

Notes:

1. The first part of this table responds to the issues raised in feedback on the Consultation Draft of the MPR published in January 2015.
2. The second part of this table responds to the issues raised in feedback on Version 3F of the MPR issued to the attendees at the ARNECC Industry Forum held in Melbourne on 15 June 2015.
3. Throughout the table reference is made to Identity (Subscriber) Agent. The MPR has been amended to replace the term Subscriber Agent with Identity Agent, so as to make the recasting of the Vol Standard in Schedule 8 of the MPR technology neutral and capable of being applied in both electronic and paper processes.

PART ONE – Issues arising from the Consultation Draft published in January 2015.

#	Rule	Issue	Action Taken	Commentary
1	General	To achieve widespread take-up, there must be a mutually satisfactory balance between risk apportionment and business efficacy.	Continued consultation with stakeholders whenever amendments are to be made.	A satisfactory balance between risk apportionment and business efficacy is an objective of the MPR development process and consultation with industry on the amendments proposed at this time is part of the process for achieving that outcome.
2	General	Some previously accepted changes have been reversed without any supporting explanation.	Increased attention to explaining the reasons for amendments.	Attention will be paid to explaining the amendments being proposed and made.
3	General	Changes directed at paper transactions may adversely affect timely transition to the national solution which to date has received considerable investment.	Continued care in aligning paper and electronic process requirements.	The alignment between paper and electronic is important for an efficient conveyancing process and care will continue to be taken to avoid adverse outcomes.
4	General	The approach to Vol is unduly onerous when compared with similar online registration systems. The Vol process has not been supported with identity fraud data and claims histories of land titles assurance funds establishing that the solution is in proportion to the real incidence and risk of fraud.	Continued assessment of the suitability of the Vol Standard.	A Subscriber has a choice as to whether to apply the Vol Standard or take its own reasonable steps. The reasonable steps approach to Vol provides sufficient flexibility and is not unduly onerous. The Vol Standard in Schedule 8 of the MPR is considered commensurate to the risks involved and the potential consequences of a fraudulent transaction. The approach differs from that of other registration systems and identity verification requirements because the risks and potential consequences are different.
5	General	Participants require sufficient lead time to make the necessary changes to their systems, procedures, documents and training programs. An early announcement about the timetable for the alignment of these matters nationally would be of assistance to industry.	Continued work towards alignment.	Jurisdictions are working towards aligning their electronic and paper transaction requirements for an efficient conveyancing process and they will continue to work with stakeholders in relation to implementation timeframes.
6	General	Continual revision of the regulatory framework is causing significant difficulties for respective members preparing for electronic conveyancing. Participants need to know their exposure so they can design and manage workflows and take appropriate steps to manage risk.	Increased effort to resolve all issues effectively.	Changes have been made in response to stakeholder feedback arising from practical experience with the implementation of electronic conveyancing. It is acknowledged that industry participants need a stable environment in which to plan and implement their adoption of electronic conveyancing and effort will be made to achieve this.

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7	General	Registrars should accelerate the processes of regulatory change to align electronic and paper channels, in particular, allowing practitioners to sign a paper instrument under the authority given in the Client Authorisation.	Continued work towards alignment.	Jurisdictions are working towards aligning their electronic and paper transaction requirements for an efficient conveyancing process and will continue to work with stakeholders in relation to implementation timeframes.
8	General	The WA Manual's Vol procedures differ from both the MPR and the Vol Standards in NSW and SA. It would be beneficial for these differences to be resolved in the near future. Currently, these differences make it difficult for a bank to run one set of processes and to issue one set of template documents nationally for the Vol process. This creates an avoidable and heavy administrative burden.	Continued work towards alignment.	WA has recently adopted the MPR Vol Standard as an acceptable alternative to its existing requirement for paper transactions. Jurisdictions are working towards a consistent approach to identity verification requirements for the convenience and efficiency of industry participants.
9	General	Multiple signing of lodgment instructions required by some jurisdictions should be dispensed with in favour of signing by the Responsible Subscriber only or, in the case of multiple incoming mortgagees, those mortgagees only. The Responsible Subscriber only should determine the format of any new certificate of title to be issued.	None.	Although not an issue with the MPR, the multiple signing of lodgment instructions is a consistent jurisdictional practice to ensure that all parties agree to the contents of the lodgment instructions. Selection of the Responsible Subscriber is agreed; the format of the Certificate of Title to be issued after registration is determined and in Victoria dealing requirements can be entered by any party.
10	General	A uniform approach to priority notices should be adopted across the jurisdictions, in particular their period of operation and extension.	Continued work towards alignment.	Although not an issue for the MPR, jurisdictions are working towards a national approach to priority notices within the constraints of existing legislation and future legislative amendments. Agreement has recently been reached on their duration and extension.
11	2.1.2	As previously submitted, the full suite of definitions including 'digitally sign', 'digital signature,' 'digital certificate,' 'user,' 'signer' and 'key holder' are defective and require amendment.	None at this time.	The definitions are not considered defective but will be reviewed when it is next necessary to review or amend the ECNL. At that time there will be an opportunity for all stakeholder groups to have input to the review.
12	2.1.2	Does ARNECC consider the Settlement Schedule and trust account authorisations fall within the definition of "Document"?	None.	The definition of Document in the MPR refers to the ECNL and the ECNL definition applies to the ELN only. Therefore it is not considered that trust account authorisations and Settlement Schedules fall within the definition of Document.
13	2.1.2	"Australian Legal Practitioner" is not a term used in the relevant legislation in all participating jurisdictions, such as SA.	The MPR has been amended.	The amended definition will recognise the different terminology used in SA.
14	2.1.2	The phrase "on behalf of the Subscriber" should be inserted after the word "undertake" in line two of the amended definition of Identity (Subscriber) Agent for greater clarity.	The MPR has been amended.	The amendment as suggested has been made to the definition of Identity (Subscriber) Agent.
15	2.1.2	Clarification is sought of the reason for the reference to "Registry Instrument" in the expanded definition of Identity (Subscriber) Agent.	The MPR has been amended.	The amendment has removed reference to "Registry Instrument or other Document" in the definition of Identity (Subscriber) Agent.
16	2.1.2	The definition of Subscriber Agent should be amended as follows as there may be occasions when a verification of identity	The MPR has been amended.	The amendment has removed reference to witnessing document signings in the definition of Identity (Subscriber) Agent. The Identity (Subscriber) Agent Certification

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		is required without a Client Authorisation: “Subscriber Agent” means a Person who is authorised by the Subscriber to undertake verification of identity and <i>if requested by the Subscriber to</i> witness the signing of a Client Authorisation, Registry Instrument or other Document on behalf of the Subscriber.		at Schedule 9 requires Identity (Subscriber) Agents to certify whether or not at the direction of the Subscriber they witnessed the execution of a completed Client Authorisation or the granting of a mortgage in conjunction with undertaking an identity verification according to the Vol Standard.
17	2.1.2	The definition of Subscriber Agent in Rule 2.1 is to be amended whilst the definitions in Paragraph 1 of Schedule 8 and in Paragraph 6 of the Client Authorisation are to remain as they are.	The MPR has been amended.	The amendment has made the definitions of Identity (Subscriber) Agent in the body of the MPR and in the Client Authorisation the same. Other amendments to the MPR and the Vol Standard have removed the need for a definition of Identity (Subscriber) Agent in Schedule 8.
18	2.1.2	The definition of Identity (Subscriber) Agent creates confusion. The use of “and” may be interpreted to require that an Identity (Subscriber) Agent must in addition to conducting verification of identity, be able to witness signatures on behalf of a subscriber.	The MPR has been amended.	The amendment has removed any reference to witnessing signings from the definition of Identity (Subscriber) Agent. The Identity (Subscriber) Agent Certification at Schedule 9 requires Identity (Subscriber) Agents to certify whether or not at the direction of the Subscriber they witnessed the execution of a completed Client Authorisation or the granting of a mortgage in conjunction with undertaking an identity verification according to the Vol Standard.
19	2.1.2	The definition of Registry Information Supply needs to be confined to the particular relevant information in the Titles Register.	The MPR has been amended.	The amendment has added a definition of Registry Information and amended Rules 11(a) and 11(b). The addition of a definition of Registry Information has enabled the distinction to be drawn between Registry Information (data) and Registry Information Supply (the service providing the data). The amendments clarify that the restriction on use, reproduction and disclosure applies to Registry Information.
20	2.1.2	The definition of Registry Information Supply refers to the general “service to supply” rather than the particular supply of certain information in the Titles Register.	The MPR has been amended.	The amendment has added a definition of Registry Information as the data supplied in a Registry Information Supply enabling a clear distinction between the information and the service used to supply it.
21	2.1.2	The definition of Title Activity Check does not reflect the different meanings in the PEXA system across participating jurisdictions.	The MPR has been amended.	The amended definition makes it clear that the TAC is a notification rather than a service. The TAC has been implemented by PEXA to suit Land Registry practices in each jurisdiction and ensure that the Subscriber is fully notified of any change in the Register.
22	2.1.2	As a Subscriber Administrator has administration rights specifically in relation to the ELN, suggest rewording the definition of Subscriber Administrator to “Users who are able to perform the functions of Subscriber Administrators”.	None.	The definition of Subscriber Administrator is for the purposes of the ELN only and the suggested amendment would produce a circular definition and no certainty as to the responsibility for the functions of a Subscriber Administrator. There is no limitation on a Subscriber Administrator performing additional roles.
23	2.1.2	The definition of Licensed Conveyancer includes a person whose licence or registration has been cancelled.	None.	A person whose licence or registration has been cancelled is no longer a Licensed Conveyancer.
24	2.1.2	There is no definition of Settlement Notice.	The MPR has been amended.	The amendment applies the definition of Priority Notice to Settlement Notices.

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25	2.1.2	It is unclear in the definition of Identity (Subscriber) Agent whether “witness” is used to mean simply ‘observe but not sign’ or requires the witness to also sign and provide details on the face of the document.	None.	The ordinary meaning of witness is intended to apply.
26	4	This rule should be amended to expressly include the eligibility requirement that Representative Subscribers must be legally entitled to act on behalf of others in a Conveyancing Transaction.	None.	The requested amendment is unnecessary. Rule 5.3 requires Subscribers representing others to be legally entitled to do so under State and Territory legislation.
27	4	Clarification is sought of the intended meaning of the word “officers”. The word “officer” should have the meaning given to it in the Corporations Act.	The MPR has been amended.	The term “officer” is more broadly used throughout the MPR than as defined in the Corporations Act. However, a note has been added to Rule 4.3 to clarify that for a body corporate registered under the Corporations Act, reference to “officer” under this Rule has the meaning given to it in that Act.
28	4.3.1(b)	Amendment so that the reference to “Users” is replaced with “Subscriber Administrators” is supported. The previous obligation in respect of the good character of Users was not commensurate with the role of users.	None.	The acceptability and appropriateness of the proposed amendment is noted.
29	4.3.2	Australian Credit Licensees should be deemed to have met the Character requirements.	The MPR has been amended.	The amendment deems Australian Credit Licence holders to be of good character and reputation.
30	4.3.2 & 4.3.3	There appears to be a number of inconsistencies in the entities and persons deemed of good character and reputation.	The MPR has been amended.	The amendment clarifies that the Rules apply to persons.
31	4.3.3	The words “a director, officer or employee of an” should be inserted prior to ADI in subclause (a). An ADI itself cannot be a principal, director, partner, officer or Subscriber Administrator.	The MPR has been amended.	The amendment deems directors, officers and employees of an ADI to be of good character and reputation.
32	5.4.2	This clause should be amended to specify that the Responsible Subscriber must take reasonable steps to ensure that the Lodgment Case contains the necessary documents to effect the intended transaction and that the lodgement order of documents is correct.	None.	An amendment is not necessary. Rule 6.10 requires all Subscribers to ensure all information provided to another Subscriber, the Registrar or an ELNO is, to the Subscriber’s knowledge and belief correct, complete and not false or misleading.
33	5.4.2	It is difficult to understand what reasonable steps the Responsible Subscriber can take to ensure that the information submitted by other Participants is not incorrect, incomplete, false or misleading.	None.	The definition of the role of “Responsible Subscriber” relates to actions taken post-lodgment specifically regarding fees and requisitions. It is in this context that the Responsible Subscriber is not to knowingly submit information to the Registrar that is incorrect, incomplete, false or misleading.
34	6.1.1	This requirement is unduly onerous and unnecessary, assuming this requires the Subscriber to ensure each User reads the Participation Rules. A non-lawyer merely responsible for data entry should not be expected to read or understand the MPR.	The MPR has been amended.	The amendment has limited the obligation of a Subscriber to ensure its Users’ awareness of the terms of the MPR is relevant to their role in the Subscriber’s use of electronic conveyancing.

