006** Conformity assessment - Requirements for bodies providing audit and certification of management systems

**ISO20000:2011** Information Technology – Service Management

**ISO25010:2011** Systems and software engineering – Quality Requirements and Evaluation

**OAIC Guide to Information Security: 2013** – Reasonable Steps to Protect Personal Information.

References to Australian and International Standards include all parts of the Standard and all associated Handbooks, Protocols and Codes of Practice published by the respective Standards Authority.

### **Registrar's role in determining Operating Requirements**

The ECNL empowers the Registrar to determine requirements relating to your operation of an ELN. The requirements are called Operating Requirements. As an ELNO you have a statutory obligation to comply with the Operating Requirements. In addition, you have a contractual obligation to comply with the Operating Requirements which are incorporated into the Operating Agreement you enter into with the Registrar prior to commencing the operation of your ELN in each jurisdiction.

In determining the Operating Requirements under the ECNL, the Registrar must have regard to any Model Operating Requirements (MOR) developed and published by ARNECC. ARNECC has developed and published the MOR at <http://www.arnecc.gov.au>. When adopted by the Registrar in a jurisdiction entering into an Operating Agreement with you, the MOR becomes the Operating Requirements under the ECNL referred to throughout these Notes.

The Registrar must ensure that the Operating Requirements, all superseded versions of the Operating Requirements, and any changes to the Operating Requirements are publicly available.

The Operating Requirements define the essential attributes of the ELN you are to provide for industry participants to use in lodging electronic conveyancing transactions with the Registrar. It is expected that your ELN will be:

- a trusted environment for users and the community to have confidence in electronic conveyancing
- a suitable environment for producing lodgments that can be readily examined and registered electronically
- an accessible environment for industry participants
- a safe environment for user completion of transactions electronically
- a responsive environment capable of adapting to market changes and government policy developments.
- an efficient environment that encourages widespread adoption of electronic conveyancing.

The Operating Requirements are necessary to ensure that industry participants, relying parties and the community have confidence in you as an ELNO approved by the Registrar to provide and operate an ELN.

The Operating Requirements are complemented by all other relevant regulation where applicable to the services you offer, such as:

- Privacy Law
- Taxation Law
- Corporations Law
- Competition and Consumer Law
- Financial Services Regulation Law
- Anti-Money Laundering and Counter-Terrorism Financing Law.

The Operating Requirements are also complemented by the Registrar's provision to you of business rules and information and transaction assurance services to be applied and made available by you for assisting your ELN's users to complete their transactions effectively and safely.

### **Registrar's role in approving you to operate**

The ECNL empowers the Registrar to approve a person as an ELNO to provide and operate an ELN. As an ELNO you have an obligation to provide and operate your ELN:

- for the period stated in the Approval
- subject to any conditions attached to the Approval, and
- in accordance with the Operating Requirements.

Your Approval to provide and operate an ELN in a jurisdiction is issued by the Registrar or equivalent authority of the jurisdiction by them entering into an Operating Agreement with you.

The ECNL also provides for the renewal of your Approval, and for its revocation or suspension if necessary.

### **Registrar's role in determining your compliance**

The ECNL empowers the Registrar or the Registrar's delegate to conduct Compliance Examinations of you to:

- ascertain whether or not the Operating Requirements are being complied with
- investigate any suspected or alleged misconduct with respect to the operation of your ELN.

In addition to the statutory power to conduct a Compliance Examination, the ECNL requires you to comply with the Operating Requirements at all times and the Operating Requirements themselves require you to be able to demonstrate your compliance with any aspect of them to the Registrar within ten (10) business days of a request from the Registrar while you remain approved to operate.

You have obligations under the Operating Requirements to supply the Registrar with specified documents and compliance certifications:

- when applying for Approval to operate an ELN
- prior to your commencing the operation of your ELN
- annually thereafter while you remain approved to operate
- at any time you are directed to by the Registrar.

You are also required to publish a Monthly Report of the performance of your ELN.

Your compliance certifications are either:

- Self-Certifications, including No-Change Certifications, or
- Independent Certifications obtained by you from an Independent Expert approved by the Registrar.

Independent Certifications are accompanied by a report from the Independent Expert that may set out recommendations for actions you need to take to achieve compliance with the Operating Requirements.

Assessment of your specified documents and compliance certifications provides the means for the Registrar to regularly determine your compliance with your obligations under the Operating

Requirements and, if believed necessary, a basis for the Registrar to undertake a Compliance Examination as provided for in the ECNL.

The Registrar's role in determining your compliance with the Operating Requirements involves:

- assessing your documentation and certifications provided with your application for Approval or Renewal of Approval to be an ELNO
- assessing your documentation and certifications provided prior to your commencing operation of your ELNO System, including your ELN
- approving Independent Experts to provide Independent Certifications, reports and recommendations
- assessing your Annual Report to the Registrar, including the certifications and other information provided in it
- monitoring your published Monthly Reports on the performance of your ELN
- requesting your certifications and other demonstrations of compliance when necessary and assessing the information you provide
- undertaking Compliance Examinations when necessary and assessing the information collected.

The Registrar may undertake a Compliance Examination at any time or engage another person to undertake the work on his or her behalf.

### **Registrar's general approach to assessing compliance**

The Registrar's general approach to assessing your compliance with the Operating Requirements is based upon:

- your producing comprehensive and high-quality documentation in your application for Approval to be an ELNO and prior to commencing the operation of your ELNO System

The documentation you produce at this time and its assessment by the Registrar prior to your commencing the operation of your ELNO System will set the standard for your continuing compliance and reporting while approved as an ELNO.

- your regularly demonstrating compliance in general conformance with these Guidance Notes

Your Monthly Reports and your Annual Reports to the Registrar will properly reflect the standard of operation required of the Operating Requirements and continue the standard of documentation established prior to commencing operations. It is essential that all Self-Certifications, including No-Change Certifications, and Independent Certifications are

backed up with relevant compliance programs, information, analysis and reports that justify the certifications given to the Registrar. The mere giving of a certification is not considered sufficient in any circumstances.

- your readily demonstrating specific compliance with the Operating Requirements in response to a request at any time from the Registrar
- the Registrar undertaking a Compliance Examination when warranted in accordance with the procedure set out in the Operating Requirements.

### How you can demonstrate compliance

You can demonstrate your compliance with the Operating Requirements by one or more of the following:

- producing a Specified Document
- providing a Self-Certification, including when appropriate, a No-Change Certification
- obtaining and providing an Independent Certification
- providing an Annual Report to the Registrar
- publishing a Monthly Report
- responding to a reasonable request from the Registrar to:
  - (a) produce a Specified Document
  - (b) justify a Self-Certification or No-Change Certification
  - (c) obtain an Independent Certification
  - (d) provide other documented substantiation of your compliance.
- promptly advising the Registrar whenever:
  - (a) you have breached the Operating Requirements
  - (b) you are likely to breach the Operating Requirements
  - (c) you have had to mitigate an identified risk of breaching the Operating Requirements.

The Compliance Guidance that follows this Explanatory Material sets out:

- what you are required to produce or publish when applying for Approval as an ELNO, eight (8) weeks prior to commencing operations, and monthly and annually thereafter while you remain approved to operate, to demonstrate your compliance with the Operating Requirements
- what it is expected you will be able to produce, within ten (10) business days of a request from the Registrar while you remain approved to operate, to substantiate your compliance with the Operating Requirements.

## What is a Specified Document?

A Specified Document is a document that you are to produce to demonstrate your compliance with a specific obligation in the Operating Requirements.

Specified Documents include but are not limited to your:

- Pricing Policy
- Test Plan
- Participation Agreements
- Audited Financial Statements
- Insurance Policy Documents and Certificates of Currency
- Business Plan
- Information Security Management System (ISMS) documentation
- Risk Management Framework (RMF) documentation, including your Risk Assessment and Risk Treatment Plan
- Change Management Framework (CMF) documentation
- Business Continuity and Disaster Recovery Management Program (BCDRMP) documentation
- Transition Plan (TP)
- Subscriber Registration Process (SRP) documentation
- Annual Reports to the Registrar
- Monthly Reports
- Compliance Failure Notifications.

Specified Documents can be produced to the Registrar as either originals or as copies certified as such by one of your principals, directors or officers.

## What is a Self-Certification?

A Self-Certification is a written statement you provide to the Registrar certifying that you have complied with and continue to comply with a specific obligation of the Operating Requirements.

Each Self-Certification is expected to be supportable by what you have done to enable you to give the certification, including where appropriate:

- documentation reviewed for continuing relevance and appropriateness
- compliance programs reviewed and risk-assessed for continuing completeness and effectiveness
- operations reviewed for effective implementation of documented systems and procedures



- comparable situations reviewed for measures of contemporary best practice
- performance benchmarks assessed for continuing suitability
- changes and adjustments made to systems, procedures and compliance programs as a result of your reviews.

### **What is a No-Change Certification?**

A No-Change Certification is a Self-Certification by you that the circumstances and evidence, including any prior No-Change Certification that previously demonstrated compliance, have not materially changed.

Where you are required to produce a Specified Document or give a Self-Certification to demonstrate compliance, and where there has been no change to the Specified Document or any event or occurrence which would render the Self-Certification incorrect, incomplete, false or misleading, you may give a No-Change Certification.

The circumstances in which a No-Change Certification can be given are set out in Schedule 3 of the Operating Requirements. When a No-Change Certification is not possible, the Specified Document is to be produced and/or a Self-Certification is to be provided that you remain compliant with the Operating Requirements.

### **What is an Independent Certification?**

An Independent Certification is a written statement of opinion from an Independent Expert:

- obtained by you at your expense from an Independent Expert approved by the Registrar
- signed by the Independent Expert
- on the letterhead of the Independent Expert
- given by the Independent Expert for the benefit of the Registrar
- accompanied by a report and recommendations that have been reviewed with you and your key affected, relying and co-regulatory parties

certifying that you have complied with, or can readily comply with after adopting certain recommendations, a specific obligation of the Operating Requirements.

In providing an Independent Certification, the Independent Expert is to comment upon your:

- adoption of contemporary best practices (including compliance with relevant Australian and International Standards) where such practices are readily identifiable, and
- use of systems and procedures that are fit for the purpose for which they are intended.

Where an Independent Expert makes recommendations in conjunction with providing an Independent Certification, the recommendations are to be expressed as Essential Recommendations or Desirable Recommendations and you will be expected to promptly implement any Essential Recommendations upon which the certification depends.

An Independent Expert is an appropriately qualified, competent and insured person contracted to you for the purpose of providing an Independent Certification. The person is not to be related to, or in any way associated with, you or a director, officer, employee, agent or other contractor of yours.

The Registrar must approve the appointment of each Independent Expert before they commence the work necessary to provide their certification. Sufficient information regarding the qualifications and competence of a proposed Independent Expert is to be provided to the Registrar at least three (3) months prior to the time at which the Independent Certification must be given to enable the Registrar to determine the Independent Expert's suitability to provide the certification.

The qualifications and competence required of an Independent Expert are dependent on the specific obligation about which the certification is to be given. Independent Experts will be expected wherever possible to:

- hold a recognised conformity certification accreditation such as that of the Joint Accreditation System of Australia and New Zealand (JAS-ANZ), and/or
- be experienced in the application and use of ISO17021:2006, and
- be experienced in the nature and context of your specific obligation in the Operating Requirements for which the certification of your compliance is to be given, including able to access other similar contexts and industry benchmarks relevant to that obligation.

Each Independent Expert you engage is to be briefed and managed by you. It is expected that you will contract the Independent Expert to carry out a documented and well-defined scope of works with specific deliverables that will produce the Independent Certification to your and the Registrar's satisfaction. The full cost of the works is to be met by you.

The Registrar may approve the use of an Independent Expert to provide more than one certification at the same time. The Registrar may also approve the use of an Independent Expert to provide the same certification at different times.

### **What is your Annual Report to the Registrar?**

Your Annual Report to the Registrar is a written report you prepare and provide to the Registrar. Its purpose is to demonstrate your compliance with your obligations under the Operating Requirements during the previous financial year.

Your first Annual Report is to be for the period from your commencing the operation of your ELN to the end of the financial year in which operations commenced. If that period is three (3) months or less, your first Annual Report can be provided after your first full financial year of operation.

Each of your Annual Reports is to be provided within three (3) months of the end of the financial year and is to include an analysis of both your activities and the extent to which you have complied with each of your obligations under the Operating Requirements during the period. Where an Independent Expert has included Essential Recommendations in conjunction with an Independent Certification, your Annual Report is to include a description of the action you have taken, or intend to take and the timeframe within which the action is intended to be taken, to implement those Essential Recommendations.

Schedule 3 of the Operating Requirements sets out the Specified Documents, Self-Certifications (including No-Change Certifications), and Independent Certifications that are to be included in your Annual Reports.

### **What is your Monthly Report?**

Your Monthly Report is a written report you prepare and publish. It is for the benefit of the Registrar, your Subscribers and other customers, other industry participants and the general community. Its purpose is to demonstrate your compliance with your performance obligations under the Operating Requirements during the previous calendar month.

Your Monthly Report is to be made publicly available within ten (10) business days of the end of each calendar month and is to address the obligations set out in Category Four of Schedule 3 of the Operating Requirements, including:

- your performance for the month on the service, system and management measures set out in Schedule 2 of the Operating Requirements, that is:
  - (a) Service Availability
  - (b) Service Reliability
  - (c) System Responsiveness
  - (d) System Resilience
  - (e) Incident Resolution
  - (f) Problem Identification
- all of the complaints you received during the month, categorised by the nature of the complaint, and indicating whether you found them justified, how you resolved them, and whether or not they remain outstanding

- the specific complaints you received during the month about refusal of Subscriber applications, indicating whether you found them justified, how you resolved them, and whether or not they remain outstanding
- the specific complaints you received during the month about user training, indicating whether you found them justified, how you resolved them, and whether or not they remain outstanding.

It is expected that you will make your Monthly Reports readily available and maintain that availability for at least the preceding 12 months while you remain approved to operate.

### **Registrar's Compliance Examination powers under the ECNL**

The ECNL provides the Registrar with powers to conduct Compliance Examinations of you and the operation of your ELN.

The powers enable the Registrar to conduct a Compliance Examination to:

- ascertain whether or not the Operating Requirements are being, or have been, complied with, and/or
- investigate any suspected or alleged misconduct with respect to the operation of your ELN.

You are obliged to co-operate with the Registrar in the conduct of such examinations.

The procedures to be followed in conducting a Compliance Examination are set out in Schedule 5 of the Operating Requirements.

The Registrar may appoint a delegate to conduct a Compliance Examination and must provide you with at least ten (10) business days' notice of such an examination.

### **How you can obtain Approval as an ELNO**

You must be able to comply with the Operating Requirements at the time of applying for Approval to be an ELNO.

To obtain Approval to operate an ELN, you must be able to demonstrate your ability to comply with the Operating Requirements by producing each of the following Specified Documents:

- ABN and GST registration
- ASIC registration and company search not more than 30 days old
- any Foreign Investment Review Board approval required
- constituting documents
- corporate governance model

- audited financial statements for last two years
- technical capability description
- organisational structure
- Business Plan.

These documents are to be accompanied by Self-Certifications of your:

- being of good corporate character and reputation
- principals, directors and officers being of good character
- employees, agents and contractors being of good character
- governance arrangements being contemporary best practice
- financial, technical and organisational resources being sufficient
- holding all necessary licences and regulatory approvals.

If these documents and certifications are satisfactory, on your entering into an Operating Agreement with the Registrar, you will be granted Approval to operate an ELN.

### **What you have to do before you can begin operating**

The following further Specified Documents are to be provided to the Registrar at least eight (8) weeks prior to the date you have notified the Registrar that you intend commencing operations for the first time and at the time of applying for a renewal of your Approval:

- insurance policies and certificates of currency
- Pricing Policy
- Test Plan
- Information Security Management System (ISMS) documentation
- Risk Management Framework (RMF) documentation, including your Risk Assessment and Risk Treatment Plan
- Business Continuity and Disaster Recovery Management Program (BCDRMP) documentation
- Change Management Framework (CMF) documentation
- Subscriber Registration Process (SRP) documentation
- Participation Agreements
- Transition Plan (TP).

These documents are to be accompanied by:

- No-Change Certifications for each of the documents supplied with your application for Approval

- a Self-Certification that satisfactory evidence of each of your Subscribers' complying with the insurance requirements in the Participation Rules has been obtained and retained by you
- Independent Certifications (including in each instance an approved Independent Expert's report and recommendations) of:
  - (a) your ISMS being compliant and fit for purpose
  - (b) your RMF being compliant and fit for purpose
  - (c) your BCDRMP being adequate and fit for purpose
  - (d) your ELN being soundly designed and provisioned to be reliable, scalable and flexible and conforming with industry standards for useability and accessibility.

If these documents and certifications are satisfactory, you will be able to commence operations as an ELNO.

### **Your Approval as an ELNO**

Your Approval to operate an ELN is on the basis of your continuing compliance with:

- the Operating Requirements
- your Operating Agreement with the Registrar, and
- the Specified Documents and Certifications you provided to the Registrar.

Your Approval to operate your ELN is for ten (10) years and is renewable.

### **Applications for Approval and Renewal of Approval as an ELNO**

Applications for Approval and renewal of Approval to operate an ELN are to be made to the Australian Registrars' National Electronic Conveyancing Council (ARNECC) at [chair@arnecc.gov.au](mailto:chair@arnecc.gov.au).

ARNECC will co-ordinate the Approval of the Registrar in each State and Territory.

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## PART B – COMPLIANCE GUIDANCE

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The guidance in this Part is generally provided within the following framework:

### Requirement

*(Your obligation under the Operating Requirements.)*

### Purpose

*(What the requirement is intended to achieve.)*

### Scope

*(The extent of the requirement's application. Some requirements apply to your ELNO System, including your ELN, and some requirements apply to your ELN only.)*

### Compliance

*(The Registrar's expectations of your arrangements to comply with the requirement. Where the Operating Requirements require arrangements complying with a particular standard, that standard is referenced as the essential determinant of compliance. Where the Operating Requirements do not require compliance with a particular standard, one or more standards may be referenced as guidance in developing complying arrangements.)*

### Specific Inclusions

*(The Registrar's expectations of any specific matters that will be included in your compliance arrangements.)*

### Compliance Demonstration

*(How you are required to demonstrate your compliance.)*

### Immediate Documentation

*(What is required of you to demonstrate your compliance with an immediate reporting requirement.)*

### Application Documentation

*(What is required of you to demonstrate your compliance when applying for Approval to be an ELNO with the Category One reporting requirements in Schedule 3 of the Operating Requirements.)*

### **Pre-commencement Documentation**

*(What is required of you to demonstrate your compliance at least eight (8) weeks prior to commencing operations with the Category Two reporting requirements in Schedule 3 of the Operating Requirements.)*

### **Monthly Documentation**

*(What is required of you to demonstrate your compliance monthly while approved to operate with the Category Four reporting requirements in Schedule 3 of the Operating Requirements.)*

### **Annual Documentation**

*(What is required of you to demonstrate your compliance annually while approved to operate with the Category Three reporting requirements in Schedule 3 of the Operating Requirements.)*

### **Material Change Documentation**

*(What is required of you, prior to the implementation of a material change to your compliance arrangements, to demonstrate that after implementation of the change you will continue to be compliant with the Operating Requirements.)*

Section numbers in this Part refer to Clause numbers in the Operating Requirements.

References in this Part to providing documentation and/or certifications to the Registrar prior to commencing operations are to be taken as meaning provision at least eight (8) weeks prior to a date previously nominated by you for your commencing operations.

References in this Part to providing documentation and/or certifications to the Registrar annually while approved to operate are to be taken as meaning inclusion in your Annual Report to the Registrar.



### 3 Compliance with Operating Requirements

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#### Requirement

You have an obligation to continuously comply with the Operating Requirements and any conditions of your Approval to operate while you hold that Approval.

#### Purpose

The purpose of this requirement is to ensure the proper and timely completion of conveyancing transactions and their presentation for lodgment with a land registry using your systems.

#### Scope

This requirement applies to you and to the operation of your ELNO System, including your ELN.

#### Compliance

You are expected to have in place thoroughly documented and well-understood processes to:

- inform your principals, directors, officers, employees agents and contractors of your obligations under the Operating Requirements and your Approval to operate
- establish, maintain, monitor, assess and demonstrate your compliance with the Operating Requirements and your Approval to operate
- reliably and efficiently identify actual and potential breaches of compliance
- deal adequately with any detected breaches or potential breaches of compliance
- enable you and the Registrar to at any time conclude fairly and reasonably whether you have complied with your obligations under the Operating Requirements and your Approval to operate.

