

ARNECC Response to Issues Raised in Industry Feedback on Draft v2 Model Operating Requirements

Issues are listed in order of MOR Reference.

Issue Raised may be a summary or modified extract of the submission received.

#	MOR Ref.	Issue Raised	ARNECC Response	Rationale for Response
1	7.1	<p>Information Security Management System A definition and example of what is considered a material change is required.</p>	No change is necessary.	<p>What constitutes a material change to an ELNO's independently certified and approved ISMS will depend upon the nature and extent of what is proposed and its impact on risk mitigation. Examples of what may constitute a material change include a change to the digital certificate regime, server hosting arrangements or data categorisation changes.</p> <p>Further guidance is provided in the MOR Guidance Notes available at http://www.arnecc.gov.au/.</p>
2	7.6.1	<p>Digital Certificate Regime The requirement that the digital certificate regime be independent of the ELNO unnecessarily restricts the digital certificate solutions able to be adopted. In any case, the clause is unnecessary in the context of the requirement in 7.6.2 that the regime be Gatekeeper-compliant.</p>	<p>Clause 7.6.1 is to be amended to: <i>"The ELNO must ensure that, where a Digital Certificate is used to Digitally Sign a Document, the Certification Authority is independent of the ELNO."</i></p>	<p>The amendment provides greater flexibility in the type of Gatekeeper-compliant digital certificate regime that may be adopted by ELNOs. It remains necessary however that the issuer of the digital certificates be independent of the ELNO for essential risk mitigation purposes.</p> <p>The amendment makes it possible for an ELNO to implement a Relationship Certificate regime, for example, where the digital certificates are issued by an independent Certification Authority but can only be used for the purposes of signing electronic documents in the ELNO's systems.</p>
3	7.6.2	<p>Digital Certificate Regime The clause references AGIMO's General Category Business Certificate Policy Specification and should be drafted in more general terms to accommodate changes to the Gatekeeper Framework.</p>	<p>Clause 7.6.2 is to be amended to: <i>"Without limiting clause 7.6.1 above, the ELNO must ensure that Digital Certificates used in the ELN:</i></p> <p><i>(a) accord with the Gatekeeper PKI framework;</i></p> <p><i>(b) are supplied by a Gatekeeper Accredited Service Provider;</i></p> <p><i>(c) are issued under a Certificate Policy which:</i></p>	<p>The amendment provides greater flexibility in the type of Gatekeeper-compliant digital certificates that may be utilised by ELNOs.</p> <p>The amendment makes it clear that all digital certificates used in the ELN must accord with Gatekeeper's KPI framework, be supplied by a Gatekeeper Accredited Service Provider, must identify the Subscriber and its ABN and must bind the Subscriber's Signer to the Subscriber by, without limitation, naming the Subscriber's Signer in the Certificate Profile.</p>

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			<p><i>(i) identifies the Subscriber and its ABN; and</i></p> <p><i>(ii) binds the Subscriber's Signer as Key Holder to the Subscriber by, without limitation, naming the Subscriber's Signer in the Certificate Profile."</i></p>	
4	7.9	<p>Notification of Jeopardised Conveyancing Transaction Where an ELNO has reason to believe that a Conveyancing Transaction has been jeopardised, the ELNO should be obliged to notify the Registrar as well as Subscribers.</p>	<p>Clause 7.9 is to be amended to:</p> <p><i>"The ELNO must immediately notify the Registrar and those of its Subscribers involved in any Conveyancing Transaction which it has reason to believe has been Jeopardised."</i></p>	<p>Requiring the ELNO to notify the Registrar as well as the Subscribers involved in a transaction that the ELNO has reason to believe may have been jeopardised provides an additional protection against a jeopardised transaction being accepted for lodgment and registered.</p>
5	7.9	<p>Notification of Jeopardised Conveyancing Transaction Where an ELNO has reason to believe that a Conveyancing Transaction has been jeopardised, the ELNO should be required to attempt to prevent lodgement of Land Registry Documents.</p>	<p>No change is necessary.</p>	<p>Where an ELNO notifies a Subscriber that it has reason to believe a Conveyancing Transaction has been jeopardised, the Subscriber can unsign the relevant Documents, thereby preventing their presentation for lodgment.</p>
6	7.9	<p>Notification of Jeopardised Conveyancing Transaction How would "immediately" be defined?</p>	<p>No change is necessary.</p>	<p>"Immediately" will have its common, dictionary meaning.</p>
7	7.10	<p>Notification of Compromised Security Items Would indefeasibility be affected if an ELNO was unable to prevent lodgement but had immediately notified the Registrar?</p>	<p>No change is necessary.</p>	<p>The principle of indefeasibility protects <i>registered</i> Land Registry Documents and is unaffected by Clause 7.10.</p> <p>A different legal outcome may result depending on whether the particular Land Registry Document affected by the compromise had been lodged but not registered at the time the Registrar receives notice, or lodged and registered at the time the Registrar receives notice.</p>
8	9.2	<p>No Increased Risk of Fraud or Error Would there be guidelines to enable the measurement of the risk of fraud in paper and</p>	<p>No change is necessary.</p>	<p>ELNOs are required to establish a Risk Management Framework based upon a risk assessment that includes a comparative assessment of the risk of fraud or error for</p>