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35	6.1.1	The Subscriber should be required to ensure that all of its Users are not simply aware of the Participation Rules but aware of the terms of those Rules as amended from time to time.	The MPR has been amended.	The amendment requires that a Subscriber is to ensure its Users are aware of the terms of the MPR as amended from time to time relevant to their role in the Subscriber's use of electronic conveyancing.
36	6.4	There is potential uncertainty in clauses 6.4(a) and (b) with the reference to the "entitlement to enter into" a particular Conveyancing Transaction and which the heading to these clauses stated as "Right to Deal." It is recommended that the heading should be changed to "Entitlement to Deal."	The MPR has been amended.	The amendment adopts right to deal for consistency.
37	6.4(a)	Clarification is sought in relation to whether it is intended to refer to checking that the company is incorporated or is it a wider obligation raising the questions of capacity?	None	Subscribers acting as Representatives have a professional obligation to prudently determine who they are representing and their entitlement to enter into the transaction.
38	6.5	The rules should provide that irrespective of whether a mortgagee is a Subscriber, safe harbour should apply if the identification process in Schedule 8 is used by the mortgagee or a person qualified to act as an Identity (Subscriber) Agent appointed by the mortgagee.	The MPR has been amended.	The amendment allows mortgagees who are represented by a Subscriber to use the Vol Standard and/or appoint an Identity (Subscriber) Agent.
39	6.5	It is desirable from the perspective of efficiency and cost reduction for a method to be devised to avoid duplication of identity verifications. This will primarily occur when there is a land purchase and mortgage as identity verification will be conducted by the mortgagee and by the purchaser's Subscriber.	None.	It is up to Subscribers to decide both whether they are prepared to share identity verification evidence, and whether they are prepared to rely on such evidence, as constituting reasonable steps for the identity verification they are required to conduct.
40	6.5	When a Subscriber directs an Identity (Subscriber) Agent to complete the verification of identity outside of the Verification of Identity Standard they should be required to provide specific written instructions to an Identity (Subscriber) Agent on the process they require the Agent to follow for a verification of identity.	None.	Subscribers are required to direct an Identity (Subscriber) Agent how a verification of identity is to be undertaken. Requiring the direction to be in writing may be too restrictive in some situations.
41	6.5	When a Subscriber directs an Identity (Subscriber) Agent to complete a verification of identity outside of the Verification of Identity Standard the Agent should not be responsible for any loss for any Verification of Identity undertaken outside of the Verification of Identity Standard at the direction of the Subscriber.	None.	Subscribers are already responsible for ensuring that identity verifications are undertaken by their Identity (Subscriber) Agents according to their directions, whether those directions are to use the Vol Standard or other reasonable steps. Any loss resulting from the negligence of their Identity (Subscriber) Agent is the responsibility of the Subscriber.
42	6.5.1(c)	The word "already" should be deleted as it is unnecessary and may create an unintentional timing issue.	The MPR has been amended.	The amendment has removed the potential uncertainty.
43	6.5.1 & Sch.8	The proposed Vol regime will present significant consequences for legal practices and practitioners and it is our view that these requirements will considerably increase time and financial	None.	This is not the experience in the jurisdictions where formal requirements for Vol have already been introduced. The taking of reasonable steps to verify the identity of a client is considered to be existing prudent conveyancing practice.

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		burdens for lawyers, translating into additional costs being passed onto clients.		
44	6.5.1(b) & (c)	Deletion of words at or before signing of the mortgage is not supported. The initial intention of these clauses was to ensure that Vol could occur at or prior to the signing of the mortgage (e.g. these two processes could be decoupled).	None.	The deletion of the words allows signing of the mortgage at any time. It is complemented by addition of a requirement for reasonable steps to be taken to ensure the person signing the mortgage is the person whose identity has, is being or will be verified.
45	6.5.1(c)	This clause appears to require the Subscriber to examine every step of the verification of identity carried out by the mortgagee to ascertain if it is reasonable. The Subscriber should be able to certify, on the mortgagee's instructions that verification of identity has been carried out. The current drafting is likely to give rise to both the mortgagee and the Subscriber verifying the identity of the mortgagor.	The MPR has been amended.	The amendment requires a Subscriber representing a mortgagee and relying on an identity verification by the mortgagee to be satisfied that the mortgagee has taken reasonable steps to verify the identity of the mortgagor. How this is achieved is up to each Subscriber, for example by the Subscriber relying on the warranty in the Client Authorisation from its mortgagee Client or by the Subscriber reviewing the evidence of the verification retained by the mortgagee. There is no requirement for the Subscriber and the mortgagee to both verify the identity of the mortgagor.
46	6.5.1(e)	Refers to a "former mortgagor." Clarification is requested of the expression "former mortgagor." It is presumed that a former mortgagor for the purpose of clause 6.5.1 would not include a customer who has paid out his/her/its loan but has chosen to retain the registration of the mortgage on the title for future use.	The MPR has been amended.	The amendment clarifies that a former mortgagor is a person who was previously a mortgagor before the mortgage was discharged or released and may or may not remain as a customer of the mortgagee.
47	6.5.2 to 6.5.4	Despite numerous submissions from industry on this point, we understand that ARNECC's position is that a Subscriber will always be liable for the actions of the Identity (Subscriber) Agent. The proposed amendments appear consistent with this and therefore are supported.	The MPR has been amended.	The amendment removes the strict liability requirement in favour of the common law of agency determining the responsibility of Subscribers for their agents.
48	6.5.2(b) & 6.5.4(b)(ii)	We welcome the proposed expansion which specifically recognises there can be alternatives to the Vol Standard.	None.	Support for the requirement being expanded to reasonable steps of which the Vol Standard is an example is noted.
49	6.5.2	Our assumption is that because this rule allows Subscribers to verify identity using any reasonable method, a Subscriber can use an agent who does not qualify as an Identity (Subscriber) Agent.	The MPR has been amended.	If a Subscriber does not undertake the verification themselves, they can use an Identity (Subscriber) Agent who satisfies the eligibility criteria for such agents or they can use any other agent. Subscribers are only deemed to have taken reasonable steps if they apply the Vol Standard themselves or have it applied by an Identity (Subscriber) Agent on their behalf.
50	6.5.2	We urge ARNECC to include in the Rules examples of reliable non-document identity practices that can contribute to overall certainty.	None.	Subscribers using reasonable steps of their choosing for an identity verification can utilise non-document methods but such methods are not deemed reasonable. The reliability of such methods will be kept under review.
51	6.5.3 & 6.5.4	There is no system of registration, regulation, monitoring or training of Identity (Subscriber) Agents and their employees or franchisees. We submit that, without the proper regulation, Identity (Subscriber) Agents will have an incentive to conduct as many verifications as possible, compromising their accuracy.	None.	Subscribers are responsible for ensuring verifications of identity are undertaken properly. It is for them to decide whether any particular Identity (Subscriber) Agent they engage for the work satisfies the eligibility criteria of being reputable, competent and insured.

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		We do not accept that Subscribers should have to bear the consequences of improper verifications carried out by Identity (Subscriber) Agents.		
52	6.5.3	This should be amended to refer to the expanded role of an Identity (Subscriber) Agent in witnessing the signing of a Client Authorisation, Registry Instrument or other Document, if that proposal is adopted.	The MPR has been amended.	The amendment has added Rule 6.14 to require Subscribers to take reasonable steps to ensure any document signing is by the person whose identity has been, is being or will be verified.
53	6.5.4	Whilst for the purpose of this version, it would be premature to import the Commonwealth arrangements for accredited identity service providers, consideration should be given to the progress with accreditation with a view to amending the next MPR version.	None.	The option of utilising the Commonwealth Government's accredited identity service provider arrangements for Identity (Subscriber) Agents is to be kept under review.
54	6.5.4	We have not requested deletion from 6.5.4(a) of the words 'and insured in compliance with Insurance Rules 1.2 and 2.2' on the basis that a satisfactory solution will be devised in relation to insurance for Identity (Subscriber) Agents for exceptional circumstances, for example geographic remoteness.	The MPR has been amended.	The amendment is to allow all Subscribers to comply with their obligations by using any agent who, in their reasonable opinion, can satisfactorily undertake the work for them.
55	6.5.4	The requirement to direct the Identity (Subscriber) Agent to carry out the Vol Standard should be reworded so that it is sufficient for the Subscriber to enter into an agreement in which the Identity (Subscriber) Agent agrees to comply with the Standard.	None.	There is nothing preventing a Subscriber or represented mortgagee entering into such an arrangement with their Identity (Subscriber) Agent. However, the responsibility remains with the Subscriber to ensure the verification is undertaken in accordance with the Standard.
56	6.5	We welcome the inclusion of Subscribers to use an Agent who they reasonably believe is reputable, competent and insured in compliance with Insurance Rules 1.2 and 2.2.	None.	Noted.
57	6.5.5	A Subscriber cannot ensure compliance with the Vol Standard by its Identity (Subscriber) Agent, it can only review the documentation it receives from its Identity (Subscriber) Agent with a view to performing further checks if warranted under certain circumstances.	The MPR has been amended.	The amendment requires Subscribers to take further steps where there is any reason to believe the verification may be flawed.
58	6.6	For the avoidance of doubt, it is recommended that anything that must be retained may be retained by electronic processes and retained electronically without the need to retain the relevant physical form of evidence.	None.	There is no requirement as to which medium supporting evidence for a transaction, including evidence of each required identity verification, is to be retained. The Subscriber will need to determine as a business practice the appropriate medium in light of the type of evidence and the potential need to produce the supporting evidence in court.
59	6.13.1 & Cert.5	The expression 'valid mortgage' is too broad. A practitioner is not in a position to determine whether a mortgage is valid. There may be any number of reasons why a mortgage is not	The MPR has been amended.	The amendments replace "valid mortgage from the mortgagor" with "mortgage granted by the mortgagor".