Your processes for monitoring, assessing and assuring your compliance are expected to:

- be sufficiently independent of your other activities to ensure that they are not improperly influenced by commercial considerations
- be comprehensive, rigorous and regularly undertaken
- include specific internal controls on all activities likely to affect your compliance, including provision to the Registrar when required of documents, reports and certifications demonstrating your compliance
- require you to assess the implications of and to re-assess relevant aspects of your compliance if there are significant changes to one or more of:

- (a) the operation of your ELNO System, including your ELN
  - (b) the regulation of your Subscribers
  - (c) the Operating Requirements
  - (d) your resources
- include adequate processes for monitoring and assessing the performance of any of your obligations, including compliance monitoring, which are outsourced
  - be regularly assessed for the risk of non-compliance occurring due to their inadequacy or incompleteness.

Your compliance programs are expected to:

- ensure your compliance with the Operating Requirements, including compliance with other statutory obligations and with any other relevant obligations you have, such as licence and regulatory approval conditions, industry standards and self-regulatory protocols
- ensure full awareness and understanding throughout your organisation of your obligations, including those in the Operating Requirements
- be flexible, responsive, effective and able to have their performance measured
- be regularly updated to ensure their completeness, relevance and currency
- be provisioned with adequate human and system resources and competencies and an initial and ongoing training program for all relevant employees and contractors involved in your business
- include any service agreements outsourcing functions to a third party that are material to your compliance with your obligations
- be capable of providing evidence and producing supporting documentation relevant to their design, implementation and functioning in satisfaction of your reporting obligations under the Operating Requirements.

AS3806:2006 provides guidance on establishing and managing effective compliance programs and AS31000:2009 provides guidance on conducting regular risk assessments of your compliance programs to ensure they remain adequate, complete, contemporary and fit for purpose.

### **Compliance Demonstration**

Your compliance programs, and your regular risk assessments of them, are to provide the basis for all of your reporting, monitoring and assessment obligations under the Operating Requirements, including the documents, reports and certifications needing to be published or provided to the Registrar periodically or on request.

In the absence of any formal waivers granted by the Registrar, you are required to:

- comply with the whole of the Operating Requirements:
  - (a) when applying for Approval to be an ELNO
  - (b) while approved to provide and operate your ELNO System
- continually monitor your compliance with the Operating Requirements
- demonstrate your compliance:
  - (a) prior to commencing operations
  - (b) monthly in your published Monthly Report
  - (c) annually in your Annual Report to the Registrar
  - (d) within ten (10) business days of a request from the Registrar
  - (e) when applying for renewal of your Approval to operate your ELNO System
- after you cease to be approved to provide and operate an ELNO System, continue to comply with specific requirements for:
  - (a) data retention, generation and use
  - (b) provision of information to your Subscribers
  - (c) protection of intellectual property rights
  - (d) implementation of your Transition Plan (TP).

Compliance with your overall obligation in this way is not in any respect to be diminished by your compliance with any individual requirement of the Operating Requirements and the specific compliance guidance that follows.

## 4 Eligibility Criteria

### 4.1 ABN

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#### Requirement

You have an obligation to hold an Australian Business Number (ABN) and to be registered for payment of Good and Services Tax (GST) in Australia.

#### Purpose

This requirement is to ensure that you can conduct business in Australia.

#### Scope

This requirement applies to you in the operation of your ELNO System, including your ELN.

#### Compliance

You are to hold an ABN and be registered for GST.

#### Compliance Demonstration

You are to provide your documentation of complying with this requirement to the Registrar when applying for Approval to be an ELNO and you are to provide certifications of your arrangements being unchanged prior to commencing operations and annually thereafter while you remain approved to operate.

#### Application Documentation

When applying for Approval as an ELNO you are to provide the Registrar with:

- your ABN
- your GST registration.

#### Pre-commencement and Annual Documentation

Prior to commencing operations and in each Annual Report to the Registrar, you are to provide a No-Change Certification that your ABN and GST registrations are unchanged. In the event any aspect of these arrangements has changed, you are to provide the Registrar with revised documentation.

## 4.2 Status

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### Requirement

You have an obligation to:

- be registered under the Corporations Act 2001 (Cth)
- obtain any necessary approvals under the Foreign Acquisitions and Takeovers Act 1975 (Cth) if you are a foreign body corporate
- ensure your constituting documents allow you to comply with the Operating Requirements.

### Purpose

The purpose of this requirement is to ensure you can conduct business in Australia.

### Scope

This requirement applies to you in the operation of your ELNO System, including your ELN.

### Compliance Demonstration

You are to provide your documentation to the Registrar when applying for Approval to be an ELNO and you are to provide certifications of your status being unchanged prior to commencing operations and annually thereafter while you are approved to operate.

### Application Documentation

When applying for Approval as an ELNO you are to provide the Registrar with:

- your ASIC Registration Certificate plus a company search not more than 30 days old
- any FIRB approval you require as a foreign body corporate
- your constituting documents.

### Pre-commencement and Annual Documentation

Prior to commencing operations and in each Annual Report to the Registrar, you are to provide a No-Change Certification that your status has not changed. In the event any aspect of your status has changed, you are to provide the Registrar with revised documentation.

## 4.3 Character

### 4.3.1 Character and Reputation

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#### Requirement

You have obligations to:

- be of good corporate character and reputation
- ensure your principals, directors and officers are of good character and reputation
- take reasonable steps to ensure your employees, agents and contractors are of good character and reputation.

#### Purpose

The purpose of these obligations is to ensure confidence in you as an ELNO.

#### Scope

This requirement applies to you in the operation of your ELNO System, including your ELN.

#### Compliance

It is expected that to satisfy this requirement you and your principals, directors and officers will have not been subject to:

- any previous insolvency event
- any conviction for fraud or an indictable offence or any offence for dishonesty against any law in connection with business, professional or commercial activities
- disqualification from managing a body corporate
- any fine, banning, suspension or other disciplinary measure for financial or professional misconduct
- any disciplinary action or adverse mention in a report made by, or at the request of, any government or governmental authority or agency, or any regulatory authority of a financial market or a profession
- any refusal of membership or revocation of membership of any financial markets, legal or accounting professional organisation or body on the grounds of financial or professional misconduct, fraud or dishonesty
- any refusal of an application to provide an electronic conveyancing or electronic lodgment service in any jurisdiction of Australia or elsewhere
- any other material matter to do with honesty, integrity and ethical conduct.

It is also expected that you will take reasonable steps to ensure each of your employees, agents and contractors has not been subject to any of the same events.

In assuring your compliance with this requirement, it is expected that:

- your principals or directors will make sufficient diligent inquiries to be satisfied that you comply
- you will keep records of all inquiries made and of all information collected that demonstrate your compliance
- your processes for the appointment of employees and agents and the engagement of contractors will include reasonable steps to ensure your employees, agents and contractors comply.

### **Compliance Demonstration**

You are to provide certifications to the Registrar of your compliance when applying for Approval to be an ELNO, prior to commencing operations and annually thereafter while approved to operate.

### **Application Documentation**

When applying for Approval to be an ELNO, you are to provide the Registrar with Self-Certifications of your compliance with all three obligations of this requirement. Your certifications are to be supportable by the records of the enquiries made by you or on your behalf. Those records may need to be produced if it becomes necessary to justify your certifications as having been given on an informed basis and in good faith.

### **Pre-commencement Documentation**

Prior to commencing operations, you are to provide the Registrar with a No-Change Certification that nothing has changed and you remain in compliance with all obligations of this requirement.

In the event that something has changed, you are to provide details of the change and new Self-Certifications that you comply with the requirement.

### **Annual Documentation**

You are to provide the Registrar annually, as part of your Annual Report to the Registrar, with a No-Change Certification that nothing has changed and you continue to comply with all obligations of this requirement.

In the event that something occurs or is brought to your attention that brings into question your continuing compliance with this requirement, you are to notify the Registrar of the full circumstances at the earliest possible opportunity.

## 4.3.2 Governance

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### Requirement

You have an obligation to maintain contemporary best practice governance arrangements that are regularly reviewed.

### Purpose

The purpose of this requirement is to ensure confidence in you as an ELNO.

### Scope

This requirement applies to you in the operation of your ELNO System, including your ELN.

### Compliance

It is expected that you will document, establish and maintain efficient and effective organisational and management arrangements reflective of rigour, transparency and ethical conduct. Your arrangements on each of these governance characteristics are expected to reflect:

- your particular nature and task
- the manner in which you choose to undertake your task
- the evolving nature of best practice in corporate governance.

AS8000:2003, AS8001:2003 and AS8015:2005 provide guidance on the design and maintenance of contemporary best practice governance arrangements. The ASX Corporate Governance Council's 2010 Principles and Recommendations for listed public companies also provide guidance.

### Specific Inclusions

In settling upon your governance arrangements, particular attention is to be paid to the minimum requirements you expect of your outsourced service suppliers.

### Compliance Demonstration

You are to provide your documentation of your governance arrangements to the Registrar when applying for Approval to be an ELNO together with a certification of those arrangements being contemporary best practice and fit for purpose. You are to provide certifications prior to commencing operations and annually thereafter while you are approved to operate that your arrangements remain unchanged, contemporary and fit for purpose.



## Application Documentation

When applying for Approval to be an ELNO you are to provide the Registrar with:

- documentation of your governance arrangements
- a Self-Certification of your governance arrangements' complying with contemporary best practice and being fit for purpose.

To provide the Self-Certification that your governance arrangements comply with contemporary best practice it is expected you will reference the relevant standards and industry recommendations and practices that justify your certification.

## Pre-commencement Documentation

Prior to commencing operations, you are to provide the Registrar with a No-Change Certification that your governance arrangements remain unchanged. In the event that this is not possible due to changes you have made to your arrangements, you are to provide documentation of your revised arrangements and a new Self-Certification of those arrangements being in compliance with contemporary best practice and fit for purpose.

## Annual Documentation

You are to provide the Registrar annually, as part of your Annual Report to the Registrar, with a No-Change Certification that your governance arrangements, including their documentation, remain unchanged and comply with contemporary best practice and are fit for purpose.

In the event that you are unable to provide such a certification, you are to provide the Registrar with:

- documentation of your revised governance arrangements
- the reason for and basis of the revisions that you have made to your arrangements
- your Self-Certification that the revised arrangements comply with contemporary best practice and are fit for purpose.

It is expected that your governance arrangements as adopted and implemented will be regularly reviewed while you remain approved to operate and any recommendations arising from such reviews will be promptly implemented in the interests of your continued compliance with the requirement.

## 4.4 Financial Resources

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### Requirement

You have an obligation to demonstrate having sufficient financial resources to meet your obligations under the Operating Requirements.

### Purpose

The purpose of this requirement is to ensure you can sustain the operation of your ELNO System.

### Scope

The requirement applies to you in the operation of your ELNO System, including your ELN.

### Compliance

Your audited financial statements are to comply with the requirements of the Australian Accounting Standards Board and s.296 of the Corporations Act 2001 (Cth).

### Specific Inclusions

Your audited financial statements are to include:

- at least profit and loss, balance sheet and cash flow statements, each with associated explanatory notes
- certifications of correctness by a director and your Chief Financial Officer
- an independent certification as a true and fair representation of your financial situation at the time of certification according to the requirements of the Australian Auditing and Assurance Standards Board.

### Compliance Demonstration

You are to provide your audited financial statements to the Registrar together with certifications of your having sufficient financial resources to meet your obligations under the Operating Requirements when applying for Approval to be an ELNO, prior to commencing operations and annually thereafter while you remain approved to operate.

### Application Documentation

When applying for Approval as an ELNO you are to provide the Registrar with:

- your audited financial statements for the previous two (2) financial years
- a Self-Certification of your having sufficient financial resources to meet your obligations under the Operating Requirements.

To provide this certification, it is expected that you will have assessed what resources you will need to operate your ELNO System in a proper, competent, sustainable and efficient manner as an ongoing concern in compliance with the Operating Requirements.

### **Pre-commencement Documentation**

Prior to commencing operations you are to provide the Registrar with a No-Change Certification that nothing has changed and you continue to have sufficient financial resources to meet your obligations under the Operating Requirements. If this is not possible for any reason, you are to provide the Registrar with an appropriate explanation.

### **Annual Documentation**

You are to provide the Registrar annually, as part of your Annual Report to the Registrar, with:

- your audited financial statements for the previous financial year
- a Self-Certification that you have sufficient financial resources to meet your obligations under the Operating Requirements.

To provide this Self-Certification each year, it is expected that you will have assessed what financial resources you will need to continue to operate your ELNO System in the same or a similar manner for the foreseeable future. It is expected you will have taken into account in your assessment your experience to date in operating your ELNO System and any changes and developments you have planned for the future.

Your Self-Certifications each year of continuing financial resource sufficiency are expected to be based on an analysis of at least:

- your financial position including future cash flow projections
- the nature and extent of the market for your services
- the continued appropriateness and resourcing of your Business Plan, and
- the future financial resource requirements to maintain your service and performance levels.

## 4.5 Technical Resources

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### Requirement

You have an obligation to demonstrate having sufficient technical resources to meet your obligations under the Operating Requirements.

### Purpose

The purpose of this requirement is to ensure you can sustain the operation of your ELNO System.

### Scope

The requirement applies to you in the operation of your ELNO System, including your ELN.

### Compliance

You are to maintain a comprehensive description of your technical arrangements and capability benchmarked against comparable environments.

### Specific Inclusions

It is expected that the description of your technical arrangements and capability will include at least:

- overall technical environment of your ELNO System
- special technical characteristics of your ELNO System and its operating environment
- management and technical skills required to establish and maintain your ELNO System
- market availability of the required management and technical skills
- particular qualifications required of your key management and technical specialist staff
- means of obtaining and retaining your key management and technical specialist staff
- nature and relevant terms of any key resources obtained through personal and service contracts
- numbers and classifications of all of your qualified management and technical specialist staff
- arrangements for deploying your key management and technical specialist staff
- arrangements for ensuring your key management and technical specialist staff remain up to date with contemporary technical best practices relevant to your ELNO System and its operating environment.

### Compliance Demonstration

You are to provide the Registrar with your technical arrangements and capability description when applying for Approval as an ELNO together with certifications of your technical resources being

sufficient to meet your obligations under the Operating Requirements when applying for Approval, prior to commencing operations and annually thereafter while you remain approved to operate.

### **Application Documentation**

When applying to be approved as an ELNO, you are to provide the Registrar with:

- a comprehensive description of your technical arrangements and capability
- a Self-Certification of your having sufficient technical resources to meet your obligations under the Operating Requirements.

To provide this Self-Certification, it is expected that you will have assessed what technical resources you will need to operate your ELNO System in a proper, competent, sustainable and efficient manner as an ongoing concern.

### **Pre-commencement Documentation**

Prior to commencing operations, you are to provide the Registrar with a No-Change Certification that nothing has changed and you continue to have sufficient technical resources to meet your obligations under the Operating Requirements. If this is not possible for any reason, you are to provide the Registrar with an appropriate explanation.

### **Annual Documentation**

You are to provide the Registrar annually, as part of your Annual Report to the Registrar, with a Self-Certification that you have sufficient technical resources to meet your obligations under the Operating Requirements.

To provide this Self-Certification each year, it is expected that you will have:

- reviewed your currently documented technical arrangements and capability description
- assessed what technical resources you will need to continue operating your ELNO System in the same or a similar manner for the foreseeable future, taking into account your experience to date in operating your ELNO System and any changes or developments you have planned for the future
- confirmed your currently documented technical capability description or prepared an amended one justifying your certification.

The Self-Certifications each year of your continuing technical resource sufficiency are to be based on an analysis of:

- your financial position
- the nature and extent of the market for your services
- the continued appropriateness and resourcing of your Business Plan, and
- the technical resource requirements to maintain your existing performance levels.

## 4.6 Organisational Resources

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### Requirement

You have an obligation to demonstrate having sufficient organisational resources to meet your obligations under the Operating Requirements.

### Purpose

The purpose of this requirement is to ensure you can sustain the operation of your ELNO System.

### Scope

The requirement applies to you in the operation of your ELNO System, including your ELN.

### Compliance

You are to maintain a comprehensive description of your organisational arrangements and capability benchmarked against comparable environments.

### Specific Inclusions

It is expected that the description of your organisational arrangements and capability will include at least:

- overall strategy for establishing and running your organisation
- resourcing strategy for your organisation
- key characteristics of your task that determine your resourcing strategy
- key management and specialist resources required
- market availability of the required management and specialist resources
- means for obtaining and retaining key management and specialist resources
- means of obtaining and retaining key management and specialist staff
- nature and relevant terms of any key resources obtained through personal and service contracts
- numbers and classifications of all key management and specialist staff
- arrangements for deploying key management and specialist staff
- arrangements for ensuring key management and specialist staff remain up to date with contemporary organisational best practices relevant to your systems and operating environment.

### Compliance Demonstration

You are to provide the Registrar with your organisational arrangements and capability description when applying for Approval as an ELNO together with certifications of your organisational

resources being sufficient to meet your obligations under the Operating Requirements when applying for Approval, prior to commencing operations and annually thereafter while you remain approved to operate.

### **Application Documentation**

When applying to be approved as an ELNO, you are to provide the Registrar with:

- a comprehensive description of your organisational arrangements and capability
- a Self-Certification of your having sufficient organisational resources to meet your obligations under the Operating Requirements.

To provide this Self-Certification, it is expected that you will have assessed what organisational resources you will need to operate your ELNO System in a proper, competent, sustainable and efficient manner as an ongoing concern.

### **Pre-commencement Documentation**

Prior to commencing operations, you are to provide the Registrar with a No-Change Certification that nothing has changed and you continue to have sufficient organisational resources to meet your obligations under the Operating Requirements. If this is not possible for any reason, you are to provide the Registrar with an appropriate explanation.

### **Annual Documentation**

You are to provide the Registrar annually, as part of your Annual Report to the Registrar, with a Self-Certification that you have sufficient organisational resources to meet your obligations under the Operating Requirements.

To provide this Self-Certification each year, it is expected that you will have:

- reviewed your documented organisational arrangements and capability description
- assessed what organisational resources you will need to continue operating your ELNO System in the same or a similar manner for the foreseeable future, taking into account your experience to date in operating your ELNO System and any changes or developments you have planned for the future
- confirmed your currently documented organisational capability description or prepared an amended one justifying your certification.

The Self-Certifications each year of your continuing organisational resource sufficiency are to be based on an analysis of:

- your financial position
- the nature and extent of the market for your services
- the continued appropriateness and resourcing of your Business Plan, and
- the organisational resource requirements to maintain your existing performance levels.

## 4.7 Insurance

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### Requirement

You have obligations to:

- obtain, and maintain current, specific insurance cover under policies with terms satisfactory to the Registrar
- ensure that your contractors maintain relevant and appropriate policies of insurance to cover the services they provide to you
- notify the Registrar of all claims, and events that may give rise to claims, under those policies
- keep the Registrar fully informed of the progress of all claims made under those policies.

### Purpose

The purpose of this requirement is to ensure that the residual risks in the operation of your ELNO System are adequately insured.

### Scope

The requirement applies to the operation of your ELNO System, including your ELN.

### Compliance

Your insurance policies are to be on terms satisfactory to the Registrar.

You are to obtain your policies from insurers approved by the Australian Prudential Regulation Authority (APRA) to offer insurance in Australia. A list of the insurers approved by APRA to offer insurance in Australia is available at <http://www.apra.gov.au/GI/Pages/general-insurers.aspx>.

Your policies for professional indemnity and for fidelity insurance are to cover the acts and omissions of your principals, officers and employees. It is expected that you will require the same of your contractors' insurance arrangements.

You are to notify the Registrar in writing as soon as practicable when any event occurs that may give rise to a claim under one of your insurance policies or one of your contractors' insurance policies. You are to thereafter keep the Registrar fully informed of the making of the claim and of its progress to finalisation.



## Specific Inclusions

The insurances you are required to hold include:

- insurances required under any law, such as workers compensation insurance and compulsory third party motor vehicle insurance
- professional indemnity insurance to an amount not less than \$20 million
- fidelity insurance to an amount not less than \$20 million
- public and product liability insurance to an amount not less than \$10 million
- asset insurance to an amount not less than the replacement value of your assets.

The insurances you are to require your contractors to hold include statutory insurances and those necessary to cover unmitigated risks in the services each contractor provides to you.