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		electronic transactions?		<p>electronic and paper transactions. ELNOs are also required to have their Risk Management Framework independently certified as compliant with Australian Standard AS31000 and fit for purpose by an approved independent expert prior to commencing operations.</p> <p>Australian Standard AS31000 provides guidance on the conduct of risk assessments.</p>
9	9.2	<p>No Increased Risk of Fraud or Error How often would the ELNO be required to undertake the assessment?</p>	No change is to be made.	<p>ELNOs are required to provide a certification annually that use of their ELN constitutes no greater risk of fraud or error than use of the paper system.</p> <p>To provide each of these certifications, it is expected that the ELNO will conduct a comparative risk assessment each year in accordance with Australian Standard AS31000.</p>
10	9.2	<p>No Increased Risk of Fraud or Error Would the assessment be subject to independent review and be made publicly available?</p>	No change is to be made.	<p>ELNOs are required to establish a Risk Management Framework, including a comparative risk assessment with the paper system, and have it independently certified as compliant with Australian Standard AS31000 and fit for purpose prior to commencing operations.</p> <p>There is no requirement for ELNOs to make public their risk assessments or the independent expert reports and certifications of those assessments that they are required to obtain.</p>
11	10.2	<p>Data Standard Change to clause 10.2 (insertion of (a)) implies that the ELNO will manage the Data Standard.</p>	Clause 10.2 is to be amended by deleting sub-clause (a).	<p>The deletion of Clause 10.2(a) removes the implication that the ELNO is responsible for managing the data standard. The intention is only that the ELNO use the data standard for presenting documents to the Registrar for lodgment and in all electronic messages exchanged with land registries.</p> <p>The content of the deleted sub-clause is to be reflected in the MOR Guidance Notes.</p>
12	10.3	<p>Apply Registrar's Business Rules For the Registrar to verify that the Business Rules are being fully and properly applied would require detailed analysis of the application. The</p>	<p>Clause 10.3 is to be amended to: <i>"The ELN must apply the Business Rules and must have an orderly means of implementing and testing the</i></p>	<p>With the amendment, the ELNO is only required to apply the Registrar's business rules and have an orderly means of implementing and testing the rules.</p>

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		Lodgment Verification rules of the Land Registry verify the Business Rules are being fully implemented in the ELN.	<i>Business Rules.</i> "	The ELNO is no longer required to have arrangements that enable the Registrar to readily verify that each business rule has been fully and properly applied in the ELN.
13	14.4	Evidence of Subscriber Insurance and Verification of Identity This section has significant practical implications for both the ELNO and the network.	No change is to be made.	An ELNO is required to verify the identity, and if necessary the authority, of a Subscriber applicant before registering the applicant as a Subscriber. The amendment made to Clause 14.4(b) addresses the situation where the Subscriber acts through another person (for example, an attorney or the authorised officer of a company). In that case, the identity and the authority of the person acting for the Subscriber and who signs the Participation Agreement must be verified. This is analogous to the requirement on a Subscriber in the Model Participation Rules to verify the identity and authority of its client or the person acting for the client in a conveyancing transaction.
14	19.1 & 19.2	Data Retention & Generation and Retention of Transaction Audit Records Requirement to indefinitely retain data gives rise to performance and cost implications as has data privacy implications.	No change is to be made at this time.	Given the transaction volumes in the start-up phase of National Electronic Conveyancing, the obligations are not considered unduly onerous. However, this position may be reviewed once transaction volumes become significant.
15	21.4	Implementation of Transition Plan There are implications on an ELNO as a result of the amendment of the clause.	No change is to be made.	In the absence of any detail as to what the implications are, this feedback is taken as a comment only.
16	Sch.3, Cat 3, 10.1(b)	Minimum System Requirements With regards to 10.1b Category 3 of the MOR there is an inconsistency with the MOR Guidance Notes as to what is required. According to the MOR, a self-certification is allowed each year whereas according to the MOR Guidance Notes an independent expert certification is required.	The compliance requirement on the MOR is to be clarified amending columns 4 and 5 to: Col.4: <i>"No Change certification"</i> Col.5: <i>"Where a No Change Certification cannot be given, an Independent Certification as required under Category Two"</i>	The MOR and MOR Guidance notes are not inconsistent but both could be better expressed. The requirement is for the ELNO to provide an Independent Certification of compliance with Clause 10.1(b) prior to commencing operations and thereafter in each Annual Report to the Registrar a No Change Certification can be given by the ELNO provided there has been no material change to the way the Clause is being complied with. Only if a No Change Certification cannot be given because of such a change is a fresh Independent Certification required.

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				Complimentary amendments are to be made to the MOR Guidance Notes.
17	Sch.7, 9	<p>Verification of Identity of Potential Subscriber: Use of an ELNO Agent Clarification sought as to the intent of amendments.</p>	No change is necessary.	<p>The amendment made to sub-clause (a) is to ensure that the insurance held by an agent used by an ELNO to verify the identity of a potential Subscriber includes professional indemnity and fidelity insurance policies.</p> <p>The insertion of sub-clause (b) is to ensure that an agent used by an ELNO to verify the identity of a potential Subscriber does not limit its liability to less than the minimum insurance required to be held by the Subscriber.</p> <p>The amendments are consistent with the requirements applying to a Subscriber Agent verifying identity on behalf of a Subscriber under the Verification of Identity Standard in the Model Participation Rules.</p>