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		valid such as incapacity or misleading and deceptive conduct. "Properly signed mortgage" is a more appropriate expression.		
60	7.4	A Signer must be a Subscriber.	None.	It is impractical for every Signer to be a Subscriber. Signers have a specific and limited function and responsibility undertaken on behalf of and under the supervision of a Subscriber.
61	7.4.2	There should be a similar deeming provision for directors, officers and employees of an ADI because the ADI will be liable for the actions of its directors, officers and employees and has risk management systems in place to minimise risk of wrong doing by its employees.	None.	It is not appropriate to exempt directors, officers and employees of a Subscriber from the probity requirements for Signers. The continuing obligation of Signers to comply with the probity requirements is essential to maintain confidence in the electronic system.
62	7.4.2	There should be a realistic indicative timeframe for checking for the existence of the probity factors in Clause 7.4.1(b). A period of 5 years, as is the case with an Insolvency Event, should be provided for all categories.	None.	Signers have a very important role to play in an ELN. It is not appropriate to limit the extent of probity checks for Signers that go to the honesty of the person.
63	7.4.2	Clause 7.4.1(b) appears to be a continuing obligation which does not take in to account the prudential and market conduct regulation to which an ADI is subject.	None.	The continuing obligation of Signers to comply with the probity requirements is essential to maintain confidence in the electronic system.
64	7.4.2(c)	It is queried whether the deeming provision should apply to Public Servants having regard to the broad definition of Public Servant in clause 2.1.2.	The MPR has been amended	Public Servants in all jurisdictions are required to comply with strict codes of conduct. The deeming provision has been clarified so it only applies to Public Servants involved in a Conveyancing Transaction.
65	7.5.4	A Subscriber should be required to ensure that all information provided to any Certification Authority, or to any Registration Authority, is correct, complete and not false or misleading.	None	The limitation in Rule 7.5.4 only applies to the ELNO for the purpose of obtaining a digital certificate. This limitation does not apply to the information provided to the Certification Authority or Registration Authority.
66	11(b) & 11(d)	The prohibition appears to be drawn too widely and may inadvertently prevent appropriate information being passed onto the client.	The MPR has been amended.	The amendment widens the exception to allow use, reproduction and disclosure of information for the purposes of the Conveyancing Transaction, not just for participating in an Electronic Workspace.
67	Sch.3	There should be an additional certification that the work was performed by the Subscriber, supervised and verified by the Subscriber or performed by another Subscriber.	None	The suggested additional certification is not necessary because of the attribution rule in section 12 of the ECNL.
68	Sch.3, Cert.2	The certification states that the Subscriber holds a Client Authorisation. A CA is not required for caveats and priority notices and so the Certification Rules should be amended.	None.	The certification is not required and will not be presented to the Signer when digitally signing a document where a Client Authorisation is not required.
69	Sch.3, Cert.6	The certification required from a Subscriber in relation to the retrieval and secure destruction of or making invalid the duplicate (paper) certificate of title appears to be inconsistent with requiring a party to retain the duplicate certificate of title	None.	The certification will only be used in Western Australia and Victoria where the requirement to retain the duplicate certificate of title and not mark it as cancelled does not apply. In Western Australia legislative amendments have been made to provide that a Subscriber who invalidates a duplicate Certificate of Title for an

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		and not mark it as cancelled or destroy it.		electronic transaction will not contravene the relevant statutory provision.
70	Sch.3, Cert.6	Further consideration of the practical implications of the duplicate title certification is required due to the possible need to revert to a paper settlement upon failure of an electronic settlement and the difficulties this would entail if the practitioner had already destroyed the certificate of title as required to do so, to enable making the necessary pre-settlement certification.	None.	The certification of a Certificate of Title having been destroyed or made invalid is only used in Victoria and Western Australia. In Victoria the electronic Certificate of Title can be nominated to the paper transaction. In Western Australia where a duplicate Certificate of Title for an electronic transaction has been invalidated or destroyed and the transaction is rejected or withdrawn from registration the Registrar will issue a replacement duplicate Certificate of Title.
71	Sch.3 & 6.6	Jurisdictional differences regarding the handling of Duplicate Certificates of Title are causing procedural issues for financial institutions. This, in turn, is a barrier to uptake. We submit all jurisdictions should align their processes to the MPR and the agreed-upon certifications.	None.	The requirement for the certification in some jurisdictions is a result of practice differences in those jurisdictions which all jurisdictions are working towards eliminating. Financial institutions can elect not to have a paper duplicate Certificate of Title issued or convert their paper certificates to electronic format. Where there is no paper duplicate Certificate of Title the certification is not required and is not presented to Signers during the digital signing process.
72	Sch.3, Cert.6	<p>The CT handling certification does not currently allow for an efficient transition of paper CTs to electronic CTs through bulk conversion and universal CT cancellation.</p> <p>We recommend that this requirement be reviewed and the option be provided for ADIs to be exempted from the requirement to retrieve the CT prior to its destruction for all states, including Victoria and Western Australia.</p> <p>The following wording for the Certification is suggested: "The Subscriber has either: a. securely destroyed or retained in a secure location pending destruction; or b. made invalid the (duplicate) certificate(s) of title for the folio(s) of the Register listed in this Registry Instrument or Document."</p>	None.	The certification is not related to bulk conversion or universal cancellation of paper duplicate Certificates of Title. Jurisdictions will continue to work with financial institutions to remove paper duplicate Certificates of Title.
73	Sch.4	<p>The Client Authorisation form should include a statement within the Client's certificate that he/she/it/they is/are the registered proprietor(s) (or entitled to be the registered proprietor(s)) of the property.</p> <p>The Client Authorisation form should be amended to contain a warranty by the client that it is entitled to enter into the Conveyancing Transactions(s) identified in the Client Authorisation.</p>	None	<p>Certification (b) in the Client Authorisation already covers the subject matter of the proposed certification. Nevertheless, a Subscriber is still required to establish that the Client has the right to deal with the property described in the Client Authorisation. The suggested certification would not cover all situations, for example where the Client acts through an agent.</p> <p>In the event of a fraud or improper dealing, where the client did not have the right to deal, a warranty improperly provided is of no value.</p>
74	Sch.4	The form of the Client Authorisation is strictly prescribed. As this is a key document, there should be further information about it in the rules.	None.	The Client Authorisation rules are considered to be sufficiently prescribed. A Guidance Note dealing specifically with the Client Authorisation is to provide further guidance regarding completion of the authority.

#	Rule	Issue	Action Taken	Commentary
75	Sch.4	If the Subscriber uses an agent who is not an Identity (Subscriber) Agent to conduct the Vol (because the agent does not hold the required insurance or for other technical reasons) there is no provision for the agent to sign the CA. We think that it is appropriate that there is no provision for an agent to sign because 6.5.4 and 8.3 will not apply (as the Subscriber is not using safe harbour) and so the CA and any Registry Documents will not need to be signed in the presence of the Subscriber or the agent.	The MPR has been amended.	The amendment allows Subscribers required to undertake a verification of identity to do it themselves, to engage and direct an Identity (Subscriber) Agent or to engage and direct any other person as their agent. Subscribers are also obliged to take reasonable steps to ensure that any document needing to be signed, including a Client Authorisation or Registry Instrument, is signed by the person whose identity has been verified. This may be achieved by having the document signed in the presence of the Identity (Subscriber) Agent or other agent engaged to conduct the verification of identity.
76	Sch.4	MPR Guidance Note #1 states that if an Identity (Subscriber) Agent signs the CA, the Subscriber does not also need to sign. This should be reflected in the Participation Rules. The version in Schedule 4 indicates that both must sign.	None.	Whilst the details of both the Subscriber and Identity (Subscriber) Agent are required, the Client Authorisation clearly indicates that either the Subscriber or the Identity (Subscriber) Agent must sign. The Client Authorisation is to be available as an interactive PDF form which guides how it is to be signed.
77	Sch.4	The definitions of 'Conveyancing Transaction Type' in the Client Authorisation – Schedule 4 should read 'Conveyancing Transaction type.'	The MPR has been amended.	The amendment to the Client Authorisation replaces Transaction Types with Conveyancing Transaction.
78	Sch.4	The Privacy Collection Statement in the terms of the Client Authorisation should satisfy all parties' obligations under APP 5.	None.	It is not possible for the Client Authorisation to satisfy all parties privacy compliance obligations as there are circumstances where a Client Authorisation is not necessary, for example caveats, stand-alone mortgages and Subscribers representing themselves.
79	Sch.4	The Client Authorisation form should be amended to track the language in clause 6.4 "Right to Deal".	None	Certification (b) in the Client Authorisation is broader than the Right to Deal.
80	Sch.4	We note the revised definition of transfer that includes liaising with any proposed mortgagee. Presumably the rationale for that change is that even where the practitioner is not instructed to give advice in relation to a purchaser's mortgage the practitioner will need to liaise with incoming mortgagee to arrange financial settlement. The definition should also be extended to similarly cover liaising with any outgoing mortgagee.	The MPR has been amended.	The definition of Transfer in the Client Authorisation has been amended to also include liaison with any outgoing mortgagee.
81	Sch.4	We suggest it should be possible to insert details of the sale price in a transaction so as to limit the authority of the practitioner to the transfer or mortgage of the property to a particular party at a particular price.	None.	Limitations on authority and any other conditions, such as sale price, can be inserted on the Client Authorisation under Additional Instructions.
82	Sch.4	The need for clause 1 of the Client Authorisation which simply repeats the authorisation on page 1 is queried.	None.	Inclusion of the first term of the Client Authorisation, notwithstanding its similarity to the certification wording on the face of the form, ensures all terms of the Client

#	Rule	Issue	Action Taken	Commentary
				Authorisation are clearly expressed in the one place.
83	Sch.3	A Subscriber representing a mortgagee cannot certify that the mortgagee has conducted a verification of identity; merely that it has been instructed that the mortgagee has done so.	The MPR has been amended.	The amendment to Certification 5 requires a Subscriber representing a mortgagee to be reasonably satisfied that the verification of identity has been undertaken.
84	Sch.6	Retention of the prescribed requirements for Identity (Subscriber) Agents to maintain particular insurances is supported. However, there may be times when due to distance or remoteness (including overseas) it may not be possible to comply with these requirements, despite best efforts, and a satisfactory solution needs to be developed for such circumstances. The increased insurance requirements for Identity (Subscriber) Agents could result in fewer legitimate businesses offering these services and inconvenience and frustration for customers and clients.	The MPR has been amended.	The amendment allows Subscribers to comply with their obligations to conduct identity verifications by using any agent of their choosing for the purpose. Such agents need not hold the insurances required of Identity (Subscriber) Agents.
85	Sch.6	Rules 1.2 and 2.2 should be amended to include a further subclause (f) "which is otherwise on terms satisfactory to the Registrar," reflecting Rules 1.1(e) and 2.1(e) respectively. There are concerns that because professional indemnity insurance is ordinarily framed on a claims-made basis, there may be no run off cover available if an Identity (Subscriber) Agent leaves the market. It would be appropriate for the Registrar to have residual discretion as to satisfactory terms of such policies, including automatic run off cover.	None.	It is for Subscribers to determine the acceptability of all other terms of an Identity (Subscriber) Agent's insurance including what run-off cover they require.
86	Sch.6	The current excess per claim of no greater than \$5000 is too low and not in keeping with industry standards. The insurance requirements are not appropriate for Principal Subscribers with significant transaction volume. We propose an excess of no greater than \$250,000 per claim.	The MPR has been amended.	The amendment has increased the maximum excess per claim to \$20,000.
87	Sch.6	Most mortgage brokers do not carry the level of insurance contemplated in these rules. The proposed level of insurance could prove prohibitive for them.	The MPR has been amended.	The amendments allow Subscribers to comply with the obligations by using any agent of their choosing for the purpose. Such agents need not hold the insurances required of Identity (Subscriber) Agents. The amendments also deem regulated and insured mortgage brokers as insured for the purposes of conducting identity verifications of mortgagors as Identity Agents and when they apply the Vol Standard to satisfy the requirements for a verification to be deemed reasonable steps without holding the insurances required of Identity (Subscriber) Agents.
88	Sch.6	Mortgage brokers who are covered by an Australian Credit Licence including their credit representatives should be deemed to satisfy the insurance requirements for Identity (Subscriber) Agents.	The MPR has been amended.	The amendment allows regulated and insured mortgage brokers to apply the Vol Standard to mortgagors as agents of the mortgagee and satisfy the requirements for the verification to be deemed reasonable steps without holding the insurances required of Identity (Subscriber) Agents.