## Compliance Demonstration

You are to provide the Registrar prior to commencing operations with certified copies of the insurance policies and certificates of currency for:

- each insurance cover you are required to hold, and
- each insurance cover you require each of your contractors to hold.

You are to provide the Registrar annually thereafter while you remain approved to operate with:

- certificates of currency for each policy you are required to hold
- a certification of having reported to the Registrar all claims, or events that may give rise to claims, under one or more policies and the progress of each claim
- a certification of having no knowledge or awareness of any unreported claims or events.

In addition, it is expected that you will be able to provide, within ten (10) business days of a request from the Registrar while you remain approved to operate, certified copies of the insurance policies and certificates of currency for each insurance cover you require each of your contractor's to hold.

## Pre-commencement Documentation

Prior to commencing operations, you are to provide the Registrar with certified copies of:

- all insurance policies you are required to hold
- a certificate of currency for each insurance policy you are required to hold.

## Annual Documentation

You are to provide the Registrar annually, as part of your Annual Report to the Registrar, with:

- a certificate of currency for each insurance policy you are required to hold
- a No-Change Certification of the terms of all insurance policies you are required to hold being unchanged
- a Self-Certification of your having complied with your obligation to report all claims or events that may give rise to a claim under one or more of your insurance policies or of the insurance policies you require your contractors to hold and of your having no knowledge or awareness of any unreported claims or events that may give rise to a claim.

When there has been no change to the terms of the insurance policies you can provide a No-Change Certification to that effect. However, if the terms of any of the policies have changed for any reason and you cannot provide a No-Change Certification covering all of the policies, you are to provide certified copies of the revised policies with your Annual Report to the Registrar.

To support the Self-Certification of your having complied with your obligation to report all claims or events that may give rise to a claim under one or more of the insurance policies that you are required to hold or that you require your contractors to hold, you will be expected to provide:

- a list of all reportable claims and events notified during the period
- a description of each notified claim or event including at least its nature, origin and potential implications, including any contingency provisions in your financial accounts
- the status for each notified claim or event and a forecast of its likely outcome.

## 5 Operation of ELN

### 5.1 Encourage Widespread Industry Use

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#### Requirement

You have an obligation to have and implement a plan to encourage widespread industry use of your ELN and to deliver economic benefits to your Subscribers.

#### Purpose

The purpose of the requirement is to ensure use of your ELN results in widespread community benefits.

#### Scope

The requirement applies to the operation of your ELN only.

#### Compliance

You are to have and implement a Business Plan for the operation of your ELN directed at delivering realisable economic benefits to the community through the services provided to your Subscribers.

It is expected that your Business Plan will include at least:

- demonstrated understanding of the Australian property conveyancing market in each jurisdiction
- summarised market research undertaken to determine the most effective service delivery model
- description of your service delivery model, including the customer base and expected market penetration nationally and by jurisdiction
- timings for the development of operations and delivery of particular services and facilities and the anticipated means of servicing different classes of users
- projections of user take-up and sensitivity analysis, outlining the assumptions made and the implications of all likely outcomes
- intended actions to achieve planned user take-up, overall and by market segment
- descriptions and estimates of the economic benefits realisable by each class of users.

#### Specific Inclusions

Your Business Plan is to provide for your ELN being available:

- in each jurisdiction where the land registry is accepting electronic lodgments
- to your Subscribers for their use in completing transactions in all jurisdictions where the land registry is accepting electronic lodgments
- for a minimum set of transactions for electronic lodgment in each jurisdiction consisting, where applicable, of combinations of transfer, mortgage, discharge or release of mortgage, caveat, withdrawal of caveat, settlement notice and priority notice.

## Compliance Demonstration

You are to provide the Registrar with:

- your Business Plan when applying for Approval to be an ELNO
- a certification prior to commencing operations of your Business Plan remaining unchanged
- details each year of industry use of your ELN relative to the take-up projections in your Business Plan.

## Application Documentation

When applying for Approval as an ELNO, you are to provide the Registrar with your Business Plan.

## Pre-commencement Documentation

Prior to commencing operations, you are to provide the Registrar with a No-Change Certification that your Business Plan remains unchanged. In the event that this is not possible, you are to provide the Registrar with an explanation and a revised Business Plan.

## Annual Documentation

You are to provide the Registrar annually, as part of your Annual Report to the Registrar, with a report on:

- progress achieved with your Business Plan, such as:
  - (a) industry take-up of your ELN
  - (b) the diversity of industry use of your ELN
  - (c) the availability of economic benefits to your Subscribers
- any material changes made to your Business Plan, such as:
  - (a) extensions of time
  - (b) changes in resourcing
  - (c) refinement of market segments
  - (d) revision of performance targets
- projections for further industry take-up and diversity of use of your ELN in the future
- descriptions and estimates of further realisable economic benefits expected to be available to your Subscribers in the future.

## 5.2 National System and Minimum Document Capability

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### Requirement

You have obligations to:

- make your ELN progressively available for electronic lodgment with the land registries in all States and Territories, and
- provide for a minimum set of transactions in each State and Territory where your ELN is available.

### Purpose

The purpose of this requirement is to maximise the value of your ELN to industry, the community and government.

### Scope

This requirement applies to the operation of your ELN only.

### Compliance

It is expected that your Business Plan will set out the availability of your ELN and its capability.

### Compliance Demonstration

Your compliance with this requirement is to be demonstrated within ten (10) business days of a request from the Registrar while you remain approved to operate.

## 5.3 General Obligations

### 5.3(a) Operating in a proper manner

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#### Requirement

You have an obligation to operate your ELN in a proper, competent, sustainable and efficient manner.

#### Purpose

The purpose of this requirement is to ensure confidence in the operation of your ELN.

#### Scope

The requirement applies to the operation of your ELN only.

#### Compliance

It is expected that you will implement comprehensive and contemporary customer satisfaction and complaints handling processes to continually monitor the manner in which your operation of your ELN is being received by its users and relying parties. In this regard, AS10002:2006 provides guidance on the establishment of such processes.

#### Compliance Demonstration

Your published Monthly Report of complaints received and dealt with is expected to include:

- complaints categorised by at least:
  - (a) subject and source
  - (b) how many received
  - (c) how many sustained (ie found justified)
  - (d) how many resolved and how they were resolved
  - (e) how many outstanding at end of the month, including carry-overs from previous months
- specific complaint categories for at least your:
  - (a) Subscriber Registration Process (SRP), especially refusals to register (refer Section 14.2)
  - (b) Subscriber training and awareness programs (refer Section 14.6).

## 5.3(b) Due care, skill and diligence

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### Requirement

You have an obligation to exercise due care, skill and diligence in operating your ELN and in your complying with the Operating Requirements.

### Purpose

The purpose of this requirement is to ensure confidence in the use of your ELN.

### Scope

The requirement applies to the operation of your ELN only.

### Compliance

It is expected that you will implement:

- a Risk Management Framework (RMF) compliant with AS31000:2009 (refer Section 9.1)
- comprehensive and contemporary customer satisfaction and complaints handling processes to continually monitor the manner in which your operation of your ELN is being received by its users and relying parties. In this regard, AS10002:2006 provides guidance on the establishment of such processes.

### Compliance Demonstration

Your compliance with this requirement is to be demonstrated:

- in the Independent Certifications of your RMF (refer Section 9.1)
- in the complaint statistics published in your Monthly Report
- within ten (10) business days of a request from the Registrar while you remain approved to operate.

## 5.3(c) Disruption and interference

---

### Requirement

You have an obligation to minimise any disruption of, or interference to, any systems connected to your ELN for the purpose of completing conveyancing transactions.

### Purpose

The purpose of this requirement is to ensure confidence in the operation of your ELN.

### Scope

The requirement applies to the operation of your ELN only.

### Compliance

It is expected that you will implement:

- proven standards of technical integration in your ELN's connections with external systems
- contemporary products and practices for detection and prevention of unauthorised intrusion into your systems
- complaints handling processes to continually monitor disruptions and interference to connected external systems. In this regard, AS10002:2006 provides guidance on the establishment of such processes.

### Compliance Demonstration

Your compliance with this requirement is to be demonstrated in the complaint statistics published in your Monthly Report and within ten (10) business days of a request from the Registrar while you remain approved to operate.



## 5.3(d) Licences and regulatory approvals

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### Requirement

You have an obligation to obtain and maintain all necessary licences and regulatory approvals.

### Purpose

The purpose of the requirement is to ensure that in every respect the services you provide to your Subscribers are within the law.

### Scope

The requirement applies to the operation of your ELNO System, including your ELN.

### Compliance

It is expected that you will identify, obtain and keep up to date all licences and regulatory approvals required in the jurisdictions in which your ELNO System is available.

### Compliance Demonstration

You are to provide the Registrar with certifications when applying for Approval as an ELNO, prior to commencing operation and annually thereafter while you remain approved to operate that you have obtained and hold all licences and regulatory approvals to operate your ELNO System.

It is expected that to support of these certifications you will:

- maintain a record of all of the licenses and regulatory approvals required to operate your ELNO System and the status of each license and regulatory approval required, including renewals and where necessary any exemptions granted or licences and approvals applied for but not yet obtained
- have made diligent enquiries and not be aware of any other licence or regulatory approval necessary to operate your ELNO System
- be able to provide, within ten (10) business days of a request from the Registrar while you remain approved to operate, details of the licences and regulatory approvals you are required to hold and of the enquiries you have made to ensure that the details are complete.

### Application Documentation

When applying for Approval as an ELNO, you are to provide the Registrar with a Self-Certification of having obtained all of the licences and regulatory approvals necessary to operate your ELNO System.

### **Pre-commencement Documentation**

Prior to commencing operations, you are to provide the Registrar with a No-Change Certification that nothing has changed since you applied for Approval to be an ELNO.

In the event that this is not possible, you are to provide the Registrar with a revised list of the licences and regulatory approvals you are required to hold and a new Self-Certification of having obtained them.

### **Annual Documentation**

You are to provide, in each Annual Report to the Registrar, a No-Change Certification or a Self-Certification of holding all of the licences and regulatory approvals necessary to operate your ELNO System.

## 5.3(e) Pricing Policy

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### Requirement

You have an obligation to determine your fees according to a publicly available, equitable and transparent Pricing Policy.

### Purpose

The purpose of this requirement is to ensure that your fees are reasonable and you are not exploiting any lack of market competition for the services you provide.

### Scope

The obligation applies to the operation of your ELNO System, including your ELN.

### Compliance

You are to publish a Pricing Policy and include in it a set of principles that you apply at all times in determining the fees to be charged to users of your ELNO System, including your ELN. This is separate and distinct from any decision you make to publish the fees you determine from the application of your Pricing Policy.

The principles of your Pricing Policy are to be such as to instil confidence in industry, your users and the community generally that your fees are determined equitably and transparently. In this context, “equitable” means your policy is fair, reasonable and just for all parties, and “transparent” means your policy is expressed openly and candidly, so that it can be easily understood.

### Specific Inclusions

Without limiting the principles you may adopt to express your Pricing Policy, it is expected that you will consider at least:

- being cost-reflective, in that there is a direct link between your fees and costs
- being forward-looking, in that your fees reflect the least cost of providing the service in the immediate future
- embracing user-pays, in that all services are charged for and any cross-subsidies are acknowledged, minimised and justified as being in the public interest
- ensuring revenue-adequacy, so that your services are sustainable into the future with fees based on:
  - (a) benchmarked or competitively determined inputs for establishment costs and operating expenses
  - (b) a return of capital based on the life of each asset, and
  - (c) a risk-related return on capital

- promoting sustainable investment by your Subscribers, in that they can invest in the necessary systems and procedures to take advantage of your services with the certainty of obtaining an adequate return on that investment
- ensuring regulatory efficiency, in that regulatory intrusion and compliance costs for you and your Subscribers are minimised
- facilitating efficient conveyancing services including national consistency for the eventual achievement of least cost outcomes for all industry participants
- being in the public interest, in that they promote economically efficient and sustainable conveyancing services that deliver a dividend to the end users of those services for the public investment incurred in establishing the infrastructure for you to provide your services
- avoiding perverse or unintended outcomes likely to be in conflict with the public interest.

The extent to which your Pricing Policy is expected to be based upon principles such as these may vary with the number of genuine competitors operating in the market for your services and the extent of competition in that market for the services you offer.

### **Compliance Demonstration**

Your Pricing Policy is to be made publicly available and its publication is to be kept up to date so that it can be reviewed and assessed at any time. You can expect at any time to be requested by the Registrar to demonstrate how your fee determinations comply with your Pricing Policy.

### **Pre-commencement Documentation**

Prior to commencing operations, you are to provide your Pricing Policy to the Registrar.

### **Annual Documentation**

You are to provide the Registrar annually, as part of your Annual Report to the Registrar, with a No-Change Certification that your Pricing Policy, as currently published, remains unchanged and suitable to your circumstances. In the event that you are unable to provide such a certification, you are to provide documentation of a revised Pricing Policy to the Registrar for assessment of its compliance with the obligations to be equitable and transparent.

When certifying to the continuing suitability of your published Pricing Policy in your Annual Report to the Registrar, it is expected that you will have conducted a review of your policy with regard to at least:

- the continuing applicability to your circumstances of the principles contained in your policy
- any need for additional principles in your policy to ensure equity and transparency
- consistent application of your policy in determining your fees
- identified variances from your policy and the justifiable reasons for those variations
- the level of acceptance of your policy among your Subscribers.

## 5.3(f) Training and awareness programs

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### Requirement

You have an obligation to adequately train your officers, principals, employees, agents and contractors in the use of your ELN, and to make them aware of your obligations under the Operating Requirements, to the extent relevant to their duties and responsibilities.

### Purpose

The purpose of this requirement is to ensure your ELN is operated competently and in compliance with the Operating Requirements.

### Scope

The requirement applies to the operation of your ELN only.

### Compliance

It is expected that you will maintain documentation of your training and awareness programs, setting out at least:

- nature, purpose and content of each program
- how each program is created, made available and delivered
- requirements for undertaking and satisfactorily completing each relevant program
- requirements for re-taking each relevant program on a remedial or refresher basis
- statistics on the delivery, coverage and effectiveness of each program.

### Specific Inclusions

Your training and awareness programs are to specifically include:

- the use of all relevant aspects of your ELN
- all of your relevant obligations as an ELNO under the Operating Requirements.

### Compliance Demonstration

Your compliance with this requirement is to be certified annually and demonstrated within ten (10) business days of a request from the Registrar while you remain approved to operate.

### Annual Documentation

You are to provide the Registrar annually, as part of your Annual Report to the Registrar, with a Self-Certification that each of your training and awareness programs is up to date and adequate for complying with the Operating Requirements.

It is expected that to support your certification you will maintain documentation on the delivery of your training and awareness programs during the period that will include:

- number of programs delivered
- numbers by category of persons satisfactorily completing each program
- percentage of persons by category completing each program
- content and delivery changes made to each program
- rationale for each content change and each delivery change made to each program.

## 5.3(g) Applicable laws and policies

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### Requirement

You have an obligation to comply with all applicable laws nationally and in each State and Territory in which your ELNO System is available and with all government policies notified to you in writing by the Registrar.

### Purpose

The purpose of this requirement is to ensure you comply with all laws and regulatory requirements for operating your ELNO System.

### Scope

The requirement applies to the operation of your ELNO System, including your ELN.

### Compliance

It is expected that you will maintain documentation setting out:

- a list of all laws enacted nationally and in each State and Territory in which you are operating that are relevant to your activities
- a brief description of how you are complying with each relevant law
- a list of all government policies notified to you in writing by the Registrar (and not withdrawn) since you first received Approval to operate as an ELNO
- a brief description of how you are complying with each notified government policy.

### Specific Inclusions

Your documentation is to specifically include compliance with:

- privacy legislation, particularly with regard to collection, use, storage, disclosure and retention of personal information, whether applying nationally or in a State or Territory
- taxation legislation, particularly with regard to the application of GST to service fees
- competition and consumer legislation, particularly with regard to service pricing, restrictive practices and barriers to market entry
- corporations legislation, particularly with regard to governance requirements
- financial services regulation legislation, particularly with regard to the provision of financial settlement services
- anti-money laundering and counter-terrorism financing legislation, particularly with regard to verification of identity and the operation of financial settlement services
- government policies notified to you in writing by the Registrar.

## Compliance Demonstration

Your compliance with this requirement is to be demonstrated annually with a certification and within ten (10) business days of a request from the Registrar while you remain approved to operate.

## Annual Documentation

You are to provide the Registrar annually, as part of your Annual Report to the Registrar, with a Self-Certification that all relevant laws and notified government policies have been complied with during the period.

To support each of these certifications, it is expected you will maintain:

- a list of the laws and notified government policies relevant to your activities as an ELNO
- a description of how each law and government policy was complied with during the period
- a report on every potential non-compliance during the period and the remedial action you took in each instance.



## 5.3(h) Confidentiality of information

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### Requirement

You have an obligation to maintain the confidentiality of all information provided to you that the provider would reasonably expect you to keep confidential.

### Purpose

The purpose of this requirement is to create and maintain confidence in the use of your ELNO System.

### Scope

The requirement applies to the operation of your ELNO System, including your ELN.

### Compliance

It is expected you will have documented procedures and practices in place for:

- handling of all information provided to you for which you do not have the express authority of the provider to disclose to any other party or parties
- recording of all actual or potential breaches of confidentiality and their implications
- taking remedial action to mitigate the risk of further or continued breaches of confidentiality.

### Specific Inclusions

Your documented procedures and practices are to comply with legislation applying nationally and in a State or Territory with regard to the collection, use, disclosure, storage and retention of information, including personal information. In this regard, the OAIC Guide to Information Security: 2013 provides relevant guidance.

### Compliance Demonstration

Your compliance with this requirement is to be demonstrated within ten (10) business days of a request from the Registrar while you remain approved to operate.

## 5.3(i) Reasonable directions

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### Requirement

You have an obligation to comply with any reasonable direction given by the Registrar for the purpose of the Operating Requirements.

### Purpose

The purpose of this requirement is ensure industry and community confidence in the operation of your ELNO System.

### Scope

The requirement applies to the operation of your ELNO System, including your ELN.

### Compliance

It is expected you will have documented procedures in place for receiving, assessing, implementing and reporting on directions received from the Registrar.

### Compliance Demonstration

Your compliance with this requirement is to be demonstrated within ten (10) business days of a request from the Registrar while you remain approved to operate.

## 5.3(j) Notifiable events

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### Requirement

You have an obligation to notify the Registrar of all events which have the potential to affect the integrity of the Titles Register.

### Purpose

The purpose of this requirement is to enable the Registrar to protect the integrity of the Titles Register.

### Scope

The requirement applies to you and the operation of your ELN.

### Compliance

It is expected you will have documented procedures and practices in place for:

- establishing criteria for events with the potential to affect the integrity of the Titles Register
- identifying all events which satisfy the established criteria
- recording all identified events which satisfy the established criteria
- notifying the Registrar of all recorded events which satisfy the established criteria
- regularly reviewing your notifiable event criteria for their continued relevance and completeness.

### Compliance Demonstration

Your compliance with this requirement is to be demonstrated within ten (10) business days of a request from the Registrar while you remain approved to operate.

## 5.3(k) Assistance to the Registrar

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### Requirement

You have an obligation to give such assistance to the Registrar as the Registrar, or his or her authorised representative, requests in relation to the Registrar's functions and powers under the ECNL.

### Purpose

The purpose of the requirement is to ensure the security and integrity of the Titles Register.

### Scope

The requirement applies to you.

### Compliance

It is expected you will have documented procedures and practices in place for:

- receiving requests for assistance from the Registrar or his or her authorised representative
- implementing each request in the shortest possible timeframe
- recording the outcome of the implementation
- reporting to the Registrar on the completion of the request.

### Compliance Demonstration

Your compliance with this requirement is to be demonstrated within ten (10) business days of a request from the Registrar while you remain approved to operate.

## 6 Initial Testing

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### Requirement

You have an obligation not to commence operating your ELN without first testing it in accordance with your Test Plan to the satisfaction of the Registrar.

### Purpose

The purpose of this requirement is to ensure your ELN operates correctly.

### Scope

This requirement applies to the initial testing of your ELN only.

