

**Model Operating Requirements (MOR) Consultation Draft 7 – Explanatory Notes**

This table outlines the key proposed amendments in Consultation Draft 7 of the MOR published in July 2021.

**IMPORTANT NOTE:**

ARNECC has decided to release the draft MOR in July 2021 in the interest of obtaining stakeholder feedback as early as possible in the drafting process. This decision will provide ARNECC with time to review and take on board stakeholder feedback on the Interoperability provisions prior to the anticipated start date for Version 7 of the MOR in December 2021.

This decision also means that certain provisions in the MOR have not yet been finalised. ARNECC is concurrently working on a Bill to amend the Electronic Conveyancing National Law (ECNL), which is still in draft form. The Bill will work in tandem with the MOR, so there may be further amendments to both. Additionally, there are some provisions in the draft MOR which await stakeholder input. For example, it is anticipated the ELNO Interoperability Agreement Working Group will contribute to Schedule 8 of the MOR.

ARNECC welcomes stakeholder feedback on the Consultation Draft 7 of the MOR.

| #                            | Rule | Amendments   | Explanatory Notes  |
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| <b>MOR 2.1 – Definitions</b> |      |  |  |
| 1.                           | 2.1  | Added definition of Associated Financial Transaction.  | Associated Financial Transaction is already defined in the ECNL. The definition has been added to the MOR to assist in setting out the role of the Responsible ELNO (the ELNO who will be responsible for Lodgment of the Interoperable Lodgment Case and completion of any Associated Financial Transaction). |
| 2.                           | 2.1  | Amended definition of Back End Infrastructure Connection to include connections between ELNOs for the purpose of Interoperability. | It is not intended that connections between ELNOs for the purpose of Interoperability are captured by the Integration and separation provisions in the MOR. This is because Interoperability connections are essential to the operation of an ELN.   |
| 3.                           | 2.1  | Amended definition of Conveyancing Transaction to include Interoperable Conveyancing Transactions.                                 | Generally, Interoperable Conveyancing Transaction is relevant in the same provisions in the MOR as Conveyancing Transaction, but a separate definition of Interoperable Conveyancing Transaction is also required for some provisions.   |
| 4.                           | 2.1  | Removed definition of Data Standard.   | The definition of Data Standard has been replaced with definitions of NECDS and NECIDS.  |

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| 5.  | 2.1  | Added definition of ELNO Requesting Interoperability.       | ELNOs will be required to Interoperate under the regulatory regime. The MOR provides a framework for implementing this requirement. ELNOs may make a request to Interoperate with other ELNOs, which will trigger the commencement of negotiations to prepare and execute an Interoperability Agreement. The framework extends to Potential ELNOs who have satisfied Category Two of Schedule 3, who may request to Interoperate with other ELNOs prior to commencing operation in each Jurisdiction. See MOR 5.7. |
| 6.  | 2.1  | Moved definition of Incident Response Plan.                 | The definition has been moved to the correct alphabetical placement.   |
| 7.  | 2.1  | Added definition of Interoperability.                       | The substance of this definition will be housed in the ECNL. Broadly speaking, it is anticipated that Interoperability will be defined in the ECNL as the interworking of ELNs in a way that allows: <ul style="list-style-type: none"> <li>• Subscribers using different ELNs to complete a Conveyancing Transaction; and</li> <li>• the preparation of documents using data from different ELNs.</li> </ul>  |
| 8.  | 2.1  | Added definition of Interoperability Agreement.             | In addition to the regulatory regime contained in the ECNL and the MOR, the relationship between Interoperable ELNOs will be managed by a contract known as an Interoperability Agreement. The MOR will specify certain topics that ELNOs must address in their Interoperability Agreements.   |
| 9.  | 2.1  | Added definition of Interoperability Agreement Matters.     | Schedule 8 sets out the matters which must be dealt with in an Interoperability Agreement.   |
| 10. | 2.1  | Added definition of Interoperable Conveyancing Transaction. | This definition extends the existing definition of Conveyancing Transaction to Conveyancing Transactions conducted by means of Interoperability.   |
| 11. | 2.1  | Added definition of Interoperable Electronic Workspace.     | This definition extends the existing definition of Electronic Workplace to a shared Electronic Workspace containing at least one Interoperable Conveyancing Transaction. Note the possibility of a combination of Lodgment Cases (e.g. one containing a Priority Notice) and Interoperable Lodgment Cases (e.g. one containing a discharge/release, transfer and mortgage) in a single Electronic Workspace.   |
| 12. | 2.1  | Added definition of Interoperable Lodgment Case.            | This definition extends the existing definition of Lodgment Case found in the Model Participation Rules (MPR) to a Lodgment Case that contains at least one Interoperable Conveyancing Transaction. Note there may be multiple Conveyancing Transactions in a single Lodgment Case (e.g. a discharge/release, transfer and mortgage).  |