#	Rule	Issue	Action Taken	Commentary
89	Sch.6	<p>Mortgage brokers are widely used to conduct Vol. The insurance level proposed exceeds the cover held by many mortgage brokers and higher cover is not readily available.</p> <p>Typical cover held by brokers who are not covered by larger policies held by large groups is \$2m in one claim and \$6m in aggregate allowing for two reinstatements, i.e. another \$2m for each re-instatement. The policy provides for seven years run off cover.</p>	The MPR has been amended.	<p>The amendments allow lenders to comply with their obligations to conduct identity verifications on mortgagors by using mortgage brokers who do not hold the insurance required of Identity (Subscriber) Agents.</p> <p>The amendments also allow regulated and insured mortgage brokers to apply the Vol Standard to mortgagors as agents of the mortgagee and satisfy the requirements for the verification to be deemed reasonable steps without holding the insurances required of Identity (Subscriber) Agents.</p>
90	Sch.6	Mortgage brokers are required to be insured, meet education standards and undertake continuing professional education. They are suitable to be deemed to meet the Insurance Requirements.	The MPR has been amended.	The amendment allows regulated and insured mortgage brokers to apply the Vol Standard to mortgagors as agents of the mortgagee and satisfy the requirements for the verification to be deemed reasonable steps without holding the insurances required of Identity (Subscriber) Agents.
91	Sch.6	The proposed amendments provide that an Identity (Subscriber) Agent will need the same level of insurance as a Subscriber and the ELNO. We contend that the fraud risks related to the conduct of Identity (Subscriber) Agents are not significant enough to justify the increased insurance requirements to such levels because their role is not as significant as the ELNO or the Subscriber.	None.	Conduct of identity verifications by Subscribers and Identity (Subscriber) Agents on behalf of Subscribers is the prime means of mitigating identity fraud in conveyancing transactions. The risks of identity fraud in conveyancing transactions justify the levels of insurance required of Subscribers and Identity (Subscriber) Agents. Nevertheless, it is intended to conduct a thorough independent risk assessment of over the next 6 to 12 months that will provide a basis for re-assessing the insurance requirements for Subscribers and Identity (Subscriber) Agents.
92	Sch.6	The eligibility criteria for Identity (Subscriber) Agents need to be more flexible to accommodate special circumstances such as persons in remote aged care facilities, prison or remote communities and persons who cannot satisfy the Vol Standard. The criteria should be less stringent when the Vol Standard is not being used and an Identity (Subscriber) Agent is not available.	The MPR has been amended.	The amendment allows Subscribers to use any agent of their choosing as an alternative to an Identity (Subscriber) Agent particularly where an Identity (Subscriber) Agent is not available and irrespective of whether the Vol Standard or other reasonable steps are used.
93	Sch.6, 1	<p>Under PI insurance policies in some States, the excess is much higher than \$5000. The wording should be changed to “no less than” in lieu of “no greater than”.</p> <p>Excess for fidelity insurance may be too low in some States.</p>	The MPR has been amended.	<p>The amendment has increased to maximum excess on insurance policies required by Subscribers to \$20,000. Insurance claim excesses are expressed as “no greater than” to limit the insured taking on excessive self-insurance and the insurance policy becoming ineffective for compensating losses.</p> <p>Licensed Conveyancers and Australian Legal Practitioners are however exempted from the Insurance Rules by Insurance Rule 4(b).</p>
94	Sch.6, 1.2	The inclusion of a minimum aggregate amount of professional indemnity insurance of not less than \$20,000,000 is supported. We agree with the introduction of an aggregate cap amount and increase in the excess.	None.	Noted
95	Sch.6, 2.2,	Fidelity insurance is not relevant to an Identity (Subscriber)	The MPR has been	The amendment provides the option for Identity (Subscriber) Agents to obtain cover

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#	Rule	Issue	Action Taken	Commentary
	2.3	Agent who does not handle funds on trust on behalf of clients or third parties.	amended.	for dishonest and fraudulent acts as an extension to their professional indemnity policies in lieu of having to take out a separate fidelity insurance policy. Fidelity insurance for Identity (Subscriber) Agents is intended to cover fraud by the agent or their employee that results in loss by an innocent third party. The fraud may, for example, involve collusion between the agent and the Subscriber's client to effect a fraudulent identity verification.
96	Sch.6, 2.2, 2.3	No explanation has been given for the increase in the fidelity insurance requirement for Identity (Subscriber) Agents to \$20 million aggregate.	None.	The \$20 million annual aggregate cap on fidelity insurance cover is considered necessary to provide adequate compensation for loss from fraudulent identity verifications in conveyancing transactions.
97	Sch.6, 2.3	Should "and Insurance Rule 2.2" be added to Insurance Rule 2.3?	The MPR has been amended.	The amendment allows Identity (Subscriber) Agents to comply with the fidelity insurance requirement by paying a levy or contribution to a mutual fund that complies with the fidelity insurance requirement. This means that Subscribers who obtain their fidelity insurance from a mutual fund comply with the fidelity insurance requirement for Identity (Subscriber) Agents.
98	Sch.6	Advice is requested as to whether the increased insurance arrangements will for Identity (Subscriber) Agents be accessible and affordable by a majority of businesses offering Identity (Subscriber) Agent services.	None.	It has been confirmed that the insurance levels required of Identity (Subscriber) Agents are available commercially at the present time. The continuing adequacy of the insurance market in providing the currently required levels is to be kept under review.
99	Sch.6	Advice is requested as to whether the increased insurance arrangements for Identity (Subscriber) Agents will be facilitative of a broad range of competent and professional providers being available to industry and their customers and clients at a reasonable cost.	None	It is understood that the insurance levels required of Identity (Subscriber) Agents will not prohibit a broad range of competent and professional providers being available to industry. The continuing adequacy of the insurance market in providing the currently required levels is to be kept under review.
100	Sch.6	Formal subscriber agency appointments may not be appropriate and that one-off identifications by a class of persons experienced in witnessing legal documentation would be appropriate, for example by relying on Justices of the Peace or senior police officers.	The MPR has been amended.	The amendment allows Subscribers to comply with their obligation to conduct identity verifications using any agent of their choosing irrespective of whether the Vol Standard or any other reasonable steps are applied.
101	Sch. 8	The WA Vol procedures differ from the MPR. The differences create an avoidable and heavy administrative burden.	The MPR has been amended.	The amendments to the Vol Standard will eliminate some of the existing differences with the WA Vol procedures for paper transactions. Subscribers currently have the option in WA of using the paper transactions procedure or the one in the Participation Rules. When practicable, WA intends to align its paper transaction requirements with its Participation Rules.
102	Sch.8	Practical difficulties created by the Standard are that a face-to-face meeting cannot be constituted electronically. Until this is recognised as a viable option under Schedule 8 this could contribute to a possibly lower incidence of transactions being processed electronically and add cost and inconvenience to	None.	The use of alternative methods to a face-to-face meeting for matching a face to the photo on an identity document is being kept under review.

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#	Rule	Issue	Action Taken	Commentary
		customers.		
103	Sch.8	The current draft does not provide a method to achieve safe harbour for mortgagees who are not Subscribers or who are Subscribers but outsource registration to other Subscribers.	The MPR has been amended.	<p>The amendments allow mortgagees represented by a Subscriber to apply the Vol Standard themselves or use an Identity (Subscriber) Agent and warrant to the Subscriber representing them that the identity verification has been undertaken. The Subscriber representing a mortgagee has an obligation to be reasonably satisfied that the identity verification has been undertaken.</p> <p>The amendments also allow regulated and insured mortgage brokers to apply the Vol Standard to mortgagors as agents of the mortgagee and satisfy the requirements for the verification to be deemed reasonable steps without holding the insurances required of Identity (Subscriber) Agents.</p>
104	Sch.8	The verification of identity standard must mandate checking of Government-issued documents using the Document Verification Service (DVS).	None.	Inclusion of use of the DVS in the Vol Standard is to be kept under review. Nevertheless, there is no impediment to any Subscriber using the DVS now as a part of either their reasonable steps or to resolve any doubts arising when using the Vol Standard or their reasonable steps.
105	Sch.8	There needs to be an appropriate balance reached on who should be allocated risk and to what extent Identity (Subscriber) Agents can be separately regulated under this framework.	None.	It is considered that an appropriate balance between risk and responsibility for fraud mitigation has been achieved.
106	Sch.8	Other forms of identity verification can be even more reliable than the current face to face regime.	None.	The development of alternative methods of face and photo matching, and of identity verification generally, is being kept under review.
107	Sch.8, 1	The definition of Identity (Subscriber) Agent in the Vol Standard needs to be removed to avoid inconsistency with the different definition of Identity (Subscriber) Agent in 2.1.2.	The MPR has been amended.	The amendment has removed the definition of Identity (Subscriber) Agent from the Vol Standard as part of re-presenting the Vol Standard in a generic form.
108	Sch.8, 1	Definition of photo card should be extended to cover other Government-issued photo identity cards.	The MPR has been amended.	The amendment extends the definition of Photo Card to cards issued by the Commonwealth Government as well as State and Territory governments.
109	Sch.8, 1	In the definition of Client, the words "but have not provided a Client Authorisation" should be deleted as caveats and priority notices in Victoria can only be lodged electronically and a Client Authorisation has to be completed.	None.	The national requirement for electronic lodgment of caveats and priority notices is for a Client Authorisation to be optional.
110	Sch.8, 2	References to the Defence Force Act should be changed to Defence Act.	The MPR has been amended.	The amendment has removed all references to the Defence Act and to defence personnel pending development with the Department of Foreign Affairs and Trade of a mutually acceptable procedure for verifying the identity of persons overseas.
111	Sch.8, 2.3	In order to achieve safe harbour where a verification of identity in accordance with the Vol Standard has been conducted within two years, if the client enters into a new transaction requiring a new Client Authorisation, the client will have to be subjected to a	The MPR has been amended.	The amendment requires Subscribers to take reasonable steps to ensure that the person whose identity has been verified signed the Client Authorisation in lieu of requiring the signing to take place at the same time as the identity verification. This means that a re-verification of identity is not necessarily required if it is necessary to