### Compliance

You are to have an extensive and comprehensively documented Test Plan for the initial testing and certification of all aspects of your ELN. Your Test Plan is expected to be based on at least:

- your detailed functionality specifications and comprehensive user documentation
- your documented ISMS and BCDRMP
- the System Performance measures in Schedule 2 of the Operating Requirements
- thorough and rigorous testing procedures prepared in advance and executed under tightly controlled conditions
- methodical test data generation that exercises all aspects of the system's operation, connectivity and integration under all possible scenarios
- reliable test result recording, evaluation and reporting
- sharing of test reports with all involved and affected parties
- adequate time for proper execution of all test procedures, evaluation of their outcomes and sharing of test reports
- certifications of correct operation and performance by all relevant responsible persons.

Certifications of correct operation and performance are expected to be obtained from an independent assessor and/or the entity responsible for each directly interconnected system. Your Test Plan is to be consistent with the generic testing requirements set out in your CMF for the testing of all changes made to your ELN after the commencement of operations.

It is expected that your Test Plan will comply with contemporary best practice in testing of systems in environments comparable to your ELN. In this regard, ISO25010:2011 provides relevant guidance.

## Specific Inclusions

Your Test Plan is expected to include as a minimum testing of your ELN's:

- functionality available to users as well as that on which users and relying parties depend
- connectivity with external systems for exchanging messages
- responsiveness to the actions of users under all foreseeable load conditions
- intrusion resistance for preventing information corruption and unauthorised disclosure
- disruption resilience for maintaining system availability in all foreseeable situations
- disaster recovery for restoring services after an unexpected disruption.

## Compliance Demonstration

Your Test Plan is to contain a report on its execution, including all test results and required and expected certifications of correct operation and performance, and is to be provided to the Registrar prior to commencing operations

## 7 Obligations Regarding System Security and Integrity

### 7.1 Information Security Management System

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#### Requirement

You have an obligation to establish, implement, operate, monitor, review, maintain and keep current a documented Information Security Management System (ISMS).

#### Purpose

The purpose of the requirement is to ensure confidence that the information you collect and store with your ELN is adequately protected from unauthorised access, use, amendment or disclosure.

#### Scope

This requirement applies to the operation of your ELN only.

#### Compliance

Your ISMS is to be comprehensively documented and kept up to date. It is to take into account all of your relevant obligations under the Operating Requirements, including the specific obligations related to information security at:

- Clause 7 (System Security and Integrity)
- Clause 14.1 (Subscriber Registration)
- Clause 14.3 (Subscriber and User Register)
- Clause 14.7 (Monitoring of Subscribers)
- Clause 14.8 (Restriction, Suspension and Termination of Subscribers)
- Clause 14.9 (Consequences of Restriction, Suspension and Termination of Subscribers)
- Clause 19.1 (Retention of Data and Information)
- Clause 19.2 (Generation and Retention of Audit Records)
- Clause 19.3 (Use).

In addressing these obligations, your ISMS is expected to cover at least:

- what system access and use rules, controls and practice assurance, including user accreditation and compliance monitoring, are employed
- how unauthorised system access, use, intrusion and service denial is prevented and attempts recorded and reviewed
- how access to your systems by your employees and contractors is controlled and monitored

- how unauthorised additions or modifications to your systems, such as viruses, trojans and other malware, are detected and removed
- how your systems are protected from intrusion or unauthorised access at any facilities where they are supplied from
- how system administration activities are conducted, managed and controlled
- how relying parties can efficiently and effectively authenticate digitally signed documents
- your requirements of users with regard to use of digital signatures, digital signing and information protection measures generally
- your means and procedures for data recovery in the event of information loss or corruption
- your means of integrity vetting, orientation, training, supervision and control of your employees, agents and contractors; and
- your incident management protocols, including corrective actions and responsibilities, and user and relying party notifications.

Your ISMS is to comply, as a minimum, with AS27001:2013, having regard to the particular circumstances and environment of your ELN. AS31000:2009 provides guidance on the periodic risk assessment of your ISMS and the OAIC Guide to Information Security:2013 provides guidance on the reasonable steps to be included in your ISMS for the protection of personal information.

### Specific Inclusions

Your ISMS is to specifically address the following issues in ensuring information security for your users and relying parties:

- your **Subscriber Security Policy** that each of your Subscribers is to comply with in accordance with the Participation Rules made under the ECNL and included in their Participation Agreement with you
- access to your ELN by known and authorised persons only (refer Section 7.2)
- security of your ELN from information loss or corruption (refer Section 7.3)
- accurate presentation and use of data by your ELN (refer Section 7.4).
- location of your ELN's servers in Australia (refer Section 7.5)
- reliability and independence of your digital certificate regime and in particular your compliance with the Gatekeeper requirements issued by the Australian Government and adopted as best practice by the governments of all jurisdictions (refer Section 7.6)
- your means of digital signing verification that ensures that digitally signed documents and data that are created with your ELN can be verified by relying parties as to whom they were signed by and that they have not been altered since they were signed (refer Sections 7.7 and 7.8)



- your procedures for immediate notification of jeopardised conveyancing transactions (refer Section 7.9)
- your means for preventing the delivery of any documents or data to the Registrar when you have received notification from a Subscriber that Security Items may have been compromised or a signing made without authority (refer Section 7.10).

### **Subscriber Security Policy**

Your Subscribers have a significant role to play in ensuring the security of the information you collect and store. You are to have a Subscriber Security Policy and to keep it up to date. Your Policy is to be referenced in each Participation Agreement you enter into with each of your Subscribers with an obligation in the Participation Agreement for the Subscriber to comply with your Policy.

Your Policy is to cover the measures your Subscribers must implement, operate and maintain to comply with the Participation Rules, including at least:

- what security software they are to use
- what measures they are to take to safeguard your and their systems and information from unauthorised access and use
- what measures they are to take to protect their Security Items
- what measures they are to take to safeguard their Digital Certificates from unauthorised use
- what measures they are to take to safeguard their Access Credentials from unauthorised use
- what measures they are to take generally to protect the integrity of your and their systems, and the transactions completed and documents signed using your and their systems, from corruption, falsification, unauthorised alteration or disclosure, or misuse.

### **Compliance Demonstration**

You are to demonstrate your compliance with this requirement by providing your ISMS documentation, together with a certification of its being compliant and fit for purpose, to the Registrar prior to commencing operations and at any time that it is materially changed thereafter while you are approved to operate.

You are also to provide the Registrar with certifications:

- of your ISMS being unchanged, compliant and fit for purpose annually while you are approved to operate

- that your ISMS will continue to be compliant and fit for purpose after implementing any material change to your ISMS.

### **Pre-commencement Documentation**

Prior to commencing operations, you are to provide the Registrar with:

- the documentation of your ISMS
- an Independent Certification that your documentation is compliant and fit for purpose.

### **Annual Documentation**

You are to provide the Registrar annually, as part of your Annual Report to the Register, with:

- a No-Change Certification that your ISMS, including its documentation, management and operation, is unchanged, and
- an Independent Certification that your ISMS is compliant and fit for purpose.

In the event that you are unable to provide such a No-Change Certification, you are to submit revised documentation of your ISMS to the Registrar, together with an Independent Certification of the compliance and fitness for purpose of the revised documentation, management and operation of your ISMS and the Independent Expert's recommendations.

### **Material Change Documentation**

You are to provide the Registrar with an Independent Certification that, with respect to a proposed material change to your ISMS, your ISMS will continue to be suitable, adequate and effective and otherwise fit for purpose after implementation of the change.

The Independent Certification is to be obtained and provided to the Registrar prior to implementing the proposed change and in the event that the certification cannot be obtained the change is not to be implemented.

A revision to the standard (AS27001:2013) with which your ISMS must comply, having regard to the particular circumstances and environment of your ELN, is not of itself to be considered a material change to your ISMS.

### **Independent Certifications**

You are to have:

- the documentation of your ISMS reviewed and independently certified as compliant and fit for purpose by an Independent Expert prior to submitting the documentation to the

Registrar for assessment and approval to commence operations. In conducting its review and providing its certification, it is expected that the Independent Expert will at least:

- (a) assess the documentation of your ISMS for completeness, currency, integrity and quality
  - (b) assess the content of your ISMS documentation for compliance with AS27001:2013 having regard to the particular circumstances and environment of your ELN
  - (c) assess your ISMS as documented against similar systems in comparable situations
  - (d) make any Essential and Desirable Recommendations as a result of those assessments
  - (e) provide an opinion as to the adequacy of your ISMS and its fitness for purpose
- your ISMS, as an operational management system, reviewed and certified annually as compliant and fit for purpose by an Independent Expert and to include the review report and Independent Certification in your Annual Report to the Registrar. This review is to be of the documentation of your system, of how completely and effectively you have implemented and continue to operate the documented system, and of how your system as implemented, operated and managed suits your circumstances and compares with contemporary best practice. In conducting the review and providing its certification, it is expected that the Independent Expert will at least:
    - (a) assess the awareness, knowledge and understanding of your principals, directors, agents employees and contractors of your ISMS and of their respective responsibilities in its effective ongoing management
    - (b) assess the effectiveness of your ISMS in practice by reference to compliance failures, incident statistics, performance measures and available industry benchmarks
    - (c) consult with key users and relying parties on the suitability of your ISMS and each of its key characteristics and implementation features
    - (d) make any Essential and Desirable Recommendations as a result of those assessments and consultations
    - (e) review its findings and recommendations with you and with your key affected, relying and co-regulatory parties before finalising its review report, certification and any recommendations
  - the Specific Inclusions in your ISMS, especially your Subscriber Security Policy, independently certified as compliant and fit for purpose as part of each Independent Certification of your ISMS
  - any material change proposed to your ISMS independently certified, prior to implementation of the change, as not affecting the suitability, adequacy and effectiveness and otherwise

fitness for purpose of your ISMS. In conducting the review and providing its certification, it is expected that the Independent Expert will at least:

- (a) assess the nature and extent of the proposed change
- (b) review the rationale for the change and the alternatives, if any, available for achieving the same purpose
- (c) examine in detail the impact of the change on users and relying parties, including the adequacy of proposed documentation changes to your ISMS and your continuing compliance with AS27001:2013
- (d) consult with key users and relying parties on the suitability to them of the change and each of its key characteristics and implementation features
- (e) make any Essential and Desirable Recommendations as a result of these assessments, examinations and consultations
- (f) review its findings and recommendations with you and with your key affected, relying and co-regulatory parties before finalising its review report, certification and any recommendations.

The Independent Expert you engage in each instance is to be approved in advance by the Registrar and, on each occasion that such a review and independent certification is undertaken, any Essential Recommendations of the Independent Expert will be expected to have been promptly implemented.

## 7.2 Access to ELN

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### Requirement

You have an obligation to ensure that the only persons able to access your ELN are:

- your registered Subscribers
- specific persons authorised by your registered Subscribers
- specific persons other than Subscribers authorised by you for particular purposes (ie privileged users, such as system administrators and technical diagnostic and programming staff).

### Purpose

The purpose of this requirement is to ensure that only known and authorised persons access your ELN.

### Scope

This requirement applies to the operation of your ELN only.

### Compliance

As a part of your ISMS, you will be expected to have procedures and requirements in place that prevent any unauthorised persons from accessing either the information stored in your ELN or the functionality available in your ELN to authorised persons. Such access is to be prevented for those persons attempting to access the ELN directly and for those persons with access to any system connected to your ELN for other purposes, whether legitimate or not.

### Specific Inclusions

It is expected that your ISMS will, for each distinct class of person with access of your ELN, pay particular attention to:

- the number of authentication credentials required to gain access to your ELN
- the nature and minimum characteristics of those authentication credentials and how they are created and issued
- the way authentication credentials are stored and used by your ELN for entitlement verification purposes
- the hardness of your authentication credentialing arrangements as a whole in preventing known ways of securing unauthorised access to similar systems.

Your ISMS is also expected to include provision for periodic intrusion testing of your ELN access control arrangements after you commence operations.

## Compliance Demonstration

Your compliance with this requirement is to be demonstrated by the Independent Certifications that your ISMS is compliant and fit for purpose required by the Registrar prior to commencing operations, annually thereafter while you are approved to operate, and prior to any material change being made to your ISMS.

## 7.3 Security of ELN

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### Requirement

You have an obligation to protect the information in your ELN from anything that might compromise conveyancing transactions conducted using it or adversely affect any system connected to it or to which you supply information.

### Purpose

The purpose of this requirement is to ensure conveyancing transactions can be completed using your ELN without unexpected risk.

### Scope

This requirement applies to the operation of your ELN only.

### Compliance

It is expected that the protection measures you use to satisfy this obligation will be documented and maintained as part of your ISMS and will include at least:

- physical measures, such as the location and accessibility of your ELN's servers
- system measures, such as firewalls and anti-virus software implemented in your ELN
- user measures, such as the authentication credentials used to verify access to your ELN
- social measures, such as procedures for authorising new users and for re-setting authentication credentials.

The nature and extent of the measures you implement to achieve these outcomes are to be such as to reliably achieve compliance with the Operating Requirements on an ongoing basis. In this regard, your ISMS will be expected to include arrangements for:

- regular testing of the effectiveness of all of your information protection measures
- regular reviewing of contemporary best practice in information protection
- prompt adoption of well-tested refinements, enhancements and additions to existing practices and protection measures.

### Compliance Demonstration

Your compliance with this requirement is to be demonstrated by the Independent Certifications that your ISMS is compliant and fit for purpose required by the Registrar prior to commencing operations, annually thereafter while you are approved to operate and prior to any material change being made to your ISMS.

## 7.4 Data

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### Requirement

You have an obligation to accurately present and use information received from any source. In particular, you have an obligation not to alter any data received from a Land Registry without approval.

### Purpose

The purpose of this requirement is to ensure confidence in the use of your ELN.

### Scope

This requirement applies to the operation of your ELN only.

### Compliance

It is expected that your ISMS will include your arrangements for:

- receiving, presenting and processing information received from any source
- validating the accuracy of your arrangements initially and at any time that they change
- maintaining a record of approvals for altering any data received from a Land Registry
- monitoring your compliance with those approvals.

### Compliance Demonstration

Your compliance with this requirement is to be demonstrated by the Independent Certifications that your ISMS is compliant and fit for purpose required by the Registrar prior to commencing operations, annually thereafter while you remain approved to operate and prior to any material change being made to your ISMS.



## 7.5 Protection of Land Information

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### Requirement

You have an obligation to ensure that the servers and other physical infrastructure on which you store and process Land Information are located in Australia.

### Purpose

The purpose of this requirement is to ensure that Land Information stored on your ELNO System is available to the Registrar when necessary for a Compliance Examination or investigation.

### Scope

This requirement applies to the operation of your ELNO System, including your ELN.

### Compliance

It is expected that your ISMS will include the location of your ELNO System's servers and other physical infrastructure in Australia.

### Compliance Demonstration

Your compliance with this requirement is to be demonstrated by the Independent Certifications that your ISMS is compliant and fit for purpose required by the Registrar prior to commencing operations, annually thereafter while you remain approved to operate and prior to any material change being made to your ISMS.

## 7.6 Digital Certificate Regime

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### Requirement

You have an obligation to implement and maintain a reliable and independent Digital Certificate regime.

### Purpose

The purpose of this requirement is to ensure confidence in the digital signings made with your ELN.

### Scope

This requirement applies to the operation of your ELN only.

### Compliance

Your ISMS is required to include:

- use of a Gatekeeper Accredited Service Provider to issue and verify the Digital Certificates you accept, and you cannot also be that Service Provider
- acceptance of only Digital Certificates issued under a Gatekeeper-approved General Category Business Certificate Policy Specification
- verification that the Digital Certificates you accept identify the Subscriber, its ABN and the Key Holder to whom it was issued.

### Compliance Demonstration

Your compliance with this requirement is to be demonstrated by the Independent Certifications that your ISMS is compliant and fit for purpose required by the Registrar prior to commencing operations, annually thereafter while you remain approved to operate and prior to any material change being made to your ISMS.

## 7.7 Verifying Digital Signing

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### Requirement

You have an obligation to implement an effective means for verifying that a digitally signed document and digitally signed data created using your ELN has been signed:

- using a valid Digital Certificate of the user entitled to sign the document or data
- by a user with the signing rights being exercised, and
- by a user whose right to sign the document or data has not expired or been restricted, suspended or terminated.

You also have obligations to:

- ensure these signing conditions are met at the time of signing, and
- provide the Registrar with information identifying the signer and verifying that the signing conditions were met at the time of signing.

### Purpose

The purpose of this requirement is to ensure confidence in the digital signings made with your ELN.

### Scope

This requirement applies to the operation of your ELN only.

### Compliance

It is expected that your means of complying with this requirement will be documented and put into practice as part of your ISMS.

### Compliance Demonstration

Your compliance with this requirement is to be demonstrated by the Independent Certifications that your ISMS is compliant and fit for purpose required by the Registrar prior to commencing operations, annually thereafter while you remain approved to operate and prior to making any material change to your ISMS.

## 7.8 Verifying No Alteration

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### Requirement

You have an obligation to implement an effective means for third parties to verify that digitally signed documents and data created with your ELN have not been altered since they were signed.

### Purpose

The purpose of this requirement is to ensure any alteration to digitally signed documents and data can be readily detected.

### Scope

This requirement applies to the operation of your ELN only.

### Compliance

It is expected that the means by which you will comply with this requirement will be documented and put into practice as part of your ISMS.

### Compliance Demonstration

Your compliance with this requirement is to be demonstrated by the Independent Certifications that your ISMS is compliant and fit for purpose required by the Registrar prior to commencing operations, annually thereafter while you remain approved to operate and prior to making any material change to your ISMS.

## 7.9 Notification of Jeopardised Conveyancing Transactions

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### Requirement

You have an obligation to immediately notify those of your Subscribers involved in a conveyancing transaction when you have reason to believe that the transaction has been jeopardised in any way.

### Purpose

The purpose of this requirement is to ensure that the participants in a conveyancing transaction that may have been jeopardised can take appropriate action to protect their or their clients' interests.

### Scope

This requirement applies to the operation of your ELNO System, including your ELN.

### Compliance

It is expected that the means by which you will identify the circumstances that may indicate that a transaction has been jeopardised, deliver notifications to your Subscribers, and confirm that they have been received, will be documented and put into practice as part of your ISMS.

It is also expected that your arrangements for delivering notifications will include alternative means of delivery and contingency arrangements in the event that successful delivery cannot be confirmed.

### Compliance Demonstration

Your compliance with this requirement is to be demonstrated by the Independent Certifications that your ISMS is compliant and fit for purpose required by the Registrar prior to commencing operations, annually thereafter while you remain approved to operate and prior to making any material change to your ISMS.

## 7.10 Obligations in relation to Notification of Compromised Security

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### Requirement

You have an obligation to prevent the delivery of any documents or data to the Registrar when you have received notification from a Subscriber that:

- its Security Items, such as authentication credentials, digital certificates and private signing keys, have or may have been compromised
- documents or data have been signed without authority, either of the Subscriber or of the transacting party the Subscriber is representing.

You also have an obligation to immediately notify the Registrar of the situation in the event that you cannot prevent delivery to the Registrar of documents and data of a conveyancing transaction associated with compromised Security Items and/or unauthorised signings.

### Purpose

The purpose of this requirement is to ensure any documents or data that may have been digitally signed without the authority of the transacting party are not registered on the Titles Register.

### Scope

This requirement applies to the operation of your ELNO System, including your ELN.

### Compliance

It is expected that your ISMS will include arrangements for:

- receiving notifications from your Subscribers
- verifying the authenticity of each notification
- acting on each verified notification to either:
  - (a) prevent delivery of documents and data to the Registrar, or
  - (b) notify the Registrar of the situation and its circumstances if delivery cannot be prevented.

### Compliance Demonstration

Your compliance with this requirement is to be demonstrated by the Independent Certifications that your ISMS is compliant and fit for purpose required by the Registrar prior to commencing operations, annually thereafter while you remain approved to operate and prior to making any material change to your ISMS.

## 8 Security and Integrity of Titles Register

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### Requirement

You have an obligation not to do anything that is likely to diminish the overall security and integrity of the Titles Register or public confidence in the Titles Register.

### Purpose

The purpose of this requirement is to maintain public confidence in the Titles Register.

### Scope

This requirement applies to you and the operation of your ELN only.

### Compliance

It is expected that you will have:

- effective compliance programs for other key requirements in the Operating Requirements, such as but not limited to:
  - (a) having adequate information security, risk management and business continuity arrangements in place
  - (b) satisfying the minimum Performance Levels required
  - (c) creating no greater risk of error or fraud in transactions than exists in the paper system
  - (d) verifying your Subscribers' compliance with their insurance requirements
  - (e) having sufficient financial, technical and organisational resources available
  - (f) being of good corporate character and reputation
- a policy on making public statements and comments on property conveyancing and related matters that complies with the requirement.