| #   | Rule | Amendments                                      | Explanatory Notes   |
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| 13. | 2.1  | Added definition of Interoperable Service Fees. | ARNECC is currently determining its policy around Interoperable Service Fees. Additional requirements and/or restrictions may be included in Version 7 of the MOR. Current amendments ensure any fees for Interoperability are equitable, transparent and published in the same way that ELNO Services Fees are. See MOR 5.3(e) and 5.4.  |
| 14. | 2.1  | Amended the definition of Licensed Conveyancer. | This change is not related to the interoperability reform.<br>This definition was amended because: <ul style="list-style-type: none"> <li>• a Licensed Conveyancer is not known as such in every Jurisdiction;</li> <li>• the new wording is consistent with other definitions in the MPR and MOR referring to other legislation; and</li> <li>• of changes to the mutual recognition scheme.</li> </ul>  |
| 15. | 2.1  | Added definition of Lodgment Case.              | For consistency, this definition has been copied across from the MPR. Note there may be multiple Conveyancing Transactions in a single Lodgment Case.   |
| 16. | 2.1  | Added definition of NECDS.                      | This replaces the generic term Data Standard to refer to the National Electronic Conveyancing Data Standard. The NECDS specifies data items and enables communications between ELNOs and Land Registries.   |
| 17. | 2.1  | Added definition of NECIDS.                     | This replaces the generic term Data Standard to refer to the National Electronic Conveyancing Interoperability Data Standard. The NECIDS will specify data items and enables communication between Interoperable ELNOs.   |
| 18. | 2.1  | Added definition of Participating ELNO.         | The Interoperability framework in the MOR provides for a Responsible ELNO who is the ELNO responsible for Lodgment of the Interoperable Lodgment Case and completion of any Associated Financial Transaction. A Participating ELNO is any other ELNO taking part in an Interoperable Conveyancing Transaction.<br><br>Some of the roles and responsibilities of the Responsible ELNO and Participating ELNO are covered in the NECIDS, and, for this reason, are not replicated in the MOR. |
| 19. | 2.1  | Amended definition of Pricing Table.            | The definition has been expanded to include Interoperable Service Fees. ARNECC is currently determining its policy around Interoperable Service Fees. Additional requirements and/or restrictions may be included in Version 7 of the MOR. Current amendments ensure any fees for Interoperability are  |