#	Rule	Issue	Action Taken	Commentary
		second verification of identity in accordance with the Verification of Identity Standard when the Client Authorisation is signed.		obtain a new Client Authorisation.
112	Sch.8, 2.3	Clarification is sought of the new reference to "Registry Instrument or other document" which is unclear. There may be a number of documents associated with a conveyance which have not or cannot be produced for signature at the time the Client Authorisation is signed.	The MPR has been amended.	The amendment has removed the reference to Registry Instrument or other Document and focused the Vol Standard on the process of identity verification only.
113	Sch.8, 2.3	The Registry Instrument being the mortgage document will need to be signed by the witness. In some cases, employees of mortgagees will not be eligible witnesses under the existing rules for paper mortgages.	The MPR has been amended.	The amendment has removed the reference to Registry Instrument or other Document and focused the Vol Standard on the process of identity verification only. In addition, an obligation has been placed on Subscribers to take reasonable steps to ensure the person whose identity has been verified signs any Client Authorisation, mortgage or other document needing to be executed.
114	Sch.8, 2.3	As Registry Instruments often need to be signed quickly, a requirement that the person who conducts the Vol witnesses the Registry Instrument will create significant practical problems. This will involve significant additional expense and inconvenience. Instead, the Subscriber should be required to take reasonable steps to determine that the person who signs the Registry Instrument is the same as the person identified.	The MPR has been amended.	The amendment has removed the reference to Registry Instrument or other Document and focused the Vol Standard on the process of identity verification only. An obligation has been placed on Subscribers to take reasonable steps to ensure the person whose identity has been verified signs any Client Authorisation, mortgage or other document needing to be executed.
115	Sch.8, 2.3	The requirement that Identity (Subscriber) Agents witness Registry Documents is incompatible with the qualifications for witnesses in some jurisdictions.	The MPR has been amended.	The requirements for witnessing of registry instruments and documents have been removed. An obligation has been placed on Subscribers to take reasonable steps to ensure the person whose identity has been verified signs any Client Authorisation or mortgage.
116	Sch.8, 2.3	Allowance should be made for a mortgage to be signed within six months of the original identity verification where there is no reason for the mortgagee to suspect that the mortgagor is not the same person as the one they originally identified.	The MPR has been amended.	The amendment has removed the reference to Registry Instrument or other Document and focused the Vol Standard on the process of identity verification only. An obligation has been placed on Subscribers to take reasonable steps to ensure the person whose identity has been verified signs any Client Authorisation or mortgage.
117	Sch.8, 2.3	Safe harbour for mortgagees conducting Vol according to the Vol Standard should apply even if the mortgage is not signed at the time of the Vol so long as reasonable steps are taken to ensure that the mortgage is signed by the same person(s) as were identified in a previous or subsequent but pre-certification Vol. These reasonable steps should not be prescribed in order to enable operational flexibility.	The MPR has been amended.	The amendment has removed the reference to Registry Instrument or other Document and focused the Vol Standard on the process of identity verification only. An obligation has been placed on Subscribers to take reasonable steps to ensure the person whose identity has been verified signs any Client Authorisation or mortgage.
118	Sch.8, 2.3	Concurrent signing of documents and identity verification in both electronic and paper processes should be limited to when a Client Authorisation is required.	The MPR has been amended.	The amendment has removed the reference to Registry Instrument or other Document and focused the Vol Standard on the process of identity verification only. An obligation has been placed on Subscribers to take reasonable steps to ensure the person whose identity has been verified signs any Client Authorisation or mortgage.

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119	Sch.8, 2.3	The use of "other document" in the drafting is too wide - the standard should be limited to specified documents.	The MPR has been amended.	The amendment has removed the reference to Registry Instrument and other Document in the Vol Standard.
120	Sch.8, 3	It is noted that the amendments to categories 1 and 2 have deleted the terminology "Australian visa grant notice" in the Minimum Document Requirements. As it will be some years before all Australian Resident Visa labels have expired, it is expected the removal of the requirement to sight an Australian visa grant notice in addition to sighting a foreign passport is unlikely to be an issue.	None.	Noted.
121	Sch.8, 3	The three methods of identification all require the production of either a passport or birth certificate. It is likely that many people won't have these documents, thus making safe harbour unachievable or delaying the process significantly.	None.	It has been independently estimated that 95% of adults in Australia have either a passport or a driver's licence or both. The remainder can use either Category 3 or Category 4 documents to verify their identity. The experience so far in Western Australia and South Australia has confirmed these arrangements to be adequate.
122	Sch.8, 3	There have been difficulties experienced in the Vol process for Australian citizens who have resided overseas for some time as they are unlikely to have current Australian drivers' licences or even Medicare cards.	The MPR has been amended.	The amendment has created an additional document category for Australian citizens duplicating the arrangements for foreign citizens, i.e. an Australian or Foreign Passport plus either a government-issued photo card or a full birth certificate plus a government-issued identity card.
123	Sch.8, 3.1	For clarity, the Rule should read "in one of the categories set out in the following table" rather than "in one of the following categories".	The MPR has been amended.	The amendment provides the clarity suggested, notwithstanding that there is a definition of Category.
124	Sch.8, 3.2	For clarity, the words "in the following table" should be inserted at the end of the Rule.	None	Category is a defined term.
125	Sch.8, 3.3(a)	For clarity, "of the following table" should be inserted after "1, 2, 3, 4 or 5".	None	Category is a defined term.
126	Sch.8, 3.4	How is a Subscriber to ascertain that an Australian passport has been cancelled and was current within the preceding 2 years? And what liability attaches to a Subscriber who inadvertently uses a cancelled passport to verify the identity?	None	<p>If the passport appears to be current based on the information in the passport, it would be reasonable for a Subscriber to rely on that information, unless there is a reason to suspect that the passport has been, or may have been, cancelled. In this case, further enquiries should be made. In the case of an Australian passport, this may include using the Document Verification Service (DVS) to check that the passport has not been cancelled. Alternatively, the issuing authority (or its representative in Australia, such as the relevant embassy) could be contacted to confirm whether or not the passport is valid.</p> <p>The acceptance of Australian Passports that have been expired for less than 2 years has been standard practice in identity verification since the development of the 100-point check in the 1980s.</p> <p>The liability of a Subscriber for an inadvertent acceptance of a cancelled passport would be determined on the facts of the situation and under any applicable legislative</p>

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#	Rule	Issue	Action Taken	Commentary
				scheme.
127	Sch.8, 3.4	Allowance for expired passports is supported as it will align with the requirements under the AML/CTF Act with the VOI Rules.	None.	Noted.
128	Sch.8, 4.1(a)	For clarity, "of the table set out in Rule 3 above" should be inserted after "Categories 1 to 3".	The MPR has been amended.	The amendment has adopted the suggested wording change.
129	Sch.8, 4.1(b)	For clarity, "of the table set out in Rule 3 above" should be inserted after "Category 4(a)".	The MPR has been amended.	The amendment has adopted the suggested wording change.
130	Sch.8, 5	Does the inclusion of "Registry Instrument or other document" mean that a Subscriber cannot sign a Registry Instrument on behalf of a body corporate?	The MPR has been amended.	The amendment has removed the reference to Registry Instrument or other Document and focused the VOI Standard on the process of identity verification and an obligation has been placed on Subscribers to take reasonable steps to ensure the person whose identity has been verified signs any Client Authorisation or mortgage. Where the transacting party is a body corporate the Subscriber is authorised by a Client Authorisation to sign on behalf of that body corporate.
131	Sch.8, 5(b) & (c)	There is no affixing of a seal any more in body corporate signings.	None.	Affixing of a seal is still an optional method of signing for a corporation.
132	Sch.8, 8	It is essential that verification of identity conducted in a foreign country is undertaken with as much rigour as reasonably possible.	The MPR has been amended.	The amendment has removed the procedure for verifying persons overseas, including Defence Force personnel from the VOI Standard. Unfortunately, it has become evident that consular offices and defence establishments are not able to provide the services necessary for inclusion in the VOI Standard. However, it is open to Subscribers to use the services of consular offices in their reasonable steps procedures and advice of the services available is included in the VOI Guidance Note.
133	Sch.8, 8.1	Provides that safe harbour VOI in a foreign country by an Australian Consular Officer or an Australian Diplomatic Officer or a person authorised by that officer can only apply to Australian citizens or residents (as distinct from anybody). It would assist if these officers could identify any person.	The MPR has been amended.	The amendment has removed the procedure for verifying persons overseas, including Defence Force personnel from the VOI Standard. Unfortunately, it has become evident that consular offices and defence establishments are not able to provide the services necessary for inclusion in the VOI Standard. The services available from consular offices are described in the VOI Guidance Note. Consular officers will service any person needing their identity verified for an Australian purpose. This includes Australian citizens and foreign citizens.
134	Sch.8, 8	Difficulties are currently being encountered with the requirements for verification of identity overseas. Communication was recently received from the Australian High Commission in London which indicated while the High Commission can certify documents, it will not verify identity.	The MPR has been amended.	The amendment has removed use of consular services from the VOI Standard for verifications overseas. Unfortunately, it has become evident that consular offices are not able to provide the services necessary for inclusion in the VOI Standard. However, the limited services available from consular offices are described in the VOI Guidance Note and can be used by Subscribers in their reasonable steps procedures.

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#	Rule	Issue	Action Taken	Commentary
135	Sch.8, 8	We have concerns with the verification of foreign persons in a foreign country by an Identity (Subscriber) Agent. A Subscriber has little prospect of assessing whether an overseas agent is competent, whether documents provided for Vol are legitimate and little prospect of recovering any loss from an overseas agent in the event of an error.	None.	If a Subscriber is unable to identify an eligible Identity (Subscriber) Agent able to verify the identity of a person overseas, an alternative is to devise and undertake reasonable steps themselves which may include the limited services available from consular offices.
136	Sch.8, 8	The strengthening of process for signing off-shore is supported.	The MPR has been amended.	It is intended to work with the Department of Foreign Affairs and Trade on the development of a mutually satisfactory procedure for verifications overseas using consular offices that can be incorporated into the Vol Standard.
137	Sch.8, 8	The option for a Subscriber to engage an Identity (Subscriber) Agent to conduct verification of identity has been removed. Furthermore, 8.1(b) has been revised to say that only Australian Residents and citizens can be identified by diplomatic officers. This would mean that for foreign clients there will be no option but to have their identities verified by Subscribers themselves. Given the face-to-face requirement of verification, it would mean that there is effectively no way of identifying non-Australian residents or citizens.	The MPR has been amended.	The amendment has removed use of consular services from the Vol Standard for verifications overseas. This has been necessary because those services are insufficient for inclusion in the Vol Standard. Nevertheless, Subscribers can use consular services in their reasonable steps procedures. Subscribers can also use an Identity (Subscriber) Agent or any other agent they have confidence in to verify the identity of a person overseas and the person can be an Australian or foreign citizen.
138	Sch.8, 8	There is no provision for the situation where the Standard is not used and the Subscriber or the customer or client is seeking the Vol to be conducted in another country using an appropriate consular or other recognised or authorised person.	The MPR has been amended.	The amendment allows Subscribers to comply with their obligations to conduct identity verifications by using any agent they have confidence in. Subscribers can also use an Identity (Subscriber) Agent to verify the identity of a person overseas and in both circumstances the person can be an Australian or foreign citizen. However, consular offices cannot be Identity (Subscriber) Agents so that their use can only be as part of reasonable steps undertaken by the Subscriber or an agent on the Subscriber's behalf.
139	Sch.8, 8	There is no provision allowing for the identification by a Consular Officer of non-Australian citizens who need to be identified overseas.	The MPR has been amended.	The amendment has removed use of consular services from the Vol Standard for verifications overseas. This has been necessary because those services are insufficient for inclusion in the Vol Standard. Nevertheless, Subscribers can use consular services in their reasonable steps procedures for both Australian and foreign citizens.
140	Sch.8, 8	The drafting implies that the Consulate must return the paper work directly to the Subscriber as opposed to the person being identified which may create logistical issues for the Consulate.	The MPR has been amended.	The amendment has removed use of consular services from the Vol Standard for verifications overseas. This has been necessary because those services are insufficient for inclusion in the Vol Standard. Nevertheless, Subscribers can use consular services in their reasonable steps procedures and the consular officer will return the paper work to the person whose identity is being verified for their delivery to the Subscriber.