It is expected that your policy on public statements and comments will ensure you, including your principals, directors, officers, employees, agents and contractors, make no public statements that may negatively impact on public confidence in the Titles Register or the property conveyancing process, either paper or electronic, in any State or Territory.

### Compliance Demonstration

You are to provide the Registrar with a certification annually, and within ten (10) business days of a request from the Registrar while you remain approved to operate, that you have an effective program in place to comply with the requirement and have done nothing to diminish public confidence in the Titles Register.

## Annual Documentation

You are to provide the Registrar annually, as part of your Annual Report to the Registrar, with a Self-Certification that you have an effective program in place to ensure your compliance with this requirement and have done nothing to diminish public confidence in the Titles Register.

To support each certification, it is expected that you will maintain comprehensive records of:

- your compliance programs directed at maintaining public confidence in the Titles register
- your policy on making public statements and comments on property conveyancing and related matters in all forms of media, including social media
- total instances of your public statements and comments on property conveyancing and related matters during the period
- nature, rationale and audience for each of your public statements and comments on property conveyancing and related matters during the period
- nature and source of any adverse reactions to your public statements and comments on property conveyancing and related matters during the period
- remedial actions taken, if any, to each adverse reaction to a public statement or comment on property conveyancing and related matters during the period
- changes made, if any, to your compliance program to address instances of non-compliance during the period and new compliance risks identified.

In the event that you cannot provide such a certification, you are to provide an explanation of when you will be able to provide such a certification and what actions you need to take to achieve the compliance required.



### 9.1 Mitigate Risk

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#### Requirement

You have an obligation to establish, implement, operate, monitor, review, maintain and keep current a documented Risk Management Framework (RMF) to enable the identification and mitigation of risks in the operation of your ELN.

#### Purpose

The purpose of the requirement is to ensure that all foreseeable risks in the operation of your ELN are identified, assessed and mitigated.

#### Scope

This requirement applies to the operation of your ELN only.

#### Compliance

Your RMF is to be an active means for your effective ongoing management of risk in the completion of conveyancing transactions using your ELN through:

- regular risk assessments and re-assessments
- comprehensive and measurable risk mitigation treatments and programs, and
- ongoing monitoring and reporting on potential and actual risk incidents and outcomes.

Your RMF is to be fully documented and is to comply, as a minimum, with AS31000:2009 having regard to the circumstances and environment of your ELN.

#### Specific Inclusions

Your RMF is to have particular regard for at least the risks associated with:

- business continuity and sustainability
- service availability and performance
- system malfunction
- employee error, fraud and sabotage
- contractor liability
- user error, fraud and sabotage
- external intrusion.

Your RMF is also to specifically address the comparative risk of using your ELN to complete conveyancing transactions to that of using the alternative paper system.

Your RMF is to be fully documented and that documentation is to be kept up to date so that it can be reviewed:

- prior to your commencing operations, by an Independent Expert as a competent plan for a complying, relevant and adequate RMF that is fit for purpose
- annually thereafter while you remain approved to operate, by you and an Independent Expert, as a complying, relevant and adequate RMF that is fit for purpose.

In each instance of review and certification of your RMF by an Independent Expert, any Essential Recommendations of that Independent Expert are expected to be promptly implemented.

### **Compliance Demonstration**

You are to provide the Registrar with:

- the documentation of your RMF prior to commencing operations together with a certification of its being compliant and fit for purpose
- certifications annually while you remain approved to operate of your RMF being compliant and fit for purpose and that using your ELN does not constitute any greater risk to the completion of conveyancing transactions than the alternative paper system.

You are also to be able to demonstrate your compliance with the requirement within ten (10) business days of a request from the Registrar while you remain approved to operate.

### **Pre-commencement Documentation**

Prior to commencing operations, you are to provide the Registrar with:

- the documentation of your RMF, including your Risk Assessment and Risk Treatment Plan
- an Independent Certification and Independent Expert's review report on the compliance and adequacy of your RMF documentation.

### **Annual Documentation**

You are to provide the Registrar annually, as part of your Annual Report to the Registrar, with:

- a No-Change Certification that your RMF, as documented, operated and managed, remains unchanged and fit for purpose
- a Self-Certification that use of your ELN to complete conveyancing transactions involves no greater risk of error or fraud than use of the alternative paper system

- an Independent Certification and Independent Expert's review report on the compliance, and adequacy of your RMF as documented, operated and managed.

In the event that you are unable to provide a certification that your RMF remains unchanged and fit for purpose, you are to submit revised documentation of your RMF to the Registrar, in conjunction with an Independent Certification of, and Independent Expert's review report and recommendations on, the revised documentation.

### Independent Certifications

Your RMF is to be reviewed and certified prior to your commencing operations and annually thereafter while you remain approved to operate by an approved Independent Expert. This is to ensure your RMF is and remains compliant and fit for purpose.

It is expected that the Independent Expert conducting the review will:

- assess your documentation for completeness, currency, relevance, integrity and quality
- assess the content of your documentation for compliance with AS31000:2009
- assess your RMF as documented against similar systems in comparable situations
- assess the likelihood that your RMF will ensure that use of your ELN will create no greater risk of error or fraud than use of the alternative paper system for lodgment of conveyancing transactions with the Registrar
- make any Essential and Desirable Recommendations as a result of these assessments
- provide an opinion and Independent Certification as to the compliance and adequacy of your RMF in the circumstances of your ELN.

Additionally, once you have commenced operations, the Independent Expert will be expected to also:

- assess the operation and management of your RMF against your documentation of it
- assess the awareness, knowledge and understanding of your principals, directors, agents, employees and contractors of your RMF and their respective responsibilities in it
- assess the effectiveness of your RMF in practice by reference to compliance failures, incident statistics, performance measures and available industry benchmarks
- consult with key affected, relying and co-regulatory parties on the suitability of your RMF and each of its key characteristics and implementation features.

The Independent Expert will be expected to review their findings and recommendations with you and with your key affected, relying and co-regulatory parties before finalisation of its report, certification and any recommendations.

## 9.2 No Increased Risk of Fraud or Error

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### Requirement

You have an obligation to use reasonable endeavours to ensure that use of your ELN does not result in a greater risk of fraud or error in completing transactions compared to the risk of fraud or error in the alternative paper system.

### Purpose

The purpose of this requirement is to ensure confidence in the use of your ELN and the integrity of the Titles Register.

### Scope

This requirement applies to the operation of your ELN only.

### Compliance

It is expected that:

- the Risk Assessment in your RMF will include a comparative assessment of the residual risks of using your ELN and of the risks of using the alternative paper system
- the Risk Treatment Plan in your RMF will ensure the residual risks of using your ELN are no greater than the risks of using the alternative paper system.

### Compliance Demonstration

You are to provide a certification to the Registrar annually while you remain approved to operate.

### Annual Documentation

You are to include in each Annual Report to the Registrar a Self-Certification that use of your ELN involves no greater risk of error or fraud than use of the alternative paper system. In the event that no identified or unexpected risk events occurred during the period, you may give the Registrar a No-Change Certification.

To support this certification in each Annual Report to the Registrar, it is expected that you will be able to provide the Registrar, within ten (10) business days of a request from the Registrar while you remain approved to operate, details of

- all current risks identified and being managed by appropriate mitigation treatments in your RMF
- the incidence of identified risk events, if any, occurring during the period including descriptions of each risk event and the measures taken to deal with it

- the incidence of unexpected risk events, if any, occurring during the period including descriptions of each risk event and the measures taken to deal with it
- an analysis of whether each identified and unexpected risk event occurring during the period was peculiar to your ELN environment or could also have occurred in the paper system
- your comparative assessment of the risk of error or fraud in using your ELN to that of the alternative paper system.

## 10 Minimum System Requirements

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### Requirement

You have an obligation to ensure that your ELN meets minimum requirements determined by the Registrar.

### Purpose

The purpose of this requirement is to ensure your ELN offers a minimum level of service to industry and government.

### Scope

This requirement applies to the operation of your ELN only.

### Compliance

You are to provision your ELN with the Registrar's minimum system requirements with regard to:

- functionality provided to your Subscribers and the Registrar (refer Section 10.1(a))
- design and provisioning for adaptability to changed requirements (refer Section 10.1(b))
- data standard used for communications with Land Registry systems (refer Section 10.2)
- business rules applied in the preparation of transactions (refer Section 10.3)
- integrity assessment services made available to your Subscribers (refer Section 10.4)
- document and data unsigning capabilities available to your Subscribers (refer Section 10.5)
- templates used to create documents (refer Section 10.6)
- presentations for lodgment only after settlement becomes irrevocable (refer Section 10.7)
- presentations for lodgment only after duty has been assessed and paid or an irrevocable commitment to pay has been made (refer Section 10.8)
- presentations for lodgment only after applicable Land Registry fees have been collected or an irrevocable commitment to pay has been made (refer Section 10.9)
- any other requirement determined by the Registrar and advised to you from time to time.

### Compliance Demonstration

Your compliance with this requirement is to be demonstrated within ten (10) business days of a request from the Registrar while you remain approved to operate.

## 10.1 Functionality

### 10.1(a) Functionality for Subscribers and the Registrar

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#### Requirement

You have an obligation to ensure that your ELN provides sufficient functionality to enable:

- your Subscribers to comply with the Participation Rules, and
- the Registrar to comply with relevant legislative obligations and policy requirements.

#### Purpose

The purpose of this requirement is to ensure your Subscribers and the Registrar are not constrained in meeting their legal obligations by the functionality of your ELN.

#### Scope

This requirement applies to the operation of your ELN only.

#### Compliance

You are to provision your ELN with all of the functionality justifiably required by Subscribers and the Registrar to meet their legal obligations.

#### Compliance Demonstration

Your compliance with this requirement is to be demonstrated within ten (10) business days of a request from the Registrar while you remain approved to operate.

## 10.1(b) ELN Design and Provisioning

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### Requirement

You have an obligation to ensure that your ELN is soundly designed and provisioned.

### Purpose

The purpose of this requirement is to ensure your ELN is able to be readily maintained and enhanced to meet the future functionality requirements of Subscribers and the Registrar.

### Scope

This requirement applies to the operation of your ELN only.

### Compliance

You are to design, provision and maintain your ELN to comply with contemporary expectations of:

- being reliable, scalable and flexible
- utilising only software fully supported by its provider
- being architecturally sound with industry standard code design
- being compliant with industry standards for usability and accessibility.

In these regards, ISO25010:2011 provides relevant guidance.

### Compliance Demonstration

You are to provide the Registrar with certifications prior to commencing operations, and thereafter annually while you remain approved to operate, that your ELN complies with contemporary expectations of sound design and provisioning.

### Pre-commencement Documentation

Prior to commencing operations, you are to provide the Registrar with an Independent Certification and Independent Expert review report on your ELN's compliance with sound design and provisioning.

It is expected that the Independent Expert conducting the review for you will:

- assess your design and provisioning benchmarks and practices for completeness, currency, relevance, integrity and quality
- assess your design and provisioning benchmarks and practices against similar performance measures in comparable circumstances



- assess the awareness, knowledge and understanding of your principals, directors, agents employees and contractors of your design and provisioning benchmarks and practices
- assess the effectiveness of your design and provisioning benchmarks and practices by reference to compliance failures, incident statistics, performance measures, test exercises and CMPs prepared in accordance with your CMF
- 
- consult with key affected and relying parties on the suitability of your design and provisioning benchmarks and practices
- make any Essential and Desirable Recommendations as a result of these assessments
- provide an opinion as to the adequacy of your design and provisioning benchmarks and performance in the circumstances of your ELN.

The Independent Expert will be expected to review its findings and recommendations with you and with your key affected and relying parties before finalising its certification, report and any recommendations.

### **Annual Documentation**

You are to provide the Registrar annually, as part of your Annual Report to the Registrar, with a No-Change Certification that your design and provisioning benchmarks and performance remain unchanged. If in any respect they have changed, you are to provide an explanation of where they have changed with an Independent Certification and Independent Expert review report on the continuing compliance of your arrangements with this requirement.

## 10.2 Data Standard

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### Requirement

You have an obligation to:

- have a robust means of implementing the Registrar's data standard, including maintaining version control and managing backward compatibility as the standard evolves over time
- use the data standard for exchanging messages with the Land Registry electronically, including presenting documents and data to the Registrar for lodgment.

### Purpose

The purpose of this requirement is to ensure the Registrar can readily process documents, data and messages received from your ELN.

### Scope

This requirement applies to the operation of your ELN only.

### Compliance

You are to have proven processes and procedures in place for:

- implementing the Registrar's data standard for electronic communications with Land Registries
- maintaining version control over the standard's use by Land Registries
- managing backward compatibility of the standard's use by Land Registries.

### Compliance Demonstration

Your compliance with this requirement is to be demonstrated within ten (10) business days of a request from the Registrar while you remain approved to operate.

## 10.3 Apply Registrar's Business Rules

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### Requirement

You have an obligation to apply the Registrar's business rules to documents and data intended for presentation to the Registrar for lodgment and to have an orderly means of implementing, testing and keeping the rules that enable the Registrar to readily verify that each rule is being fully and properly applied in your ELN.

### Purpose

The purpose of this requirement is to ensure confidence in the use of your ELN to present documents and data to the Registrar for lodgment.

### Scope

This requirement applies to the operation of your ELN only.

### Compliance

It is expected that you will have documented processes and procedures in place for:

- receiving business rules and rule amendments from the Registrar
- implementing the Registrar's business rules and rule amendments in your ELN
- testing the effectiveness of your implementation of the Registrar's business rules and rule amendments
- enabling the Registrar to readily verify that each rule and rule amendment is being fully and properly applied in your ELN.

### Compliance Demonstration

Your compliance with this requirement is to be demonstrated within ten (10) business days of a request from the Registrar while you remain approved to operate.

## 10.4 Services to Enable Assessment of Integrity

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### Requirement

You have an obligation to make services available to your Subscribers that assist them in assuring the integrity of their conveyancing transactions completed using your ELN, including determination of the fees payable to the Registrar for lodgment.

### Purpose

The purpose of this requirement is to ensure that Subscribers can have confidence in the transactions completed using your ELN.

### Scope

This requirement applies to the operation of your ELN only.

### Compliance

It is expected you will have arrangements in place to monitor the use and non-use of your ELN and to identify and implement enhancements to these services that will assist your Subscribers in assuring the integrity of their conveyancing transactions completed using your ELN.

As a minimum, your arrangements are to include services for:

- Land Title Reference Verification (verifying that a land title reference is valid and suitable for electronic conveyancing)
- Registry Information Supply (obtaining details of a land title for use in preparing documents and data for lodgment)
- Lodgment Verification (verifying that documents and data are acceptable for lodgment)
- Title Activity Check (checking whether there has been any recent activity on a land title), and
- determining Lodgment Fees payable.

### Compliance Demonstration

Your compliance with this requirement is to be demonstrated within ten (10) business days of a request from the Registrar while you remain approved to operate.

## 10.5 Ability to Unsign Digitally Signed Documents

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### Requirement

You have an obligation to enable your Subscribers to unsign any document or data they have digitally signed using your ELN up until the time the process of settlement and/or lodgment of the transaction has begun.

### Purpose

The purpose of this requirement is to ensure confidence in the use of your ELN to prepare and sign documents.

### Scope

This requirement applies to the operation of your ELN only.

### Compliance

It is expected you will include a readily-identifiable and conveniently-actionable means of unsigning documents and data in your ELN that is available to Subscribers and their users in the event that the circumstances of a conveyancing transaction demand that a digitally signed document or data not be proceeded with prior to the time of settlement and/or lodgment.

### Compliance Demonstration

Your compliance with this requirement is to be demonstrated within ten (10) business days of a request from the Registrar while you remain approved to operate.

## 10.6 Document Templates

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### Requirement

You have an obligation to ensure that the correct document template supplied and determined by the Registrar is used by Subscribers when preparing instruments and documents using your ELN.

### Purpose

The purpose of this requirement is to ensure confidence in the use of your ELN to prepare documents acceptable to the Registrar.

### Scope

This requirement applies to the operation of your ELN only.

### Compliance

It is expected you will have arrangements in place for receiving, testing and commissioning document templates provided to you by the Registrar, including reliable means of managing multiple template versions and applying template versions according to specific start and end dates determined by the Registrar.

### Compliance Demonstration

Your compliance with this requirement is to be demonstrated within ten (10) business days of a request from the Registrar while you remain approved to operate.

## 10.7 Presentation Following Completion of Financial Settlement

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### Requirement

You have an obligation to ensure that no instrument forming part of a transaction involving financial settlement is presented to the Registrar for lodgment unless the settlement is irrevocable.

### Purpose

The purpose of this requirement is to ensure only completed conveyancing transactions are presented to the Registrar for lodgment.

### Scope

This requirement applies to the operation of your ELN only.

### Compliance

It is expected that you will have sufficient controls included in your ELN to prevent the presentation to the Registrar for lodgment of any document or data forming part of a settlement transaction while there is any uncertainty as to whether the settlement has been or will be completed.

### Compliance Demonstration

Your compliance with this requirement is to be demonstrated within ten (10) business days of a request from the Registrar while you remain approved to operate.

## 10.8 Presentation Following Duty Payment or Commitment

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### Requirement

You have an obligation to ensure that no document or data is presented to the Registrar for lodgment unless it has been assessed for duty and, where applicable, the duty has been paid or an irrevocable commitment to pay the duty has been obtained from or on behalf of the party liable for the duty.

### Purpose

The purpose of this requirement is to ensure that no dutiable document or data is presented to the Registrar for lodgment without certainty that the duty has or will be paid.

### Scope

This requirement applies to the operation of your ELN only.

### Compliance

It is expected that you will have sufficient controls included in your ELN to prevent the presentation to the Registrar for lodgment of any document or data on which duty is payable unless the duty has been paid or an irrevocable commitment to pay the duty has been obtained from or on behalf of the party liable for the duty.

### Compliance Demonstration

Your compliance with this requirement is to be demonstrated within ten (10) business days of a request from the Registrar while you remain approved to operate.



## 10.9 Land Registry Fees

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### Requirement

You have obligations to:

- ensure that no document or data is presented to the Registrar for lodgment unless the fees payable for lodgment have been collected by you or an irrevocable commitment to pay you has been obtained from or on behalf of the party liable for the fees
- pay or remit to the Registrar all fees payable or collected in the manner determined by the Registrar
- provide all information required by the Registrar for the identification and reconciliation of all fees paid or remitted.

### Purpose

The purpose of this requirement is to ensure the Registrar receives all fees due for the services provided to your ELN.

### Scope

This requirement applies to the operation of your ELN only.

### Compliance

It is expected you will have appropriate arrangements including controls in place to ensure that:

- no Registry Instrument is presented to the Registrar for lodgment unless the Lodgment Fee has been collected or you have obtained an irrevocable commitment to pay the fee from or on behalf of the party liable for the fee
- all Lodgment Fees collected and all Information Fees payable are remitted or paid to the Registrar
- all information required by the Registrar to identify and reconcile all fees paid, remitted and payable are provided to the Registrar.

An irrevocable commitment to pay Lodgment Fees may, for example, be obtained in the Participation Agreement each Subscriber enters into with you.

The collection of Lodgment Fees on behalf of, and their remittance to, the Registrar is to be under an agency agreement you enter into with the Registrar prior to commencing operations.

### Compliance Demonstration

Your compliance with this requirement is to be demonstrated within ten (10) business days of a request from the Registrar while you remain approved to operate.

## 11 Minimum Performance Levels

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### Requirement

You have an obligation to ensure your ELNO System achieves and maintains the Performance Levels.

### Purpose

The purpose of this requirement is to ensure your Subscribers receive a minimum level of service.

### Scope

This requirement applies to you and to the operation of your ELNO System, including your ELN.

### Specific Inclusions

You are required to achieve, as a minimum, the Performance Levels set out in Schedule 2 of the Operating Requirements. These Performance Levels include specific measures of:

- Service Availability
- Service Reliability
- System Responsiveness
- System Resilience
- Incident Resolution
- Problem Identification.

### Compliance

It is expected that your ELNO System will meet or exceed the Performance Levels at all times and that you will have sufficient means of monitoring your performance to demonstrate your compliance with the Performance Levels.

### Compliance Demonstration

You are to publish records of your ELNO System's performance in your Monthly Report and provide the Registrar annually while you remain approved to operate with a certification that you have complied with the Performance Levels for the period.