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|   |                   |  | equitable, transparent and published in the same way the ELNO Services Fees are. See MOR 5.3(e) and 5.4.   |
| 20.   | 2.1               | Added definition of Responsible ELNO.  | A Responsible ELNO is the ELNO responsible for Lodgment of the Interoperable Lodgment Case and completion of any Associated Financial Transaction.   |
| 21.   | 2.1               | Added definition of Responsible Subscriber.  | Added the existing definition of Responsible Subscriber used in the MPR.   |
| 22.   | 2.1               | Removed definition of Settlement Transaction.  | For consistency, this definition has been removed in favour of Associated Financial Transaction as defined in the ECNL.  |
| <b>MOR 4.4, 4.5 and 4.6 – Financial resources, Technical resources and Organisational Resources</b>         |                   |  |  |
| 23.   | 4.4, 4.5, and 4.6 | Amended MOR 4.4, 4.5 and 4.6 so that an ELNO must demonstrate sufficient financial, technical and organisational resources to meet its obligations under the ECNL as well as under the MOR.  | These provisions were amended to clarify that any requirements set out in the ECNL form part of the obligations in relation to which the ELNO must demonstrate sufficient resources.   |
| <b>MOR 4.7 – Insurance</b>  |                   |  |  |
| 24.   | 4.7               | No amendment.  | While no amendment has been made to this MOR, ARNECC may further review the insurance requirements in Schedule 1 in light of Interoperability.   |
| <b>MOR 5.2 – Minimum system and electronic Registry Instrument and other electronic Document capability</b> |                   |  |  |
| 25.   | 5.2.1             | Moved the qualification regarding reasonable staging in accordance with the ELNO’s Business Plan to MOR 5.2.4.   | The qualification will now apply to MOR 5.2.1, 5.2.2 and 5.2.3.  |
| 26.   | 5.2.2             | Added a requirement that any ELNO that has obtained Approval prior to the MOR Version 7 effective date must ensure that it releases Interoperable Registry Instruments and other electronic Documents:<br><br>(a) under MOR 5.2.1(b), by 31 December 2022; and<br>(b) under MOR 5.2.1(c), as they are released, if they have a receiving Party and a relinquishing Party or are capable of forming part of a Lodgment Case containing more than one electronic Registry Instrument or other electronic Document. | To achieve the benefits of competition amongst ELNOs for all participants, including Subscribers and their Clients, ARNECC considers that work to implement Interoperability should commence as soon as possible.<br><br>The documents listed under MOR 5.2.1(b) are considered priority documents as they represent the highest volume of Lodgments in most jurisdictions. ELNOs that have obtained Approval will be required to prioritise implementation of Interoperability with respect to these documents and implement them by 31 December 2022.<br><br>It is also important that documents that involve a receiving Party and a relinquishing Party, and documents that are capable of forming part of a Lodgment Case containing more than one document, are capable of forming |

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|                                    |                               |  | part of an Interoperable Lodgment Case or Interoperable Electronic Workspace. Otherwise, Subscribers will have to resort to registering with multiple ELNOs and would have to agree with other parties on which ELNO to use. This is not ARNECC's intention. ELNOs that have obtained Approval will be required to ensure that these documents are Interoperable as they are released.  |
| 27.                                | 5.2.3                         | <p>Added a requirement that any ELNO that has obtained Approval after the MOR Version 7 effective date must ensure that it releases Interoperable Registry Instruments and other electronic Documents:</p> <ul style="list-style-type: none"> <li>(a) under MOR 5.2.1(b), as they are released; and</li> <li>(b) under MOR 5.2.1(c), as they are released, if they have a receiving Party and a relinquishing Party or are capable of forming part of a Lodgment Case containing more than one electronic Registry Instrument or other electronic Document.</li> </ul> | <p>An ELNO that obtains Approval after the MOR Version 7 effective date may not be in a position to implement Interoperability for the priority documents listed under MOR 5.2.1(b) by 31 December 2022. Instead, it is reasonable to require the ELNO to ensure that any documents released under MOR 5.2.1(b) are capable of being Lodged as part of Interoperable Lodgment Cases or Interoperable Electronic Workspaces as and when they are released.</p> <p>Under Operating Requirement 20.1(a)(viii), the Registrar has the power to suspend or revoke an ELNO's Approval if it fails to meet the timeframes for the release of documents listed under MOR 5.2.1(b).</p> <p>See note above under MOR 5.2.2 regarding the rationale for the inclusion of 5.2.3(b).</p> |
| 28.                                | 5.2.4                         | Moved the qualification regarding reasonable staging in accordance with the ELNO's Business Plan from MOR 5.2.1 to MOR 5.2.4.  | <p>The qualification will now apply to MOR 5.2.1, 5.2.2 and 5.2.3. Reasonable staging in accordance with the ELNO's Business Plan will provide ELNOs with the capacity to effectively plan releases of functionality.</p> <p>It will also provide Registrars with visibility over the ELNO's plans to implement Interoperability.</p>   |
| <b>MOR 5.4 – ELNO Service Fees</b> |                               |  |   |
| 29.                                | 5.4.1, 5.4.2, 5.4.3 and 5.4.5 | Addition of Interoperable Service Fees alongside ELNO Service Fees as fees that may be charged in accordance with an ELNO's equitable, transparent and published pricing policy.   | ARNECC is currently determining its policy around Interoperable Service Fees. Additional requirements and/or restrictions may be included in Version 7 of the MOR.  |
| <b>MOR 5.6 – Separation</b>        |                               |  |   |
| 30.                                | 5.6.2(b)(v)                   | Addition of Interoperability to the list of items the ELN business unit must have control over and responsibility for.   | MOR 5.6.2(b) requires that, where an ELNO is supplying a Downstream or Upstream Service and implements functional separation, certain functions must remain with the ELN business unit. Interoperability has been added to this list because Interoperability connections are essential to the operation of an ELN.   |