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#	Rule	Issue	Action Taken	Commentary
141	Sch.8,8	The drafting implies that all registry instruments need to be witnessed when this is not the case.	The MPR has been amended.	The amendment has removed the reference to Registry Instrument and other document from the Vol Standard as part of re-casting it as a generic identity verification process only.
142	Sch.8, 8	Can it be assumed that the relevant consular officers and other authorised persons are not acting as Identity (Subscriber) Agents so as to avoid any risk of them being subject to the requirements in Schedule 8 such as insurance and the completion of Identity (Subscriber) Agent certifications in clause 9 so that clause 8.3 stands alone from those provisions?	The MPR has been amended.	The amendment has removed use of consular services from the Vol Standard for verifications overseas. This has been necessary because those services are insufficient for inclusion in the Vol Standard. However, the limited services available from consular offices can be used by Subscribers in their reasonable steps procedures.
143	Sch.8, 9	This clause requires the Subscriber to receive the documents 'from the Identity (Subscriber) Agent.' It should be sufficient that the Subscriber receives them (for example returned by the person being identified or by a third party) rather than requiring the documents to be received 'from the Identity (Subscriber) Agent.'	The MPR has been amended.	The amendment has removed the section on use of Identity (Subscriber) Agents from the Vol Standard. However the requirement for the Subscriber to receive all documentation of an identity verification from the Identity (Subscriber) Agent who conducted it on their behalf has been re-instated in the Rules. The Subscriber's receipt of the documents directly from the Agent in the Vol Standard is to ensure they are not tampered with by the person whose identity is being verified after having been certified by the Agent.
144	Sch.8, 9	This amendment requires an Identity (Subscriber) Agent to witness the execution of a Registry Instrument at the time the Vol is undertaken. It also requires the Identity (Subscriber) Agent to collect and return the completed Registry Instrument to the Subscriber following Vol. This will introduce further cost, risk to settlements and inherent delay and is counter to the goals of creating improved productivity.	The MPR has been amended.	The amendment has removed the reference to Registry Instrument and other document from the Vol Standard as part of re-casting it as a generic identity verification process only. Separately, an amendment has introduced a requirement for Subscribers to take reasonable steps to ensure any document is signed by the same person whose identity has been, is being or will be verified.
145	Sch.8, 9(b)	Include previous wording from version 2 as part of the amended clause 6.5.4 that a Subscriber must appoint an Identity (Subscriber) Agent who the Subscriber reasonably believes is reputable, competent and insured in compliance with the Insurance Rules 1.2 (b) and 2.2(b) and whose Terms and Conditions of providing the services of an Identity (Subscriber) Agent do not limit its liability to less than the amounts specified in paragraphs 1.2(b) and 2.2(b) of the Insurance Rules. The Identity (Subscriber) Agent should not be able to be seen to contract out of its insurance obligations.	None.	Identity (Subscriber) Agents must hold the insurance levels specified in Schedule 6. Any liability limitation in an agreement between the Subscriber and its Agent would put the Subscriber in breach of the Rules.
146	Sch.8, 10	It needs to be stated in para 10 that the requirements in para 10 to take further steps are part of the Standard. This should be done to avoid doubt because Schedule 8 sets out the Standard but includes additional requirements – for example, para 11 is expressly not part of the Standard.	The MPR has been amended.	The amendment has clarified when the person undertaking an identity verification according to the Vol Standard is required to take further steps to assure the verification, and has moved the reliance on a previous verification to the Rules where it applies to all identity verifications.
147	Sch.8, 10	This clause requires undertaking further checks but it has been	The MPR has been	The amendment has placed the obligation to take further steps on the Identity

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#	Rule	Issue	Action Taken	Commentary
		revised so that Identity (Subscriber) Agents are no longer required to undertake further checks. By divesting Identity (Subscriber) Agents from the obligation to undertake further checks, it renders the Vol services being provided by Identity (Subscriber) Agents redundant as a Subscriber will not qualify for the safe harbour unless they have taken reasonable steps to verify identity.	amended.	Verifier, who may be the Subscriber or an Identity (Subscriber) Agent, as part of recasting the Vol Standard as a generic process focussed on identity verification only. In addition, a Subscriber is to undertake further steps under new Rule 6.5.3.
148	Sch.8, 10	This should be reworked so that the subclause "if it would otherwise be reasonable to do so" stands alone, i.e. subclause (b) it would otherwise be reasonable to do so.	The MPR has been amended.	The amendment has adopted the suggestion.
149	Sch.8, 11	Unless the person who undertakes the later face-to-face interview is the same person who undertook the original interview, there is great scope for fraud. It is suggested that if the person undertaking the later face-to-face interview is not the individual who undertook the original interview, the Subscriber should be obliged to take reasonable steps to verify the identity. Given that the identity has already been apparently verified, those reasonable steps should be less onerous than for an original verification.	The MPR has been amended.	The amendment has moved the reliance on a previous verification to new Rule 6.5.4 where it applies to all identity verifications (not just those conducted according to the Vol Standard). The Subscriber must take reasonable steps to assure itself it is dealing with the same person.
150	Sch.8, 11	Customers once they settle loans continuously transact on their accounts and are continuously in contact with the bank and monitored. It is unreasonable to ask them to re-verify themselves every 2 years just so we can meet a 'safe harbour' standard. The safe harbour standard must reflect what is reasonable.	None.	The requirement to re-verify every two years is a compromise between those situations where clients have continuous contact and those who have no contact with the Subscriber between transactions. If the requirement were to be removed, some clients would need to have their identity re-verified more often than every two years.
151	Sch.8, 11	A Vol assessment should be valid unless the Subscriber becomes aware of a change in the name or key identifier information of the person or, in any other case, a longer period of time perhaps comparable with the 10 years for a passport renewal is included.	None.	There is no obligation on the Subscriber to re-verify an identity unless another transaction is to be conducted.
153	Sch.8	The Rules should align with the Commonwealth Government National Identity Proofing Guidelines. These guidelines explicitly recognise the rapid advances being made with knowledge-based authentication and biometrics, assessing that they will develop high enough integrity to replace face-to-face interactions.	None.	Advances in identity verification methods and techniques, including the evolution and application of new technologies, are kept under review.
154	General	It is noted that a number of proposed changes are not substantive changes but rather drafting improvements for clarity which are supported.	None.	Noted.

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#	Rule	Issue	Action Taken	Commentary
155	Sch.6	The Insurance Rules should stand alone and should not be subject to exemptions based on a Subscriber's or an Identity (Subscriber) Agent's status as an ADI or holder of an Australian Credit Licence (ACL).	None.	It is necessary to cater for those industry participants who are capable of self-insuring, as well as those who are similarly insured for other purposes.
156	6.5.4	The combination of the general principles of agency law and the proposed Clause 6.5.4 of the MPR (to the effect that Subscribers are responsible for their agents and cannot delegate responsibility for complying with the Vol Rules) should negate the need for Identity (Subscriber) Agents to hold professional indemnity and fidelity insurance.	The MPR has been amended.	The amendment has removed the strict liability of Subscribers for their agents and left the relationship to be governed by the common law of agency. As such, Subscribers are not responsible for all the acts of their agents and those Identity (Subscriber) Agents need to be insured.
157	Sch.6	Non-ADI Mortgagee Subscribers (such as specialist non-bank lenders) should be treated equally to their ADI competitors and should be allowed to self-insure if they are Registered Financial Corporations under the Financial Sector (Collection of Data) Act 2001.	None.	Registered financial corporations are not subject to the same capital requirements or prudential supervision as ADIs and are not generally considered to have sufficient financial resources to self-insure for the purposes of conveyancing transactions.
158	Sch.6	The professional indemnity and fidelity insurance requirements for Identity (Subscriber) Agents exceed the insurance they would normally hold, and may not even be obtainable on commercially acceptable terms.	The MPR has been amended.	The amendment has provided the option for Subscribers and Identity (Subscriber) Agents to procure fidelity (dishonest and fraudulent acts) cover as an extension to their professional indemnity cover. Both standalone professional indemnity and fidelity policies and as a professional indemnity policy extended to cover dishonest and fraudulent acts, have been confirmed as available commercially.
159	Sch.6	The Insurance Rules should reflect the insurable risks that arise from use of PEXA by Subscribers.	None	The categories of Subscribers deemed compliant with the Insurance Rules are to remain unchanged for the time being while a thorough risk assessment is undertaken.
160	Sch.6	It would be inappropriate to use the ACL status of Subscribers or Identity (Subscriber) Agents to determine whether they should be exempt from the Insurance Rules.	None.	The ACL status of Subscribers is used only to confirm their being of good character and reputation.
161	Sch.6	If some insurance concessions are to be allowed, then Mortgagee Subscribers that hold an Australian Credit Licence (ACL) should be "deemed compliant" with the Insurance Rules, in a similar way to lawyers and conveyancers that hold equivalent insurance.	None.	The categories of Subscribers deemed compliant with the Insurance Rules are to remain unchanged for the time being while a thorough risk assessment is undertaken.
162	Sch.6	It would be inappropriate for commercial mortgage lenders who do not need a credit licence to be required to take out professional indemnity and fidelity insurance in excess of what they hold to satisfy their own risk management needs to be eligible to be Subscribers.	None.	The insurance requirements for Subscribers who are not deemed compliant are to remain as they are until a thorough risk assessment is conducted. From that work the insurance requirements for Subscribers and Identity (Subscriber) Agents will be re-assessed.
163	Sch.6	It is not clear why only ADIs may choose to self-insure, but not other types of lenders.	None.	ADI's are allowed to self-insure because they are supervised by APRA and are required by APRA to hold minimum capital reserves.

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#	Rule	Issue	Action Taken	Commentary
164	Sch.6	The disparity in insurance requirements for ADIs, legal practitioners and conveyancers on the one hand and non-ADI Mortgagee Subscribers on the other hand is potentially distortionary, discriminatory and a strong disincentive for non-bank mortgagees to become Subscribers.	None.	Legal practitioners and licensed conveyancers are required by law to hold insurance for conveyancing transactions in order to hold their practising certificates. ADIs are subject to prudential supervision and are of sufficient financial strength to self-insure. Other mortgagees are not similarly supervised, are of varying financial strength and are not required by any law to be insured for conveyancing transactions.
165	Sch.6	A \$20m aggregate (or even a \$10m aggregate) cover is a significant and unusually high minimum requirement. When establishing an industry wide insurance requirement it is vital the requirements are set at realistic levels so they reflect the exposure (claims history) of the industry and the size of the practitioner.	None.	The \$20 million aggregate cover requirement is a consensus view among the Registrars in each jurisdiction. It is to be tested in a thorough independent risk assessment over the next 6 to 12 months.
166	Sch. 6	Excessive or difficult insurance requirements may result in a reduction in the number of insurers willing or able to supply cover and with a reduction in supply we generally see more expensive costs, restrictive cover, limited policy advancement over time and some practitioners may find it difficult to obtain insurance at all.	The MPR has been amended.	The amendment allows cover for dishonest and fraudulent acts to be obtained by way of an extension to professional indemnity cover as an alternative to a separate fidelity policy. This option is expected to significantly reduce the cost of insurance for those not needing a comprehensive fidelity policy.
167	Sch.6	Aggregate insurance cover is determined by the number of reinstatements within the policy. The majority of insurers offer either one or two reinstatements. This means practitioners would be forced to increase their (per claim) policy limit in order to achieve the aggregate requirement And premium loadings would vary between insurer from 80% to 130%. Where the insurer only provides one reinstatement it would be a premium increase of 200% to 250%.	None.	The commercial availability of the insurance requirements as described has been confirmed. Whether the insurance needs to be obtained depends upon whether the Subscriber wants to ensure that the steps taken to verify identity are deemed reasonable when the mortgage is granted. Subscribers need not use an Identity (Subscriber) Agent by taking steps they consider reasonable themselves or using any agent to carry out reasonable steps at their direction.
168	Sch.3	Minor drafting issue "Subscriber or the Subscriber"	None.	The certification rule as drafted is correct. The intended meaning is that either the Subscriber has taken reasonable steps to verify the identity of the mortgagor or is reasonably satisfied the mortgagor it represents has done so.
169	Sch.4	Can the proforma be made 1 double-sided A4? – we have made submissions on the practical benefits of this streamlining.	None.	The requirement is that the Client Authorisation be in the form prescribed. Facsimiles of the prescribed form can be implemented in any manner that satisfies minimum legibility and usability standards. This may include a double-sided representation provided the content is equivalent to the prescribed form.
170	Sch.4	Should references to Identity (Subscriber) Agent be deleted from the form given the acknowledgement that the Subscriber is responsible for taking reasonable steps to ensure that the Form is signed by the same person who was identified (i.e. which may occur after the Vol)?	The MPR has been amended.	The amendment has replaced Identity (Subscriber) Agent with Agent. Agent is defined as including an Identity (Subscriber) Agent. While ideally a Client Authorisation should be obtained at the same time as the identity verification is conducted, this is no longer mandatory. The Subscriber is, however, required to take reasonable steps to ensure the person whose identity has been verified signs the Client Authorisation.