### Monthly Documentation

Your Monthly Report is to include, as a minimum, the performance of your ELN for the preceding month against the minimum level required for each Performance Level set out in Schedule 2 of the Operating Requirements. You may also include reporting on additional performance measures in the Report.

It is also expected that you will maintain and publish historical performance statistics that will enable identification of trends in performance over at least the previous twelve (12) months as an indication of your ELN's likely future performance.

Your Monthly Reports are expected to be sufficiently detailed and self-explanatory to enable ready assessment of you and your ELNO System's performance over the preceding month and year.

### **Annual Documentation**

You are to provide the Registrar annually, as part of your Annual Report to the Registrar, with a Self-Certification of your and your ELNO System's having complied with the Performance Levels for the period.

It is expected you will base your Self-Certifications of compliance each year on detailed records of performance against each of the six Performance Levels in Schedule 2 of the Operating Requirements.

In the event you cannot provide a Self-Certification of compliance in your Annual Report to the Registrar, it is expected you will provide an explanation of the cause of the non-compliance and a description of the remedial actions you have taken.

### 12.1 Business Continuity and Disaster Recovery Management Program

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#### Requirement

You have an obligation to establish, implement, operate, monitor, review, maintain, test and keep current a documented, detailed and comprehensive Business Continuity and Disaster Recovery Management Program (BCDRMP).

#### Purpose

The purpose of the requirement is to ensure you can continue to operate your ELN with the minimum of service disruption to your Subscribers and the Registrar.

#### Scope

This requirement applies to the operation of your ELN only.

#### Compliance

It is expected that your BCDRMP will be fully documented and include at least:

- identification and risk rating of all foreseeable disaster and business and service interruption scenarios
- development of appropriate risk mitigation measures, including essential system design features, for each foreseeable disaster and business and service interruption scenario
- consultation with key affected, relying and co-regulatory parties on acceptable degraded service standards and scenarios
- determination of essential system design and operation features and characteristics
- provisioning of back-up facilities, for regular and emergency use
- specification and programming of essential maintenance activities
- documentation of disaster recovery event invocation, communication and management protocols
- specific provisions for achieving the Performance Levels in Schedule 2 of the Operating Requirements
- planning, conduct and evaluation of regular test event exercises
- incorporation of lessons learned from each test event exercise.

AS5050:2010 provides general guidance and ISO24762:2008 provides specific guidance on the development, documentation and operation of an effective BCDRMP. Your BCDRMP is to comply with these standards having regard for the particular circumstances of your ELN.

## Compliance Demonstration

You are to provide your BCDRMP documentation to the Registrar prior to commencing operations with a certification of its being a compliant and adequate plan for a BCDRMP. Annually thereafter while you are approved to operate you are to provide the Registrar with a certification that your BCDRMP, as documented, implemented and managed, is effective, compliant and fit for purpose.

## Pre-commencement Documentation

Prior to commencing operations, you are to provide the Registrar with:

- your BCDRMP documentation
- an Independent Certification and Independent Expert review report on the compliance, adequacy and fitness for purpose of your BCDRMP documentation.

## Annual Documentation

You are to provide the Registrar annually, as part of your Annual Report to the Registrar, with:

- a No-Change Certification that your BCDRMP, as documented, implemented and managed, remains unchanged and fit for purpose
- an Independent Certification and Independent Expert review report on the compliance, adequacy and fitness for purpose of your BCDRMP as documented, implemented and managed.

In the event that you are unable to provide a No-Change Certification that your BCDRMP remains unchanged and fit for purpose, you are to provide revised documentation of your BCDRMP to the Registrar, in conjunction with the Independent Certification, Independent Expert review report and recommendations of your BCDRMP as currently documented, implemented and managed.

## Independent Certifications

Your BCDRMP documentation is to be reviewed and certified prior to your commencing operations and your BCDRMP, as documented, implemented and managed, is to be certified annually thereafter while you remain approved to operate by an Independent Expert. This is to ensure your BCDRMP is and remains fit for purpose.

It is expected that the Independent Expert conducting the review of your BCDRMP documentation prior to your commencing operations will:

- assess your BCDRMP documentation for completeness, currency, relevance, integrity and quality
- assess the content of your BCDRMP documentation for compliance with relevant industry standards

- assess your BCDRMP as documented against similar programs in comparable situations
- make any Essential and Desirable Recommendations as a result of these assessments
- provide an opinion and certification as to the compliance, adequacy and fitness for purpose of your BCDRMP in the circumstances of your ELN.

Additionally, once you have commenced operations, the Independent Expert will be expected to also:

- assess the implementation and operation of your BCDRMP against your documentation
- assess the awareness, knowledge and understanding of your principals, directors, agents employees and contractors of your BCDRMP and their respective responsibilities in it
- assess the effectiveness of your BCDRMP in practice by reference to compliance failures, incident statistics, performance measures, test exercises and available industry benchmarks
- consult with key affected, relying and co-regulatory parties on the suitability of your BCDRMP and each of its key characteristics and implementation features.

The Independent Expert will be expected to review its findings and recommendations with you and with key affected, relying and co-regulatory parties before finalisation of its report, certification and any recommendations.

## 12.2 Review

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### Requirement

You have an obligation to have your BCDRMP regularly reviewed by an Independent Expert. You also have an obligation to implement any Essential Recommendations made by the Independent Expert as a result of such a review.

### Purpose

The purpose of this requirement is to ensure your BCDRMP remains compliant and fit for purpose.

### Scope

This requirement applies to the operation of your ELN only.

### Compliance

You are to provide the Registrar annually with an Independent Expert report and certification that your BCDRMP is compliant and fit for purpose.

It is expected that the Independent Expert conducting the review will at least:

- assess the quality, appropriateness and extent of your BCDRMP documentation
- assess the quality and extent of your implementation of your BCDRMP
- assess your records of test exercises and real invocations of your BCDRMP during the period
- research and assess contemporary best practice in BCDRMP documentation and implementation
- review and assess the development of International and Australian Standards for BCDRMP
- consult with you and with key affected, relying and co-regulatory parties on relevant issues to do with your BCDRMP
- develop and justify a conclusion on the compliance, adequacy and fitness for purpose of your BCDRMP
- make appropriate Essential and Desirable Recommendations for enhancing the compliance and effectiveness of your BCDRMP
- present you with a written report setting out all findings, conclusions and recommendations from the review.

### Compliance Demonstration

Your compliance with this requirement is to be demonstrated in conjunction with the Independent Certification of your BCDRMP required to be included in each Annual Report to the Register while you remain approved to operate.

### 13.1 Change Management Framework

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#### Requirement

You have an obligation to establish, implement, operate, monitor, review, maintain and keep current a documented, detailed and comprehensive Change Management Framework (CMF).

#### Purpose

The purpose of the requirement is to ensure that changes made to your ELNO System and procedures are planned and implemented in an orderly manner.

#### Scope

This requirement applies to the operation of your ELNO System, including your ELN.

#### Compliance

Your CMF is to be a comprehensive, documented framework of policies, practices and procedures from which specific Change Management Plans (CMPs) can be readily prepared for making specific system, procedural and service changes relevant to:

- your obligations under the Operating Requirements
- the use of your ELNO System by your Subscribers
- the operation of your ELNO System, including your ELN.

Your CMF is to be used as the consistent and comprehensive basis for your preparation of a situation-specific CMP in each instance of a:

- system or software release
- functionality or service change
- significant maintenance activity.

In each instance, your CMF is to provide a framework for addressing the particular context, characteristics, requirements and implications of the proposed change to ensure effective planning, management and control of all of the actions required by all parties irrespective of the reason for or source of the change.

Your CMF is to cover both changes initiated by the Registrar and changes initiated by you or other relying parties in response to demands from your Subscribers or market conditions. In this regard, your CMF is expected to provide for at least:



- new system and software module releases
- changes to service infrastructure
- changes to data standards and communications protocols
- changes to data requirements, document templates and/or transaction assurance services
- changes requested by the Registrar in response to legislative obligations and notified policy requirements
- changes arising from legislative change generally
- changes delivering functionality and service enhancements to users
- changes arising in relation to system maintenance activities
- emergency changes responding to specific incidents such as a security breach
- changes required to implement a direction of the Registrar under the Operating Requirements or your Operating Agreement with the Registrar.

The preparation of each situation-specific CMP consistent with your CMF is to involve all affected and relying parties collaboratively in assessing impacts, costs, risks and tasks to be completed. In this regard, it is expected that your CMF will make provision for each CMP to include at least:

- notice to all affected and relying parties of the proposed change providing details of:
  - (a) the reason for the change and its significance to all parties
  - (b) the tasks expected to be required to effect the proposed change including comprehensive testing and certification of correct operation
  - (c) the risks associated with the proposed change and how they are to be mitigated and/or allocated
  - (d) alternative strategies for mitigating risks associated with the proposed change
  - (e) costs and fees associated with the proposed change and who is to bear them
  - (f) a preliminary schedule for implementing the proposed change
  - (g) a timetable for agreeing a final version of the CMP to be implemented
- a mechanism for all affected and relying parties to agree matters related to the proposed change
- thorough testing of the change to the satisfaction of all affected and relying parties before implementation and commissioning
- reasonable notice to all affected and relying parties of when the change is to be implemented and commissioned
- implementation and commissioning of the change in a manner that minimises disruption to all affected and relying parties and interference with any systems connected to your ELNO System for the purposes of carrying out conveyancing transactions.

In the definition and documentation of your CMF, ISO20000:2011 provides relevant guidance.

## Specific Inclusions

Your CMF is expected to specifically provide standard and proven methodologies for:

- assessing the business impacts of a proposed change and their significance
- assessing the costs involved in a proposed change and how they will be funded
- assessing the risks involved in a proposed change and how they will be mitigated
- communicating and consulting with all affected and relying parties and key stakeholder groups about a proposed change
- agreeing the scope and content of a proposed change with all affected and relying parties and key stakeholder groups
- planning and documenting the steps necessary to implement, test and commission a proposed change.

## Compliance Demonstration

Your CMF documentation is to be provided to the Registrar prior to commencing operations and, annually thereafter while you remain approved to operate, you are to provide the Registrar with a certification or revised documentation.

## Pre-commencement Documentation

Prior to commencing operations, you are to provide the Registrar with your CMF documentation.

## Annual Documentation

You are to provide the Registrar annually, as part of your Annual Report to the Registrar, with a No-Change Certification that your CMF, as documented and implemented, is unchanged and fit for purpose.

To support your certification, it is expected that you will maintain records of:

- the number, nature and content of all CMPs prepared in accordance with your CMF during the previous twelve (12) months
- the number, nature and content of any CMPs prepared at variance from your CMF during the previous twelve (12) months together with the reasons for each variation.

It is expected that you will be able to provide these records within ten (10) business days of a request from the Registrar while you remain approved to operate.

In the event that you are unable to provide a certification, you are to provide revised documentation of your CMF to the Registrar with details of:

- the nature and content of any material changes made to your CMF during the period
- the circumstances and rationale for each material change made to your CMF during the period
- any inadequacies identified in your CMF during the period and how each was addressed or is intended to be addressed
- your assessment of the general suitability of your CMF for the ongoing management of your obligations under the Operating Requirements.

## 13.2 No Changes other than in accordance with Change Management Framework

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### Requirement

You have an obligation not to make changes to your ELNO System unless they are done so in accordance with a specific CMP prepared in compliance with your CMF.

### Purpose

The purpose of this requirement is to ensure that the only changes made to your ELNO System are in compliance with your CMF.

### Scope

This requirement applies to the operation of your ELNO System, including your ELN.

### Compliance

You are required to make all changes to your ELNO System, including significant maintenance, in accordance with a CMP complying with your CMF.

### Compliance Demonstration

Your compliance with this requirement is to be demonstrated within ten (10) business days of a request from the Registrar while you remain approved to operate.

## 14 Subscribers

### 14.1 Subscriber Registration

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#### Requirement

You have an obligation to establish, review, implement and keep current a Subscriber Registration Process (SRP).

#### Purpose

The purpose of this requirement is to ensure that:

- only eligible persons are registered and remain registered as Subscribers to your ELNO System, and
- only those Subscribers legally entitled to carry out conveyancing work represent transacting parties in using your ELNO System.

#### Scope

This requirement applies to the operation of your ELN only.

#### Compliance

Your SRP is expected to be a comprehensive, documented process that:

- covers the entire lifecycle of a Subscriber registration to use your ELN, from first applying to be registered as a Subscriber to after ceasing to be a Subscriber to your ELN
- is your principal tool for managing entitlement to use your ELN
- includes provisions for mitigating the risks of registering an ineligible Subscriber and in allowing an unentitled Subscriber to represent a transacting party in using your ELN.

Your SRP is to ensure you only register Subscribers to use your ELN that:

- satisfy the Subscriber eligibility criteria set out in the Participation Rules
- satisfy the Subscriber Identity Verification Standard in the Operating Requirements
- enter into a Participation Agreement with you that includes a commitment to comply with the Participation Rules
- are legally entitled, if necessary, to represent transacting parties in the jurisdiction where the land involved in the transaction is located.

Your SRP is expected to provide for:

- publishing the processes for applying to be a Subscriber to your ELN and for your assessing those applications
- applying and recording each applicant's (and if necessary the person representing them) compliance with the Subscriber Identity Verification Standard in the Operating Requirements
- verifying the authority of an applicant (or of the person representing the applicant) to sign your Participation Agreement
- verifying that the person signing the Participation Agreement is the same person whose identity and authority to sign has been verified
- applying the eligibility criteria for Subscribers set out in the Participation Rules
- creating and maintaining a register or registers of your Subscribers
- obtaining and verifying all data necessary to assess initial and ongoing compliance with the eligibility criteria for Subscribers set out in the Participation Rules
- receiving notifications from credentialing authorities, including legal and conveyancing profession regulators and statutory and market insurers, of non-renewals, suspensions or cancellations of required credentials
- making adequate training resources and information available to successful applicants
- monitoring the continuing compliance of your Subscribers with their eligibility criteria and the Participation Rules generally
- applying restriction, suspension or termination of your Subscriber registrations at the request of the Registrar or otherwise in accordance with the Participation Rules and notifying the Registrar accordingly
- permanently recording in your registers of Subscribers at least the following data items and documents:
  - (a) the application to be a Subscriber
  - (b) discrete data items contained in the application
  - (c) applicant's signature
  - (d) signed Participation Agreement
  - (e) applicant's identity documents sighted and verified in accordance with the Subscriber Identity Verification Standard in the Operating requirements
  - (f) evidence of the applicant's identity and authority to sign the Participation Agreement where the applicant signs for the Subscriber
  - (g) applicant's eligibility credentials verified, including where necessary evidence of the insurance required to be held
  - (h) advices and notifications obtained from third parties as to the applicant's character and reputation
  - (i) notifications received from credentialing authorities
  - (j) current status of the Subscriber

(k) administrative actions taken affecting the Subscriber's registration status.

## Specific Inclusions

Your SRP is to specifically provide for:

- treating all applicants seeking to be registered as Subscribers to your ELN fairly and transparently
- maintaining a register of all of your Subscribers including those whose registration has expired or been restricted, suspended, terminated or re-instated, and when those events occurred
- offering successful applicants a Participation Agreement that does not in any way conflict with or adversely affect the Participation Rules
- making training resources and information available to successful applicants in how to use your ELN
- monitoring the compliance of your Subscribers with the Participation Rules, in particular continuing compliance with their insurance and professional standing eligibility requirements
- assessing instances of Subscriber non-compliance or likely non-compliance with the Participation Rules, taking action as justified and notifying the Registrar of what has happened and why
- implementing directions from the Registrar to restrict, suspend or terminate a Subscriber's registration or use of your ELN
- including in your register of Subscribers reference to the Participation Agreement entered into with the Subscriber and any amendments made subsequently together with the dates of those events
- including in your register of Subscribers the details of each User entitled to use your ELN on behalf of the Subscriber
- complying with Privacy Laws on the collection, storage and use of personal information.

## Compliance Demonstration

You are to provide your SRP documentation to the Registrar prior to commencing operations and annually thereafter while you remain approved to operate you are to provide the Registrar with a certification.

## Pre-commencement Documentation

Prior to commencing operations, you are to provide your SRP documentation to the Registrar.

## Annual Documentation

You are to provide the Registrar annually, as part of your Annual Report to the Registrar, with a Self-Certification that your SRP remains compliant with the Operating Requirements. It is expected that to provide this certification, you will make and retain comprehensive records of:

- the number of Subscriber applications received during the period and the number and percentage approved
- the number of Subscriber applications rejected during the period and the reasons by category for the rejections
- the nature and content of any material changes made to your SRP during the period
- the circumstances and rationale for each material change made to your SRP during the period
- any inadequacies identified in your SRP during the period and how each was addressed or is intended to be addressed
- your assessment of the general and continuing suitability of your SRP for ongoing management of your obligations in regard to Subscriber registrations.

It is expected that you will be able to provide the Registrar with these records in support of a certification within ten (10) business days of a request to do so.



## 14.2 Unreasonable Barriers or Refusal to Accept Subscriber

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### Requirement

You have obligations not to:

- impose any unreasonable barriers to applying to become a Subscriber to your ELN
- unreasonably refuse to accept any applicant to be a Subscriber to your ELN who is capable of meeting the eligibility criteria for Subscribers in the Participation Rules
- impose any unreasonable barriers on a Subscriber using your ELN.

### Purpose

The purpose of this requirement is to maximise the use of your ELN.

### Scope

This requirement applies to the operation of your ELN only.

### Compliance

It is expected that your SRP will include practices, procedures and controls directed at ensuring fair and transparent processes for receiving and assessing Subscriber applications and for providing access to your ELN, and that you will implement a comprehensive and contemporary customer satisfaction and complaints handling processes to continually monitor your compliance with this requirement. In this regard, AS10002:2006 provides guidance on the establishment of such processes.

### Compliance Demonstration

Your compliance with this requirement is to be demonstrated in the documentation of your SRP provided prior to your commencing operations and thereafter monthly in the publication of complaints received and annually in the certification provided while you remain approved to operate.

### Pre-commencement Documentation

Prior to commencing operations, you are to provide your SRP documentation to the Registrar.

### Monthly Documentation

Each month you are to publish in your Monthly Report the numbers of complaints you received in the prior period concerning refusal to register an applicant as a Subscriber or to provide a Subscriber access to your ELN in accordance with Category Four of Schedule 3 of the Operating Requirements.

### Annual Documentation

You are to provide the Registrar annually, as part of your Annual Report to the Registrar, with a Self-Certification that your SRP remains in compliance with the Operating Requirements.

To provide your certification it is expected that you will conduct a review of the relevant practices, procedures and controls in your SRP and of the incidence of relevant complaints received during the period and be able to provide the documentation of your review within ten (10) business days of a request from the Registrar while you remain approved to operate.

## 14.3 Maintain Subscriber and User Register

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### Requirement

You have an obligation to maintain a register of all persons entitled to use your ELN, including those persons whose registration has expired or been restricted, suspended, terminated or re-instated.

### Purpose

The purpose of this requirement is to ensure confidence in the use of and reliance on your ELN.

### Scope

This requirement applies to the operation of your ELN only.

### Compliance

It is expected that your compliance with this requirement will be part of your SRP.

### Compliance Demonstration

Your SRP documentation, including your processes for complying with this requirement, is to be provided to the Registrar prior to your commencing operations and annually thereafter while you remain approved to operate you are to provide the Registrar with a certification.

### Pre-commencement Documentation

Prior to commencing operations, you are to provide your SRP documentation to the Registrar

### Annual Documentation

You are to provide the Registrar annually, as part of your Annual Report to the Registrar, with a No-Change Certification that your SRP including your processes and procedures for maintaining a register of all persons entitled to use your ELN remain unchanged.

To provide your certification it is expected that you will conduct a review of the relevant practices, procedures and controls in your SRP and be able to provide the documentation of your review within ten (10) business days of a request from the Registrar while you remain approved to operate.

In the event that you are not able to provide a No-Change Certification, you are to provide revised documentation of your SRP.

## 14.4 Evidence of Subscriber Insurance and Verification of Identity

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### Requirement

You have an obligation to obtain and retain:

- evidence of each of your Subscriber's holding the insurance they are required to hold under the Participation Rules at all times they remain registered as a Subscriber
- evidence supporting your verification of the identity of each of your Subscribers or of the person representing them and their authority to sign your Participation Agreement on the Subscriber's behalf.