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| <b>MOR 5.7 – Interoperability framework</b> |       |   |   |
| 31.   | 5.7.1 | Added a requirement that an ELNO or Potential ELNO that complies with Operating Requirement 15.4(b) publish on its website details of the process for any ELNO Requesting Interoperability to make a request to Interoperate.   | This requirement will provide transparency and information to ELNOs Requesting Interoperability about how to commence the process of requesting Interoperability with another ELNO.   |
| 32.   | 5.7.2 | <p>Added a requirement for an ELNO or Potential ELNO that complies with Operating Requirement 15.4(b) to:</p> <ul style="list-style-type: none"> <li>(a) Promptly enter into good faith negotiations with the ELNO Requesting Interoperability; and</li> <li>(b) take all steps reasonably necessary to implement Interoperability with the ELNO Requesting Interoperability; and</li> <li>(c) ensure the Interoperability Agreement entered into with each ELNO or Potential ELNO is on the same basis.</li> </ul>   | <p>Negotiation in good faith is a phrase used and considered in Australian common law. It requires that the ELNO make an honest and genuine attempt at coming to an agreement.</p> <p>All steps reasonably necessary to implement Interoperability includes all technical work required to implement Interoperability.</p> <p>ELNOs will not be permitted to offer one Interoperable ELNO more favourable terms than another.</p>   |
| 33.   | 5.7.3 | <p>Added the requirement that the Interoperability Agreement must:</p> <ul style="list-style-type: none"> <li>(a) not include any express or implied terms that could affect the ELNO’s compliance with any of its obligations under the ECNL and the Operating Requirements; and</li> <li>(b) include terms that deal with the Interoperability Agreement Matters, which are listed in Schedule 8 of the MOR.</li> </ul>   | <p>The requirement that the Interoperability Agreement not include terms that could affect the ELNO’s compliance with its obligations under the MOR clarifies the position that the MOR takes precedence over the Interoperability Agreement.</p> <p>There are some matters which ARNECC considers must be provided for in the Interoperability Agreement. See Schedule 8.</p>  |
| 34.   | 5.7.4 | <p>Added a process to resolve disputes between the ELNO or the Potential ELNO that complies with Operating Requirement 15.4(b) and the ELNO Requesting Interoperability where they are unable to agree on the terms of the Interoperability Agreement and have not agreed to a binding dispute resolution process. The process includes the ELNO, Potential ELNO or the ELNO Requesting Interoperability:</p> <ul style="list-style-type: none"> <li>(a) providing notice in writing detailing the particulars of the disagreement and requesting mediation; and</li> <li>(b) attempting to agree on a mediator, and if they cannot agree within 20 Business Days after the issuing of the notice, to request the chair of the Resolution Institute, or designated representative, to appoint a mediator; and</li> <li>(c) being represented by a Person having authority to settle the dispute; and</li> </ul> | <p>There may be instances where the ELNO or the Potential ELNO that complies with Operating Requirement 15.4(b) and the ELNO Requesting Interoperability fail to come to an agreement on the terms of an Interoperability Agreement. MOR 5.7.4 sets out a process for resolving disputes between them at the pre-contractual stage to assist them in coming to an agreement.</p> <p>The timeframe and notice requirements ensure that the process is efficient in that it requires issues for determination to be particularised. It provides certainty about when they should take the next step; that is, to request that the chair of the Resolution Institute appoint a mediator.</p> <p>The Resolution Institute is a dispute resolution membership organisation operating in Australia and New Zealand. Providing the mechanism of referring selection of the mediator to the chair of the Resolution Institute ensures that the dispute resolution process can continue in an efficient manner.</p> <p>The other requirements in MOR 5.7.4, such as the requirement that the ELNO or Potential ELNO and ELNO Requesting Interoperability be represented by a</p> |