#	Rule	Issue	Action Taken	Commentary
171	Sch.4	If there is a reason to retain the Identity (Subscriber) Agent signing block (if there is please explain why) then the reference should be changed to "Identity (Subscriber) Agent".	The MPR has been amended.	The amendment has replaced Identity (Subscriber) Agent with Agent, with Agent defined as including Identity (Subscriber) Agent and other agents of the Subscriber. The signing block has been retained on the Client Authorisation to provide for situations where the authorisation is given to an agent of the Subscriber, preferably in conjunction with an identity verification.
172	Sch.6	Fidelity insurance for Identity (Subscriber) Agents is a mis-named insurance requirement and requires Identity (Subscriber) Agents to purchase policies that have no practical relationship at all to their roles or possible risks. If third party protection against fraud is the issue intended to be covered here this can be addressed under PI policy endorsements.	The MPR has been amended.	The amendment has provided the option for Subscribers and Identity (Subscriber) Agents to obtain fidelity cover for dishonest and fraudulent acts by way of an extension to a professional indemnity policy in lieu of a separate fidelity insurance policy.
173	Sch.8	In item 5 (Execution by Body Corporate), item 6 (Individual as Attorney) and item 7 (Body Corporate as Attorney) of the Vol Standard, the drafting in respect of limbs (a) and (b) should be clarified so that these authority checks need not be performed by the same Person who acted as the Identity Verifier – i.e. it will typically be the Subscriber (not the Identity (Subscriber) Agent) who makes these checks when they work with an Identity Agent. The ability to separate these functions between the Subscriber and the Identity (Subscriber) Agent is not clear in these instances by use of the single term "Identity Verifier".	The MPR has been amended.	The amendment requires Identity (Subscriber) Agents to certify in their Identity (Subscriber) Agent Certification at Schedule 9 that they have been directed by the Subscriber to conduct the verification according to the Standard. For example, the Subscriber may direct the Identity (Subscriber) Agent not to perform the tasks in paragraphs 5, 6 and 7 of the Vol Standard, the Subscriber intends performing.
174	Sch.8	With regard to Item 8 of the Vol Standard – we offer our patent-pending mobile Vol solution to streamline performance of efficient, consistent, paperless and secure Vol in consulate offices. ARNECC is encouraged to raise this possible solution with DFAT for it to investigate. Offshore relaxation of rules should not become a loophole to the objectives of the Vol system.	None.	It is intended to undertake detailed discussions with the Department of Foreign Affairs and Trade with a view to determining a mutually satisfactory process for verifying the identity of persons overseas. At this time it is not possible to indicate what that process might be.
175	Sch.8	Item 11(b) of the Vol Standard – the words 'by the Identity Verifier' should be inserted to make it clear that the 2 year rule should apply only when the Subscriber in question has either itself or through its Identity (Subscriber) Agent verified the identity of the person within the last 2 years. We assume this is the intent.	The MPR has been amended.	The amendment has removed the exemption for re-verification with 2 years from the Vol Standard and placed it in new Rule 6.5.4. It is given on the basis that the person's identity has previously been verified and the Subscriber has taken reasonable steps to ensure the same person is being dealt with.

PART TWO – Issues arising from MPR Consultation Draft 3F provided to attendees at the Industry Forum held in Melbourne on 15 June 2015.

#	Rule	Issue	Action Taken	Commentary
176	General	Further time should be taken now to settle the outstanding issues of Identity (Subscriber) Agent insurance and overseas Vol instead of signalling to industry that there will be a period of further review, investigation and consultation over the next 12 months.	None.	It is considered important that the next version of the MPR be finalised for implementation now. The further work planned on the Identity (Subscriber) Agent insurance and overseas Vol process may take up to 12 months to finalise.
177	General	The emphasis on management and allocation of risk remains unsatisfactory notwithstanding some significant improvements.	None.	It is considered that the aim of aligning the risk and liability allocation in electronic conveyancing with those existing for paper conveyancing has been achieved. If specific matters are brought to attention that demonstrate that this is not the case they will be considered when the Rules are next reviewed.
178	General	What is the rationale for the distinction between an Identity (Subscriber) Agent and any other agent, such as a mortgage broker, based on insurance considerations?	None.	Some stakeholders were keen to ensure that anyone used to undertake a verification of identity was adequately insured. Others were keen to maintain their existing business processes. It was demonstrated that there could be circumstances where neither the Subscriber nor an Identity (Subscriber) Agent was able to undertake the verification of identity. The Rules cater for all of these stakeholder requirements.
179	General	Mortgage brokers should be able to provide deemed reasonable steps for mortgage lenders irrespective of their insurance arrangements.	The MPR has been amended.	The amendment allows regulated and insured mortgage brokers to apply the Vol Standard to mortgagors as agents of the mortgagee and satisfy the requirements for the verification to be deemed reasonable steps without holding the insurances required of Identity (Subscriber) Agents.
180	2.1.2	What is the relevance of mandatory insurance requirements for Identity (Subscriber) Agents in their taking reasonable steps to verify an identity?	None.	Under the common law of agency, a principal is liable for the negligence of its agents but in most cases not their fraud. It is therefore in the interest of Subscribers that Identity (Subscriber) Agents hold professional indemnity insurance. It is in the interests of Subscribers, transacting parties and the Registrars that Identity (Subscriber) Agents hold insurance for third party claims arising from dishonest or fraudulent acts.
181	2.1.2	No clear benefits for the integrity of the system by imposing the insurance requirements on mortgage brokers have been identified. This requirement is inconsistent with common practice for many years.	The MPR has been amended.	The amendments allow Subscribers to comply with their identity verification obligations by using any agent of their choosing for the purpose. Such agents need not hold the insurances required of Identity (Subscriber) Agents. The amendments also allow regulated and insured mortgage brokers to apply the Vol Standard to mortgagors as agents of the mortgagee and satisfy the requirements for the verification to be deemed reasonable steps without holding the insurances required of Identity (Subscriber) Agents.
182	2.1.2	It should be for Subscribers to decide what level of indemnification and insurance their Identity (Subscriber) Agents should maintain.	None.	The minimum insurance levels required of Identity (Subscriber) Agents are considered necessary at this time but will be subject to the thorough risk assessment to be undertaken over the next 6 to 12 months.
183	2.1.2	Concern remains that the definitions of Digitally Sign, Digital Signature, Digital Certificate, User, Signer and Key Holder are	None.	It has been previously acknowledged that these definitions will be reviewed with stakeholders when it is necessary for other reasons to amend the ECNL.

#	Rule	Issue	Action Taken	Commentary
		defective and may result in the regulatory framework not operating as intended and that a Subscriber will ultimately bear this risk.		
184	2.1.2	<p>The proposed new definition of “Identity (Subscriber) Agent” seems to imply that an Identity (Subscriber) Agent is an agent of a Subscriber or of a mortgagee for general purposes. In practice, in many cases, a person may be an agent only for carrying out Verification of Identity (VoI) procedures and for no other purposes. We therefore suggest that the definition should read as follows:</p> <p>“Identity (Subscriber) Agent means a Person who is an agent of either a Subscriber, or a mortgagee represented by a Subscriber, and who:</p> <p>(a) the Subscriber or mortgagee reasonably believes is reputable, competent and insured in compliance with Insurance Rules 1.2 and 2.2; and</p> <p>(b) is an agent of either a Subscriber, or a mortgagee represented by a Subscriber, for the purpose of conducting verification of identity on behalf of the Subscriber or mortgagee.”</p>	The MPR has been amended.	The amendment has clarified that an Identity (Subscriber) Agent is only engaged by a Subscriber or mortgagee represented by a Subscriber to conduct an identity verification according to the VoI Standard on the Subscriber or mortgagee’s behalf.
185	4	Eligibility to participate in the trusted role as a Subscriber should be limited to those most likely and able to comply with their obligations in that role, by clearly mandating their eligibility. The general obligation on the Subscriber and signer to comply with the law as it applies to the conduct of conveyancing transactions in the participating jurisdiction is in our view not a proper substitute for a clear and unambiguous requirement in the Rules.	None.	It is considered sufficient for Subscribers representing transacting parties to ensure they are entitled to practice conveyancing in the jurisdictions where the land is located. The Registrars have no role or authority to prescribe who can practice conveyancing in any jurisdiction.
186	4.3.2 & 4.3.3	The inclusion of the holder of an Australian Credit Licence as a new category of deemed “fit and proper” person appears to be made in the face of the fact that the system entrusts to every Subscriber the power to deal with almost every parcel of land in the relevant jurisdiction. The current drafting leaves open the possibility of a Principal Subscriber who is not appropriately qualified conducting conveyancing transactions. This exposes the system and its participants, including Subscribers, to enormous risks.	None	The deeming of ACL holders as being of good character and reputation does not create a new category of fit and proper person to be a Subscriber. The rule simply recognises that such persons should not have to prove their good character and reputation again.
187	4.3.3(d)	The Crown cannot fulfil any of those individual roles described in Rule 4.3.3 (d) (except to the extent that the individual is a minister of the Crown). In summary, Rule 4.3.3(d) produces an absurd result.	The MPR has been amended.	The amendment has removed the sub-clause.

#	Rule	Issue	Action Taken	Commentary
188	4.3.3(f)	Rule 4.3.3(f) will deem the principals, directors, partners, officers or Subscriber Administrators of a Subscriber to comply with the good character and reputation requirements if they are a fit and proper "Person" for performing duties under an Australian Credit Licence. We suggest that the word "Person" should not be capitalised because Rule 4.3.3(f) relates to requirements under an Australian Credit Licence, which is a separate matter to the definition of "Person" in the Electronic Conveyancing National Law.	None.	The use of "Person" is necessary to invoke the definition of person in the Electronic Conveyancing National Law which encompasses an individual or a corporate entity.
189	6.5	Despite acceptance that the principles of the common law of agency should govern the responsibility of Subscribers for their agents, the amendments made do not achieve that outcome. The failure to implement the common law principles of agency is, and has always been, a major concern to legal and conveyancing practitioners and is likely to remain a significant impediment to take up of electronic conveyancing (regardless of whether Vol is mandated for paper transactions or not).	None.	It is considered that the amendments made comply with the principles of the common law of agency. It is not considered sufficient to have properly engaged an agent for the Subscriber to have discharged its duty under the common law of agency. The Subscriber must also take all reasonable steps necessary to ensure that its agent carries out its directions accurately and completely, as a Subscriber is responsible for the negligence of its agent at common law.
190	6.5.1	The subclauses of Rule 6.5.1 remain difficult to follow, particularly 6.5.1(c). Consideration should be given to highlighting the party whose identity needs to be verified in each subclause to assist clarity.	The MPR has been amended.	The amendment takes up the suggestion of highlighting the party whose identity needs to be verified in each sub-clause.
191	6.5.4	Rule 6.5.4(a) may imply that a Subscriber can only use an Identity (Subscriber) Agent if it is following the Vol Standard in Schedule 8. The definition of "Identity (Subscriber) Agent" means that Clauses 6.5.4(b) - (d) can stand alone. Rather than further complicating the Rules by inserting another provision to clarify that the general law of agency is not being excluded where the Schedule 8 Vol Standard is not being used, we suggest that Rule 6.5.4(a) be deleted.	None.	The use of an Identity (Subscriber) Agent to conduct a verification of identity according to the Vol Standard is at the discretion of the Subscriber. Subscribers may also appoint another agent to conduct a verification using the Vol Standard.
192	6.5.5	An ADI should be entitled to safe harbour where the ADI is the principal, the ADI has engaged the holder of an Australian Credit Licence for the purpose of procuring, arranging, processing or administering a mortgage or discharge of mortgage, and the ADI has also engaged that holder of an Australian Credit Licence to conduct the whole or part of the Schedule 8 Vol Standard; but only to the extent that the verification of identity has been carried out in accordance with Schedule 8 by the ADI, the holder of an Australian Credit Licence, an Identity (Subscriber) Agent or a Subscriber.	None.	Such an arrangement for ADIs only is considered to discriminate against mortgage lenders who are not ADIs. All mortgage lenders can engage an Identity (Subscriber) Agent or use any other agent to discharge their obligations to take reasonable steps in verifying the identity of a mortgagor.
193	6.13.1(a) & 6.14(b)	There appears to be a drafting duplication with Rules 6.13.1 (a) and 6.14(b) in relation to the obligation to ensure a Subscriber mortgagee "holds a mortgage granted by the mortgagor, on the	The MPR has been amended.	The amendments have replaced "electronic mortgage" with "mortgage signed by or on behalf of the mortgagor".