### Purpose

The purpose of this requirement is to ensure confidence in the use of and reliance on your ELN.

### Scope

This requirement applies to the operation of your ELN only.

### Compliance

It is expected that your compliance with this requirement will be part of your SRP.

### Compliance Demonstration

Your SRP documentation, including your processes for complying with this requirement, is to be provided to the Registrar prior to your commencing operations and annually thereafter while you remain approved to operate you are to provide the Registrar with a certification.

### Pre-commencement Documentation

Prior to commencing operations, you are to provide your SRP documentation to the Registrar

### Annual Documentation

You are to provide the Registrar annually, as part of your Annual Report to the Registrar, with a No-Change Certification that your processes for ensuring your Subscribers obtain and retain their required insurances and for your recording of evidence supporting your verification of the identity of your Subscribers or of the person representing them and their authority to sign your Participation Agreement on the Subscriber's behalf remain unchanged.

To provide your certification it is expected that you will conduct a review of the relevant practices, procedures and controls in your SRP and provide the documentation of your review within ten (10) business days of a request from the Registrar while you remain approved to operate. In the event that you are not able to provide a No-Change Certification, you are to provide revised documentation of your SRP.

## 14.5 Participation Agreement and Participation Rules

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### Requirement

You have an obligation to ensure your Participation Agreement does not in any way conflict with the Participation Rules each of your Subscribers are required to comply with under the ECNL.

### Purpose

The purpose of this requirement is to ensure confidence in the use of and reliance on your ELN.

### Scope

This requirement applies to the operation of your ELN only.

### Compliance

Your Participation Agreement is not to contain any express or implied term that could qualify, derogate from or otherwise prejudicially affect any Subscriber obligation set out in the Participation Rules.

### Compliance Demonstration

You are to provide your Participation Agreement to the Registrar prior to commencing operations and, annually thereafter while you remain approved to operate, you are to provide a certification.

### Pre-Commencement Documentation

You are to provide your Participation Agreement (or Agreements if you intend to use more than one) to the Registrar prior to commencing operations.

### Annual Documentation

You are to provide the Registrar, as part of your Annual Report to the Registrar, with a No-Change Certification that your Participation Agreement or Agreements remain unchanged.

It is expected that to support your certification you will maintain a record of the creation and amendment of your Participation Agreement or Agreements that can be provided to the Registrar within ten (10) business days of a request.

If you are not able to provide a No-Change Certification, you are to provide the Registrar with your revised Agreement or Agreements.

## 14.6 Training

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### Requirement

You have an obligation to make adequate training resources and information available to your Subscribers, including their users, in relation to their use of your ELN so that they can become proficient in its use.

### Purpose

The purpose of this requirement is to ensure confidence in the use of and reliance on your ELN and to maximise its use.

### Scope

This requirement applies to the operation of your ELN only.

### Compliance

It is expected that your SRP will include the training resources and information made available to your Subscribers and their Users and that you will implement a comprehensive and contemporary customer satisfaction and complaints handling processes to continually monitor your compliance with this requirement. In this regard, AS10002:2006 provides guidance on the establishment of such processes.

### Compliance Demonstration

Your compliance with this requirement is to be demonstrated in the documentation of your SRP provided prior to your commencing operations and thereafter, monthly in the incidence of complaints received and annually in the certification of continuing compliance provided, while you remain approved to operate.

### Pre-commencement Documentation

Prior to commencing operations, you are to provide your SRP documentation to the Registrar.

### Monthly Documentation

Each month you are to publish in your Monthly Report the numbers of complaints you received in the prior period concerning the training resources and information made available to Subscribers in accordance with Category Four of Schedule 3 of the Operating Requirements.

### Annual Documentation

You are to provide the Registrar annually, as part of your Annual Report to the Registrar, with a Self-Certification that your SRP, including the adequacy of the training resources and information made available to your Subscribers, remains in compliance with the Operating Requirements.

To provide this certification it is expected that you will have conducted a review of the training resources and information made available to your Subscribers and of the incidence of relevant complaints received during the period and be able to provide the documentation of your review within ten (10) business days of a request from the Registrar while you remain approved to operate.

If you are not able to provide a No-Change Certification, you are to provide the Registrar with your revised SRP documentation.

## 14.7 Monitoring of Subscribers and Suspension or Termination

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### Requirement

You have an obligation to continuously monitor the compliance of your Subscribers with their obligations under the Participation Rules, including the eligibility criteria for Subscribers, and when necessary to notify the Registrar of any action you take to restrict, suspend or terminate access to your ELN.

### Purpose

The purpose of this requirement is to ensure confidence in the use of and reliance on your ELN.

### Scope

This requirement applies to the operation of your ELN only.

### Compliance

It is expected that your compliance with this requirement will be part of your SRP.

If your monitoring of your Subscribers indicates any material non-compliance with their eligibility criteria or other material breach or likely material breach of the Participation Rules, you are to assess whether any action is justified to restrict, suspend or terminate the Subscriber's registration or access to your ELN in accordance with your SRP and if necessary take the action and immediately notify the Registrar in writing.

When notifying the Registrar of a Subscriber's registration or access to your ELN having been restricted, suspended or terminated, you are to advise the Registrar of the:

- legal name of the Subscriber
- details of the material breach or impending material breach of the Participation Rules
- reason for your belief that a material breach has occurred or is likely to occur
- action you have taken or intend to take.

### Compliance Demonstration

Your compliance with this requirement is to be demonstrated in the documentation of your SRP provided prior to commencing operations.

### Pre-commencement Documentation

Prior to commencing operations, you are to provide your SRP documentation, including the processes and procedures used to continuously monitor the compliance of your Subscribers and take appropriate action where necessary, to the Registrar.



## 14.8 ELNO must Restrict, Suspend or Terminate Subscriber if Directed by Registrar

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### Requirement

You have an obligation to restrict, suspend or terminate a Subscriber's registration and use of your ELN if directed to do so by the Registrar.

### Purpose

The purpose of this requirement is to ensure confidence in your ELN and to protect the integrity of the Titles Register.

### Scope

This requirement applies to the operation of your ELN only.

### Compliance

It is expected that your compliance with this requirement will be part of your SRP.

### Compliance Demonstration

Your compliance with this requirement is to be demonstrated in the documentation of your SRP provided prior to commencing operations.

### Pre-commencement Documentation

Prior to commencing operations, you are to provide your SRP documentation, including the processes and procedures used to implement a direction from the Registrar to restrict, suspend or terminate a Subscriber, to the Registrar.

It is expected that you will be able to provide the Registrar with details of the actions taken to comply with this requirement within ten (10) business days of a request to do so.

## 14.9 Consequences of Restriction, Suspension or Termination

---

### Requirement

You have an obligation to ensure any Subscriber whose registration or use of your ELN has expired or been restricted, suspended or terminated cannot use your ELN otherwise than in accordance with their status.

You also have obligations to:

- allow any documents already signed by the Subscriber prior to their registration or use of your ELN having expired or been restricted, suspended or terminated to be presented to the Registrar for lodgment if you are satisfied no party would be disadvantaged
- allow another Subscriber authorised by the relevant transacting party to take over the role of the Subscriber whose registration status has been changed for the purposes of completing an incomplete transaction.

### Purpose

The purpose of this requirement is to ensure confidence in the use of and reliance on your ELN.

### Scope

This requirement applies to the operation of your ELN only.

### Compliance

It is expected that your compliance with this requirement will be part of your SRP.

### Compliance Demonstration

Your compliance with this requirement is to be demonstrated in the documentation of your SRP provided prior to commencing operations.

### Pre-commencement Documentation

Prior to commencing operations, you are to provide your SRP documentation, including the processes and procedures used to provide your Subscribers with access to your ELN and to enable completion of any transactions affected by restriction, suspension or termination of a Subscriber, to the Registrar.

It is expected that you will be able to provide the Registrar with details of the actions taken to comply with this requirement within ten (10) business days of a request to do so.

## 15 Compliance Monitoring and Reporting

### 15.1 Monitor Compliance

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#### Requirement

You have an obligation to continually monitor your compliance with the Operating Requirements.

#### Purpose

The purpose of this requirement is to ensure confidence in you and your ELNO System, including your ELN.

#### Scope

This requirement applies to you and to the operation of your ELNO System, including your ELN.

#### Compliance

You are to have processes in place for continually monitoring your compliance with the Operating Requirements.

It is expected you will have documented processes in place for:

- ensuring you have a compliance program for each Operating Requirement
- including a performance monitoring function in each of your compliance programs
- maintaining records of the performance of each of your compliance programs
- regularly reviewing the performance of each of your compliance programs
- regularly assessing the risk of each program not adequately mitigating non-compliance.

AS3806:2006 provides guidance on establishing and managing effective compliance programs and AS31000:2009 provides guidance on conducting regular risk assessments of your compliance programs to ensure they remain adequate, complete, contemporary and fit for purpose.

#### Compliance Demonstration

Your compliance with this requirement is to be demonstrated by a certification annually while you remain approved to operate.

#### Annual Documentation

You are to provide the Registrar, as part of your Annual Report to the Registrar, with a Self-Certification of your having continually monitored your compliance with the Operating Requirements.

To support your certification, it is expected you will have conducted a review of your relevant processes and be able to provide the documentation of your review within ten (10) days of a request from the Registrar.

If you are not able to provide the certification, it is expected you will provide an explanation for the non-compliance and details of the remedial action you have taken.

## 15.2 Demonstrate Compliance

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### Requirement

You have an obligation to demonstrate your compliance by:

- producing Specified Documents, including an Annual Report to the Registrar, and publishing Monthly Reports
- providing Self-Certifications, including No-Change Certifications
- obtaining and supplying Independent Certifications, including Independent Expert review reports and recommendations
- supplying any other information requested by the Registrar.

### Purpose

The purpose of this requirement is to ensure continuing confidence in you and your ELNO System, including your ELN.

### Scope

This requirement applies to you and to the operation of your ELNO System, including your ELN.

### Compliance

You are to provide the Registrar with documentation and certifications as set out in Schedule 3 of the Operating Requirements.

### Compliance Demonstration

You compliance with this requirement is to be demonstrated by providing documentation and/or certifications to the Registrar when applying for approval, prior to commencing operations and monthly and annually thereafter while you remain approved to operate.

### Application Documentation

You are to provide the documentation and certifications set out in Category One of Schedule 3 of the Operating Requirements.

### Pre-commencement Documentation

You are to provide the documentation and certifications set out in Category Two of Schedule 3 of the Operating Requirements at least eight (8) weeks prior to your nominated date for commencing operations.

### **Monthly Documentation**

You are to publish and provide the documentation set out in Category Four of Schedule 3 of the Operating Requirements within ten (10) business days of the end of each month while you remain approved to operate.

### **Annual Documentation**

You are to provide the documentation and certifications set out in Category Three of Schedule 3 of the Operating Requirements as part of your Annual Report to the Registrar within three (3) months of the end of each financial year while you remain approved to operate.

You are also to provide documentation and certifications substantiating your compliance within ten (10) business days of a request from the Registrar while you remain approved to operate.

## 15.3 Inability to give a No-Change Certification

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### Requirement

You have an obligation to re-establish your compliance with the Operating Requirements if at any time you are unable to give a No-Change Certification.

### Purpose

The purpose of this requirement is to ensure that any changes in your compliance arrangements are brought to the Registrar's notice and your compliance with the relevant requirement is promptly re-established

### Scope

This requirement applies to you and to the operation of your ELNO System, including your ELN.

### Compliance

You are to re-establish your compliance whenever you are unable to provide a No-Change Certification as set out in Schedule 3 of the Operating Requirements.

### Compliance Demonstration

Your compliance with this requirement is to be demonstrated when necessary and within ten (10) business days of a request from the Registrar while you remain approved to operate.

## 15.4 When to Demonstrate Compliance

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### Requirement

You have an obligation to demonstrate your compliance with particular requirements in the Operating Requirements at specified times.

### Purpose

The purpose of this requirement is to ensure continuing confidence in you and your ELNO System, including your ELN.

### Scope

This requirement applies to you and to the operation of your ELNO System, including your ELN.

### Compliance

You are to provide the Registrar with documents and certifications at the times set out in Schedule 3 of the Operating Requirements.

### Compliance Demonstration

Your compliance with this requirement is to be demonstrated by the timely and complete provision of documentation and certifications at the times set out in Schedule 3 of the Operating Requirements.

You are also to provide documentation and certifications substantiating your compliance within ten (10) business days of a request from the Registrar while you remain approved to operate.



## 15.5 Demonstrate Compliance at any Time

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### Requirement

You have an obligation to demonstrate your compliance with the Operating Requirements when requested by the Registrar.

### Purpose

The purpose of this requirement is to ensure confidence in you and your ELNO System, including your ELN.

### Scope

This requirement applies to you and to the operation of your ELNO System, including your ELN.

### Compliance

You are to provide the Registrar with documents and certifications substantiating your compliance within ten (10) business days of a request.

### Compliance Demonstration

Your compliance with this requirement is to be demonstrated by your timely and complete response to requests from the Registrar.

## 15.6 Provision of Further Information

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### Requirement

You have an obligation to satisfy any written request from the Registrar for further information, including documentation and certifications, to demonstrate your compliance with the Operating Requirements within a reasonable time determined by the Registrar.

### Purpose

The purpose of this requirement is to ensure confidence in you and your ELNO System, including your ELN.

### Scope

This requirement applies to you and to the operation of your ELNO System, including your ELN.

### Compliance

You are to provide the further information requested by the Registrar within the time determined by the Registrar.

### Compliance Demonstration

Your compliance with this requirement is to be demonstrated by your timely and complete response to requests from the Registrar while you remain approved to operate.

## 15.7 Notice of Non-Compliance and Remedy

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### Requirement

You have an obligation to advise the Registrar in writing of your failure at any time to comply with the Operating Requirements, or of your expected non-compliance in the future, and to either remedy any non-compliance within ten (10) business days or to take such action as necessary to avoid non-compliance in the future.

### Purpose

The purpose of this requirement is to ensure the Registrar is made aware of all instances where there may be an unexpected risk to the proper completion of a conveyancing transaction and to the integrity of the Titles register.

### Scope

This requirement applies to you and to the operation of your ELNO System, including your ELN.

### Compliance

You are to report actual and anticipated non-compliance with the Operating requirements and include appropriate remedial or avoidance action plans.

### Compliance Demonstration

You are to report non-compliances with the Operating Requirements immediately they occur or you first become aware of their having occurred or are expected to occur, and annually as a part of your Annual Report to the Registrar.

### Immediate Documentation

It is expected that when reporting an actual or anticipated compliance breach to the Registrar, you will provide details in writing of the:

- nature of the breach and when and where it occurred or is expected to occur
- significance of the breach in terms of transactions, value, Subscribers and relying parties affected
- actions taken or intended to be taken to remedy or avoid the breach or to mitigate its impact
- actions taken to prevent the breach from recurring in the future.

### Annual Documentation

You are to provide, in your Annual Report to the Registrar, consolidated categorised details of:

- your compliance breaches for the period

- your compliance breaches that would have occurred had you not taken preventive action and the nature of each preventive action taken
- the remediations you have put in place for each actual and anticipated compliance breach
- the outcomes you have achieved or expect to achieve from each remediation.

It is expected that you will categorise each of your actual and anticipated compliance breaches and their respective remediations by the nature and severity of the breach in terms of implications for relying parties.

In the event that no compliance failures have occurred or are anticipated during the reporting period, a nil report is to be given for the period.

## 15.8 Remediation of Non Compliance

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### Requirement

You have obligations to provide the Registrar with a remedial action plan for any obligation that you fail to demonstrate compliance with as and when required on two consecutive occasions and to implement the remedial action plan without delay.

### Purpose

The purpose of this requirement is to ensure any repeated failure to demonstrate compliance is remedied without delay.

### Scope

This requirement applies to you in the operation of your ELNO System, including your ELN.

### Compliance

You are to provide the Registrar with a remedial action plan and implement that plan without delay on each of the second consecutive occasions when you are unable to demonstrate your compliance as required with a particular obligation in the Operating Requirements.

### Compliance Demonstration

You are to demonstrate your compliance with this requirement by providing the Registrar with your remedial action plan and advice of its being or having been implemented whenever you advise the Registrar that you are unable for the second consecutive time to demonstrate your compliance as required with a particular obligation in the Operating Requirements.

You are also to provide a remedial action plan and implementation advice within ten (10) business days of a request from the Registrar while you remain approved to operate.

## 15.9 Remediation of Serious Non Compliance

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### Requirement

You have an obligation to immediately prepare and provide the Registrar with a remedial action plan, and to promptly implement that action plan, whenever the Registrar notifies you that your non-compliance is of a serious nature.

### Purpose

The purpose of this requirement is to ensure any serious non-compliance with the Operating Requirements is remedied promptly.

### Scope

This requirement applies to you in the operation of your ELNO System, including your ELN.

### Compliance

You are to prepare a remedial action plan, provide the plan to the Registrar and promptly implement it.

### Compliance Demonstration

Your compliance with this requirement is to be demonstrated by your preparing, providing and implementing a remedial action plan immediately upon receipt of a serious non-compliance notification from the Registrar.

## 15.10 ELNO may provide certified copies of original documents

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### Requirement

You have an obligation to have copies of Specified Documents provided to the Registrar certified as true copies by one of your principals, directors or officers.

### Purpose

The purpose of this requirement is to ensure the Registrar can rely on copies of original documents provided to demonstrate your compliance with the Operating Requirements.

### Scope

This requirement applies to you and to the operation of your ELNO System, including your ELN.

### Compliance

In providing a copy of an original document to the Registrar you are to have it certified as a true copy of the original by a principal, director or officer.

### Compliance Demonstration

Your compliance with this requirement is to be demonstrated by including on the copy the full name and status of the person certifying the copy and the date of certification.

### 16.1 Approval of Independent Expert

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#### Requirement

You have an obligation to ensure that each Independent Expert you engage to provide an Independent Certification:

- has the prior written approval of the Registrar
- is not related to or associated in any way with you or any of your directors, officers, employees, contractors or agents
- is qualified, competent and insured to the satisfaction of the Registrar.

#### Purpose

The purpose of this requirement is to ensure that the Registrar can have confidence in each Independent Certification and Independent Expert's recommendations.

#### Scope

This requirement applies to you in the operation of your ELNO System, including your ELN.

#### Compliance

You are to provide details of each proposed Independent Expert's affiliations, qualifications, insurance and experience to the Registrar.

#### Compliance Demonstration

Your compliance with this requirement is to be demonstrated by providing the details of each proposed Independent Expert to the Registrar at least three (3) months prior to the Independent Certification being required.



## 16.2 Assistance

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### Requirement

You have an obligation to provide each Independent Expert you engage to prepare an Independent Certification with reasonable assistance to complete the work. Reasonable assistance includes directing third parties with whom you have contractual relationships to make relevant information available to the Independent Expert.

### Purpose

The purpose of this requirement is to ensure that each Independent Certification and each Independent Expert's recommendations are thoroughly informed and can be relied upon by the Registrar.

### Scope

This requirement applies to you in the operation of your ELNO System, including your ELN.

### Compliance

You are to provide all requested assistance to the Independent Experts you engage, including directing third parties with whom you have contractual relationships to make all relevant information available to the Independent Expert.

### Compliance Demonstration

Your compliance with this requirement is to be demonstrated by including specific conditions in each contract you enter into with your suppliers and third parties.

## 16.3 Essential and Desirable Recommendations

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### Requirement

You have an obligation to ensure that, when an Independent Expert engaged by you to provide an Independent Certification makes recommendations concerning your compliance with the Operating Requirements, those recommendations are expressed as either Essential or Desirable Recommendations.

### Purpose

The purpose of this requirement is to ensure clear identification of those recommendations that must be implemented to secure your compliance with the Operating Requirements.

### Scope

This requirement applies to you in the operation of your ELNO System, including your ELN.

### Compliance

You are to include in each statement of work you issue to an Independent Expert that any recommendations made by the Independent Expert are to be categorised as either Essential or Desirable in securing your compliance.

### Compliance Demonstration

Your compliance with this requirement is to be demonstrated when you provide details of each proposed Independent Expert engagement to the Registrar.

## 16.4 Inclusion of Essential Recommendations in Independent Expert's Certification

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### Requirement

You have an obligation to ensure that any Essential Recommendations made by an Independent Expert providing you with an Independent Certification are disclosed to the Registrar with the certification.

### Purpose

The purpose of this requirement is to ensure the Registrar is made aware of all matters identified by an Independent Expert as essential to securing your compliance with the Operating Requirements.

### Scope

This requirement applies to you in the operation of your ELNO System, including your ELN.

### Compliance

You are to provide any Essential Recommendations made to you by an Independent Expert when you provide the Expert's Independent Certification to the Registrar.

### Compliance Demonstration

Your compliance with this requirement is to be demonstrated when providing Independent Certifications to the Registrar in accordance with Schedule 3 of the Operating Requirements.

## 17 Compliance Examination

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### Requirement

You have an obligation to comply with each Compliance Examination conducted by the Registrar.

### Purpose

The purpose of this requirement is to ensure Compliance Examinations can be carried out efficiently and where and when required by the Registrar.

### Scope

This requirement applies to you in the operation of your ELNO System, including your ELN.

### Compliance

You are to comply with Compliance Examination requirements set out in Section 33 of the ECNL and in the Compliance Examination Procedure in Schedule 5 of the Operating Requirements.

### Compliance Demonstration

Your compliance with this requirement is to be demonstrated when the Registrar undertakes a Compliance Examination.

## 18 Reports

### 18.1 Monthly Report

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#### Requirement

You have an obligation to publish a Monthly Report of your performance as an ELNO.

#### Purpose

The purpose of this requirement is to ensure confidence in you as an ELNO.

#### Scope

The requirement applies to the operation of your ELNO System, including your ELN.

#### Compliance

You are to publish and provide a Monthly Report to the Registrar.

It is expected that your Monthly Report will:

- be clear and concise
- be published by a means that makes it readily and widely available without restriction
- be presented in a manner that enables ready determination of your compliance and any trends in your compliance
- remain publicly available for at least twelve (12) months while you remain approved as an ELNO.

It is expected that your reporting on complaints received will be part of the compliance program you put in place to satisfy your obligation to operate your ELN in a proper, competent, sustainable and efficient manner. In this regard, AS10002:2006 provides guidance on the design and implementation of contemporary customer satisfaction and complaints handling processes.

#### Specific Inclusions

Your Monthly Report is to include details of:

- the performance of your ELNO System against the Performance Levels set out in Schedule 2 of the Operating Requirements
- the complaints you have received and dealt with about your services and performance as set out in Category 4 of Schedule 3 of the Operating Requirements.

Your reporting on the performance of your ELNO System is to include at least your performance against the Performance Levels set out in Schedule 2 of the Operating Requirements for:

- Service Availability
- Service Reliability
- System Responsiveness
- System Resilience
- Incident Resolution
- Problem Identification.

Your reporting on complaints in accordance with Category Four of Schedule 3 of the Operating Requirements is to categorise the complaints you have received into at least:

- general complaints about your services and performance
- complaints about your refusal to register Subscriber applicants
- complaints about the training resources and information you make available to your Subscribers.

Within each complaint category, you are to report on at least:

- the number of complaints received during the preceding month
- the number found to be justified
- the number satisfactorily resolved with the complainant
- the number remaining unresolved at the end of the preceding month
- the number and age of all complaints remaining unresolved at the end of the preceding month.

### **Compliance Demonstration**

You are to demonstrate your compliance with this requirement by publishing and providing a report to the Registrar monthly while you remain approved to operate.

### **Monthly Documentation**

You are to publish your Monthly Report and provide it to the Registrar within ten (10) business days of the end of each calendar month

## 18.2 Annual Report to the Registrar

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### Requirement

You have an obligation to provide the Registrar with an Annual Report each year.

### Purpose

The purpose of this requirement is to provide a regular demonstration to the Registrar of your continuing compliance with the Operating Requirements.

### Scope

This requirement applies to you in the operation of your ELNO System, including your ELN.

### Compliance

You are to provide an Annual Report to the Registrar.

It is expected that your Annual Report will be comprehensive setting out at least:

- a description of your activities for the period
- the extent of your compliance with the Operating Requirements
- the evidence justifying the stated extent of your compliance
- the specific instances, if any, of non-compliance for the period and the reasons for each instance of non-compliance
- the actions you have taken or intend to take to remedy each instance of non-compliance
- the actions, if any, you have taken or intend to take to lessen your risk of non-compliance in the future.

### Specific Inclusions

Your Annual Report is to include at least:

- all Specified Documents, Self-Certifications, No-Change Certifications and Independent Certifications (including each Independent Expert's report and any Essential Recommendations) you are required to provide annually to the Registrar while approved to operate
- the actions you have taken or intend to take to implement each of any Essential Recommendations accompanying each Independent Certification.

### Compliance Demonstration

Your Annual Report is to be provided within three (3) months of the end of each financial year.

Your first Annual Report is to be for the period from your commencing operations to the end of the financial year in which you commenced operations. If that period is three (3) months or less, your first Annual Report can be provided after your first full financial year of operations.



## 19 Data and Information Obligations

### 19.1 Retention

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#### Requirement

You have an obligation to indefinitely retain, retrieve and provide to the Registrar when requested information and documents received and created by your ELN.

#### Purpose

The purpose of this requirement is to ensure all relevant information is available to any investigation or Compliance Examination by the Registrar.

#### Scope

This requirement applies to the operation of your ELNO System, including your ELN.

#### Compliance

Your compliance with this requirement is to be part of your ISMS (refer Section 7).

#### Specific Inclusions

The arrangements included in your ISMS are to cover:

- all workspace data created or received in connection with transactions
- all electronic workspace documents, whether digitally signed or not and whether presented or not to the Registrar for lodgment
- all alerts, notifications and information received and sent in connection with transactions
- each document and record received or created in connection with the registration of each of your Subscribers and their use of your ELN.

#### Compliance Demonstration

You are to demonstrate your compliance with this requirement by providing your ISMS documentation, together with a certification of its being compliant and fit for purpose, to the Registrar prior to commencing operations and at any time that it is materially changed thereafter while you are approved to operate.

You are also to provide the Registrar with certifications of your ISMS being unchanged, compliant and fit for purpose annually while you remain approved to operate.

### Pre-commencement Documentation

Prior to commencing operations, you are to provide the Registrar with:

- the documentation of your ISMS
- an Independent Certification that your ISMS documentation is compliant and fit for purpose.

### Annual Documentation

You are to provide the Registrar annually, as part of your Annual Report to the Register, with:

- a No-Change Certification that your ISMS, including its documentation, management and operation, is unchanged, and
- an Independent Certification that your ISMS is compliant and fit for purpose.

In the event that you are unable to provide a No-Change Certification, you are to submit revised documentation of your ISMS to the Registrar, together with an Independent Certification of the compliance and fitness for purpose of the revised documentation, management and operation of your ISMS and any Essential Recommendations of the Independent Expert.

## 19.2 Generation and Retention of Transaction Audit Records

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### Requirement

You have an obligation to generate and indefinitely retain transaction audit records and provide them to the Registrar when requested.

### Purpose

The purpose of this requirement is to ensure all relevant information is available to any investigation or Compliance Examination by the Registrar.

### Scope

This requirement applies to the operation of your ELNO System, including your ELN.

### Compliance

Your compliance with this requirement is to be part of your ISMS (refer Section 7).

### Specific Inclusions

The arrangements included in your ISMS are to cover the generation and indefinite retention of records of the use of your ELNO System including:

- changes made in workspaces and who made each change
- administrative actions taken in relation to use of your ELNO System and by whom
- other actions of you or your Subscribers and their Users in a workspace and by whom
- changes in the status of a workspace, or instrument or other document in a workspace, and what action or event caused the change
- events relating to the security and integrity of your ELNO System and what action by whom gave rise to the event.

### Compliance Demonstration

You are to demonstrate your compliance with this requirement by providing your ISMS documentation, together with a certification of its being compliant and fit for purpose, to the Registrar prior to commencing operations and at any time that it is materially changed thereafter while you are approved to operate.

You are also to provide the Registrar with certifications of your ISMS being unchanged, compliant and fit for purpose annually while you remain approved to operate.

### Pre-commencement Documentation

Prior to commencing operations, you are to provide the Registrar with:

- the documentation of your ISMS
- an Independent Certification that your ISMS documentation is compliant and fit for purpose.

### Annual Documentation

You are to provide the Registrar annually, as part of your Annual Report to the Register, with:

- a No-Change Certification that your ISMS, including its documentation, management and operation, is unchanged, and
- an Independent Certification that your ISMS is compliant and fit for purpose.

In the event that you are unable to provide a No-Change Certification, you are to submit revised documentation of your ISMS to the Registrar, together with an Independent Certification of the compliance and fitness for purpose of the revised documentation, management and operation of your ISMS and any Essential Recommendations of the Independent Expert.

## 19.3 Use of Land Information

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### Requirement

You have obligations restricting your use, storage, alteration, reproduction, disclosure, product development and resale of Land Information without approval from the Registrar.

### Purpose

The purpose of this requirement is to ensure confidence in the supply of Land Information to your ELN by the Registrar and your Subscribers.

### Scope

The requirement applies to the operation of your ELN only.

### Compliance

You are to comply with this requirement in regard to all information you receive that is used in the preparation of documents and data to be lodged with the Registrar.

### Specific Inclusions

You are to comply with this requirement in regards to:

- storage of Land Information for other than facilitating the preparation of documents to be lodged with the Registrar
- modification or alteration of Land Information
- anything that allows another person to modify or alter Land Information
- use, reproduction or disclosure of Land Information other than as required or requested by a Subscriber participating in the relevant transaction
- anything that allows another person to use, reproduce or disclose Land Information other than as required or requested by a Subscriber participating in the relevant transaction
- creation of products which include or are the same as or substantially similar to Land Information
- reverse assembly, reverse compilation, reverse engineering or recreation or rework of Land Information
- re-use of Land Information in any manner not approved by the Registrar.

### Compliance Demonstration

You are to provide the Registrar annually while you remain approved to operate with a certification of your compliance with this requirement.

## Annual Documentation

You are to provide a Self-Certification in each Annual Report to the Registrar of your having complied with this requirement during the period.

To support your certification, it is expected that you will have determined and documented for the period:

- frequency and means of receiving Land Information
- total instances of receiving Land Information
- detected instances of unauthorised modification or alteration of Land Information
- detected instances of unauthorised use of Land Information
- detected instances of unauthorised reproduction or disclosure of Land Information
- sustained complaints received about unauthorised treatment of Land Information
- reviews, including risk assessments, undertaken of your compliance program
- changes made, if any, to your compliance program to address instances of non-compliance during the period and new compliance risks identified.

It is expected that you will be able to provide this documentation within ten (10) days of a request from the Registrar while you remain approved to operate.

## 19.4 Provide Information to Subscribers

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### Requirement

You have an obligation to provide alerts and notifications to your Subscribers supplied to you by the Registrar.

### Purpose

The purpose of this requirement is to ensure that the Registrar has a means of getting relevant information to your Subscribers.

### Scope

This requirement applies to the operation of your ELNO System, including your ELN.

### Compliance

You are to provide any alerts and notifications for Subscribers received from the Registrar to Subscribers.

It is expected that:

- your ELNO System will include a convenient and reliable means of providing alerts and notifications to your Subscribers, including alerts and notifications supplied to you by the Registrar
- you will have arrangements in place for:
  - (a) receiving, recording and verifying alerts and notifications supplied to you by the Registrar
  - (b) promptly communicating each alert and notification to the relevant Subscribers
  - (c) receiving and recording confirmation of the delivery of each alert and notification.

### Specific Inclusions

Your arrangements are to provide for alerts and notifications that relate to:

- amendments to the ECNL, the Operating Requirements or the Participation Rules
- an emergency situation or the security, integrity or stability of the Titles Register
- a direction to you relating to any or all Subscribers
- matters generally about your operations to be communicated to Subscribers
- matters generally to be communicated to Subscribers.

### Compliance Demonstration

Your compliance with this requirement is to be demonstrated within ten (10) business days of a request from the Registrar while you remain approved to operate.

## 19.5 Intellectual Property Rights

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### Requirement

You have obligations to:

- not do anything that might invalidate or be inconsistent with the intellectual property rights of the Registrar, a Land Registry or a State or Territory
- promptly notify the Registrar if you know or suspect that such rights have been infringed
- take what action you can to prevent the infringement from re-occurring
- take all steps the Registrar reasonably requires of you to maintain the validity and enforceability of such rights.

### Purpose

The purpose of this requirement is to protect the Registrar's, the Land Registry's and the State or Territory's intellectual property rights.

### Scope

This requirement applies to you in the operation of your ELN only.

### Compliance

It is expected that this obligation will be fully reflected in the design and implementation of the compliance programs you establish to satisfy your general obligation to comply with the Operating Requirements.

### Compliance Demonstration

Your compliance with this requirement is to be demonstrated within ten (10) business days of a request from the Registrar while you remain approved to operate while you remain approved to operate.



### 20.1 Suspension or Revocation of ELNO's Approval

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This clause of the Operating Requirements does not place any obligation on you.

### 21.1 Transition Plan

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#### Requirement

You have an obligation to establish, operate, monitor, review, maintain and keep current a documented, detailed and comprehensive Transition Plan (TP) for invoking in the event of your ceasing to provide and operate your ELN or any of its services.

#### Purpose

The purpose of this requirement is to ensure that in the event of your needing to cease providing and operating your ELN or any of its services, you can disengage from the business in an orderly manner with the least possible disruption to affected parties including the Registrar.

#### Scope

This requirement applies to the operation of your ELN only.

#### Compliance

You are to comply with this requirement by having a Transition Plan.

It is expected that your Transition Plan will be a comprehensive, robust and documented plan of action that has regard for all foreseeable circumstances in which you may not be able to continue providing one or more of your ELN's services.

#### Specific Inclusions

It is expected that your Transition Plan will include at least the following:

- notifications to your users and relying parties, including the Registrar:
  - (a) that your Transition Plan has been invoked
  - (b) why it has been invoked,
  - (c) what procedures you will be following
  - (d) what procedures they will need to follow
- orderly winding down of your affected systems, facilities and services
- controlled completion of all affected transactions that have been started but not yet completed
- continued support for your Subscribers in finalising their incomplete transactions
- transfer or licensing of any intellectual property rights necessary for the continued operation of your systems, facilities and services by another ELNO or the Registrar

- migration of all Subscriber and transaction data and service agreements
- orderly shutdown of discontinued systems, facilities and services unable to be migrated
- safe custody of all retained records of Subscribers and completed transactions
- time frames in which all matters are expected to be finalised.

### **Compliance Demonstration**

You are to demonstrate your compliance with this requirement by providing your Transition Plan documentation to the Registrar prior to commencing operations and annually thereafter while you remain approved to operate you are to provide the Registrar with a certification of your Transition Plan being unchanged and fit for purpose.

### **Pre-commencement Documentation**

Prior to commencing operations, you are to provide your Transition Plan documentation to the Registrar.

### **Annual Documentation**

You are to provide the Registrar annually, as part of your Annual Report to the Registrar, with a No-Change Certification that your Transition Plan remains unchanged and fit for purpose.

To support this certification, it is expected that you will have reviewed your Transition Plan for its:

- comprehensiveness and accuracy
- use of contemporary facilities and services
- continued relevance to the full extent of your operations and environment.

It is expected that you will be able to provide your documentation of this review within ten (10) days of a request from the Registrar while you remain approved to operate.

In the event that you are unable to provide a No-Change Certification, you are to provide revised documentation of your Transition Plan to the Registrar.

## 21.2 Minimum Requirements of a Transition Plan

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### Requirement

You have an obligation to include in your Transition Plan:

- notice to all of your Subscribers and the Registrar of the timing, extent and reason for your disengagement
- process for orderly winding down of your affected systems, services and facilities
- manner in which any incomplete transactions are to be finalised
- transfer of all retained records to the Registrar or as directed by the Registrar
- transfer of all licenses and intellectual property to a third party or the Registrar.

### Purpose

The purpose of this requirement is to minimise the disruption to affected parties of your having to discontinue any or all of your ELN's services.

### Scope

This requirement applies to the operation of your ELN only.

### Compliance

You are to comply with this requirement by providing for it in your Transition Plan.

### Compliance Demonstration

You are to demonstrate your compliance with this requirement by providing your Transition Plan documentation to the Registrar prior to commencing operations and annually thereafter while you remain approved to operate you are to provide the Registrar with a certification of your Transition Plan being unchanged and fit for purpose.

### Pre-commencement Documentation

Prior to commencing operations, you are to provide your Transition Plan documentation to the Registrar.

### Annual Documentation

You are to provide the Registrar annually, as part of your Annual Report to the Registrar, with a No-Change Certification that your Transition Plan remains unchanged and fit for purpose.

To support this certification, it is expected that you will have reviewed your Transition Plan for its:

- comprehensiveness and accuracy

- use of contemporary facilities and services
- continued relevance to the full extent of your operations and environment.

It is expected that you will provide your documentation of this review within ten (10) days of a request from the Registrar while you remain approved to operate.

In the event that you are unable to provide a certification, you are to provide revised documentation of your Transition Plan to the Registrar.

## 21.4 Implementation of Transition Plan

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### Requirement

You have an obligation to invoke your Transition Plan either:

- twelve (12) months prior to your intending to cease to provide your ELN or any services material to the operation of your ELN, or
- immediately if your Approval to operate as an ELNO is suspended or revoked, or
- upon receipt of notification from the Registrar that your Approval to operate as an ELNO is not to be renewed.

### Purpose

The purpose of this requirement is to ensure that you can always disengage from the whole or part of the business in an orderly manner with the least possible disruption to affected parties including the Registrar.

### Scope

This requirement applies to the operation of your ELN only.

### Compliance

You are to comply with this requirement by providing for it in your Transition Plan.

### Compliance Demonstration

You are to demonstrate your compliance with this requirement by providing your Transition Plan documentation to the Registrar prior to commencing operations and, annually thereafter while you remain approved to operate, you are to provide the Registrar with a certification of your Transition Plan being unchanged and fit for purpose.

### Pre-commencement Documentation

Prior to commencing operations, you are to provide your Transition Plan documentation to the Registrar.

### Annual Documentation

You are to provide the Registrar annually, as part of your Annual Report to the Registrar, with a No-Change Certification that your Transition Plan remains unchanged and fit for purpose.

To support this certification, it is expected that you will have reviewed your Transition Plan for its:

- comprehensiveness and accuracy

- use of contemporary facilities and services
- continued relevance to the full extent of your operations and environment.

It is expected that you will be able to provide your documentation of this review within ten (10) days of a request from the Registrar while you remain approved to operate.

In the event that you are unable to provide a No-Change Certification, you are to provide revised documentation of your Transition Plan to the Registrar.

## 22 Amendment of Operating Requirements

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### Requirement

You have an obligation to comply with any amendment made to the Operating Requirements.

### Purpose

The purpose of this requirement is to ensure the Operating Requirements can be kept relevant and up to date.

### Scope

This requirement applies to the operation of your ELNO System, including your ELN.

### Compliance

You are to comply with any amendment made to the Operating Requirements in accordance with the procedure set out at Schedule 6 of the Operating Requirements.

It is expected that your compliance with your obligation to ensure that your ELN is soundly designed and provisioned, including being reliable, scalable and flexible, will enable your compliance with this requirement (refer Section 10.1).

### Compliance Demonstration

Your compliance with this requirement is to be demonstrated when an amendment is made to the Operating Requirements.

It is expected you will:

- participate in good faith consultation with the Registrar when necessary about proposed amendments to the Operating Requirements
- assess the implications for you and for your Subscribers of any proposed amendment
- provide the Registrar with relevant advice on any proposed amendment
- use best endeavours to achieve compliance with any amendment as soon as practicable.



## 23 Additional Operating Requirements

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### Requirement

You have an obligation to comply with any additional Operating Requirements.

### Purpose

The purpose of this requirement is to ensure the Operating Requirements can be added to by a jurisdiction if circumstances reveal that the existing requirements are insufficient in that jurisdiction.

### Scope

This requirement applies to the operation of your ELNO System, including your ELN.

### Compliance

You are to comply with any additional Operating Requirements.

It is expected that your compliance with your obligation to ensure that your ELN is soundly designed and provisioned, including being reliable, scalable and flexible, will enable your compliance with this requirement (refer Section 10.1).

### Compliance Demonstration

Your compliance with this requirement is to be demonstrated when an addition is made to the Operating Requirements.

It is expected you will:

- participate in good faith consultation with the Registrar when necessary about proposed additions to the Operating Requirements
- assess the implications for you and for your Subscribers of any proposed additional requirement
- provide the Registrar with relevant advice on any proposed additional requirement
- use best endeavours to achieve compliance with any additional requirement as soon as practicable.