#	Rule	Issue	Action Taken	Commentary
		same terms as the electronic mortgage” and to ensure the “mortgagor grants a mortgage on the same terms as the electronic mortgage.”		
194	6.14	We would like to understand how this new section addresses the expectation that a mortgage that needs to be signed is signed by an individual whose identity has been verified under the Vol Standard or such other reasonable steps.	None.	The mortgagee or a Subscriber representing it has an obligation to ensure the mortgage is granted by the mortgagor, meaning the person whose identity has been verified. When the verification of identity and the granting of the mortgage occur at different times, the mortgagee or their Representative must take reasonable steps to ensure the same person is being dealt with. This may be done by referencing the verification of identity supporting documentation and ensuring it is the same person signing.
195	Sch.3	Certification #6 in relation to the retrieval and secure destruction or making invalid the duplicate (paper) certificate of title appears to be inconsistent with the NSW Registrar General’s Prescribed Requirement in relation to CoRD Holder Consent, which requires retention on file of the paper certificate of title. If this certification is not to apply in NSW this must be made abundantly clear; otherwise practitioners may mistakenly destroy the duplicate certificate of title.	None.	Advice is to be provided in a Guidance Note dealing with certifications. Certification #6 is not used in NSW.
196	Sch.3	The very practical consideration has been previously raised of the possible need to revert to a paper settlement upon the failure of an electronic settlement, but the difficulties in doing so if the paper certificate of title had been destroyed, noting that the relevant certification is made at the time of Signing.	None.	The certification of a Certificate of Title having been destroyed or made invalid is only used in Victoria and Western Australia. In Victoria an electronic Certificate of Title can be nominated to a paper transaction. In Western Australia where a duplicate Certificate of Title for an electronic transaction has been invalidated or destroyed and the transaction is rejected or withdrawn from registration, the Registrar will issue a replacement duplicate Certificate of Title.
197	Sch.3	Certification #5 should be redrafted to assist clarity. For example, it could be amended to read: “The Subscriber: (a) is reasonably satisfied that the mortgagee it represents, or (b) itself, has taken reasonable steps to verify the identity of the mortgagor, and holds a mortgage granted by the mortgagor on the same terms as this Registry Instrument.”	None.	The suggested amendment does not cover all of the circumstances where the certification is required.
198	Sch.4	For completeness and accuracy, the words “collected and” should be inserted before “disclosed” near the end of the Privacy and Client Information term of the Client Authorisation.	The MPR has been amended.	The amendment has adopted the suggestion.
199	Sch.4	Please clarify the intent of the addition of the words “or any other transfer of land” in the definition of Transfer on the Client Authorisation.	None.	The words are intended to cover other types of land title transfer, such as transfers for no consideration.
200	Sch.4	The inclusion in the definition of caveat in the Client Authorisation of the word “purported” before “claim” is not appropriate.	The MPR has been amended.	The amendment has removed the word “purported” in the definition of Caveat on the Client Authorisation and in Rule 2.1.2.

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#	Rule	Issue	Action Taken	Commentary
201	Sch.6	It is unclear how third parties that are not insured parties under the relevant insurance contracts can claim the benefit of those insurances.	The MPR has been amended.	The amendment has removed the words “compensate third parties” from the Insurance Rules.
202	Sch.6	The cost of insurance for mortgage brokers is likely to be a deterrent to the broker and could result in a reduction in the availability of identity agency services and competition and pricing for the acquisition of those services.	The MPR has been amended.	The amendment allows regulated and insured mortgage brokers to apply the Vol Standard to mortgagors as agents of the mortgagee and satisfy the requirements for the verification to be deemed reasonable steps without holding the insurances required of Identity Agents.
203	Sch.6	The further work in relation to appropriate insurance for Identity (Subscriber) Agents should include consideration of run-off cover for Identity (Subscriber) Agents.	None.	The need for run-off cover for Identity (Subscriber) Agents is to be considered as part of the thorough risk and insurance assessment to be undertaken in the next 6 to 12 months.
204	Sch.6	Concern remains in relation to the practical operation of an annual aggregate insurance cover, in particular that the success of a claim may depend upon when a claim is made in the calendar year.	None.	The imposition of an annual aggregate insurance cover recognises that unlimited insurance cover cannot be procured in the commercial insurance market.
205	Sch.8	It is preferred that consultation proceed now with industry to address the issues associated with overseas Vol and the need for a “safe harbour” for industry to be clear in recognition of the existing and evolving dynamics and customer preferences of the consumer and commercial credit market.	None.	The consultation intended to address the need for an overseas Vol process that can be deemed as reasonable steps has already begun but it may take some months to finalise.
206	Sch.8	The re-identification exemption should be moved to the end of principal clause 6.5 in the body of the MPRs, as a further extension of having taken reasonable steps for safe harbour. Moving the exemption to the body of the MPRs would also enable the clause to be redrafted in line with the intent that if the Subscriber itself or through an Identity (Subscriber) Agent has verified the client’s identity under the Standard within the last two years, and reasonable steps have been taken to ensure it is the same person engaging the Subscriber, then the client need not be re-identified.	The MPR has been amended.	The amendment has moved the re-verification exemption from the Vol Standard to new Rule 6.5.4 where it applies when the person has previously had their identity verified and the Subscriber has taken reasonable steps to ensure the same person is being dealt with.
207	Sch.9	If 100% compliance with the Standard by an Identity (Subscriber) Agent is required, then the safe harbour any recipient of a Schedule 9 certificate believes they have is illusory. Unless remedied this circumstance would also have substantial PI Insurance consequences.	None.	It is considered that the amendments made to the relationship of Subscribers to their Identity (Subscriber) Agents comply with the principles of the common law of agency.
208	Sch.9	The word “Registrar’s” should be deleted from the “Registrar’s Verification of Identity Standard”.	The MPR has been amended.	The amendment has removed the word “Registrar’s”.
209	Sch.9	There is overlap between the “List of identification Documents	The MPR has been	The amendment has adopted a tabular format and distinguished the column heading

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#	Rule	Issue	Action Taken	Commentary
		produced (see (c) above)” and “Description of identity Documents produced and sighted”. Consideration could be given to merging these two requirements and the provision of a tabular format.	amended.	from the column contents description.
210	Sch.6	The aggregate insurance of \$20 million for Identity (Subscriber) Agents is not readily available. Although a review of insurance requirements is proposed within 12 months, we request that review is expedited in respect of licensed finance brokers so that the new rules authorise them to act from commencement of the new rules.	The MPR has been amended.	The amendment allows regulated and insured mortgage brokers to apply the Vol Standard to mortgagors as agent of the mortgagee and satisfy the requirements for the verification to be deemed reasonable steps without holding the insurances required of Identity Agents. The availability of the insurance required of Identity Agents has been confirmed and it is intended to expedite the risk assessment and review of those insurance requirements.
211	Sch.6	The insurance requirements for Identity (Subscriber) Agents are completely in contrast to the requirements of the regulator of our industry and not representative of any claims experience related to activities in finance brokering.	The MPR has been amended.	The amendment allows regulated and insured mortgage brokers to apply the Vol Standard to mortgagors as agents of the mortgagee and satisfy the requirements for the verification to be deemed reasonable steps without holding the insurances required of Identity Agents. It is intended that the relevant risks and claims experience for mortgage brokers will be thoroughly assessed during the independent risk assessment to be conducted over the next 6 to 12 months. Industry representatives will be involved in that work after which the insurance requirements for Subscribers and Identity (Subscriber) Agents will be re-assessed.
212	Sch.6	To increase the Professional Indemnity to \$20m aggregate would be cost prohibitive, the insurers are not even willing to quote on a premium at this level for an individual small business.	None.	The intended independent risk assessment to be conducted over the next 6 to 12 months will enable the insurance requirement for Subscribers and Identity (Subscriber) Agents to be re-assessed.
213	Sch.6	It is unclear what the \$20 million aggregate insurance requirement for Identity (Subscriber) Agents is based on, and why this figure was selected.	None.	The initial aggregate insurance requirement for Identity (Subscriber) Agents is based on the collective assessment of the Registrars. It is to be re-assessed after completion of a thorough independent risk assessment of the Insurance Rules.
214	Sch.6	If mortgage brokers are required to hold \$20m aggregate insurance, they will have to take their clients to the Bank for identification. This will give the Banks a competitive advantage as they will use this opportunity to convince the client to deal with the Bank instead of the broker. The unintended consequence could see Banks regain market share and consumers lose the benefit of choice and pay more on their mortgage. This requirement could also be viewed as anti-competitive and in breach of current laws.	The MPR has been amended.	The amendment allows regulated and insured mortgage brokers to apply the Vol Standard to mortgagors as agents of the mortgagee and satisfy the requirements for the verification to be deemed reasonable steps without holding the insurances required of Identity (Subscriber) Agents. However, it is not mandatory for lenders to use an Identity (Subscriber) Agent to conduct Vol for them. They can conduct the Vol themselves or they can use an agent who is not an Identity (Subscriber) Agent.
215	Sch.8	Clause 5, 6, and 7 of Schedule 8 should be amended as Identity (Subscriber) Agents would not normally conduct activities (a)	None.	It is the Subscriber’s responsibility to ensure that an identity verification is conducted according to the Vol Standard for the Subscriber to be deemed as having taken

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		and (b) in those clauses. These activities would normally be conducted by the Subscriber. The rules should provide flexibility for these activities to be conducted either by the Identity (Subscriber) Agent or the Subscriber.		reasonable steps. The Subscriber may do this by conducting part of the process themselves and having an Identity (Subscriber) Agent carry out the balance of the process.
216	Sch.8	Many mortgagees will want to fit strictly within safe harbour, despite it being quite clear that any reasonable method can be used. Although some mortgagees may accept that it is 'reasonable' to use Identity (Subscriber) Agents who do not meet the proposed insurance levels, this position may not be accepted by many mortgagees. If brokers cannot undertake Vol within safe harbour, mortgagors will incur significant additional costs and inconvenience. This cost and inconvenience is quite material.	The MPR has been amended.	The amendment allows regulated and insured mortgage brokers to apply the Vol Standard to mortgagors as agents of the mortgagee and satisfy the requirements for the verification to be deemed reasonable steps without holding the insurances required of Identity (Subscriber) Agents. Nevertheless, mortgagees, whether Subscribers or represented by Subscribers, can conduct identity verifications themselves or they can have any agent conduct the verification for them.