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|   |       | <ul style="list-style-type: none"> <li>(d) participating in the mediation process in good faith and complying with any rules and procedures determined by the mediator; and</li> <li>(e) meeting their own costs of and in connection with mediation, irrespective of the outcome.</li> </ul>  | <p>Person having authority, also provide confidence that the issues can be settled efficiently.</p> <p>Mediation is one form of dispute resolution and would enable the ELNO or Potential ELNO and ELNO Requesting Interoperability to discuss their issues and find areas of agreement. The mediator generally has no authority to make binding decisions. Mediation is generally a more efficient process than litigation and has the added benefit of keeping commercially sensitive or security matters between ELNOs confidential.</p> <p>ARNECC is currently considering whether to include arbitration provisions under MOR 5.7 and Schedule 8 as an additional step in the dispute resolution process. ARNECC invites stakeholder comment on this issue.</p>  |
| 35.                                     | 5.7.5 | <p>Added a requirement that the ELNO must Interoperate with all ELNOs on the same basis and ensure the standard of performance of its ELN in the course of Interoperable Conveyancing Transactions is equivalent to the performance of its ELN in the course of Conveyancing Transactions conducted solely on its ELN.</p>   | <p>The purpose of MOR 5.7.5 is to address the concern commonly expressed in interconnection regimes in other sectors that an existing provider may seek to disadvantage interconnected parties relative to its own business, or relative to other businesses it interconnects with, by offering a discriminatory grade of interconnection.</p> <p>MOR 5.7.5 ensures that Subscribers do not receive a lower level of performance of the ELN in Interoperable Conveyancing Transactions.</p>   |
| <b>MOR 5.8 – Interoperability roles</b> |       |  |   |
| 36.                                     | 5.8.1 | <p>Added the role of the Responsible ELNO, being to:</p> <ul style="list-style-type: none"> <li>(a) Promptly send and respond to all messages and calls relating to the Interoperable Lodgment Case or any Associated Financial Transaction; and</li> <li>(b) Lodge all the electronic Registry Instruments or other electronic Documents in the Interoperable Lodgment Case; and</li> <li>(c) Promptly notify all other Participating ELNOs of any Incident that affects the Interoperable Lodgment Case, including the details of the Incident.</li> </ul> | <p>The roles of the Responsible and Participating ELNO are fundamental to the Interoperability model.</p> <p>The main difference between the role of the Responsible ELNO and that of the Participating ELNO is that the Responsible ELNO must Lodge all the electronic Registry Instruments or other electronic Documents in an Interoperable Lodgment Case and perform the Associated Financial Transaction aspect of the transaction. The majority of the functions of the Responsible and Participating ELNOs will be specified in the NECIDS and do not need to be replicated in the MOR. MOR 10.3 includes a general obligation to use and comply with any requirements in the NECIDS.</p> <p>The requirement to notify all participating ELNOs of any Incident that affects an Interoperable Lodgment Case will enable the ELNOs to attempt to prevent further issues where possible, and to effectively deal with the Incident.</p> |
| 37.                                     | 5.8.2 | <p>Added the role of the Participating ELNO, being to:</p>   | <p>See MOR 5.8.1.</p>   |

| #                                | Rule  | Amendments  | Explanatory Notes   |
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|                                  |       | <p>(a) Promptly send and respond to all messages and calls relating to the Interoperable Lodgment Case or any Associated Financial Transaction; and</p> <p>(b) Promptly notify all other Participating ELNOs of any Incident that affects the Interoperable Lodgment Case, including the details of the Incident.</p> |   |
| <b>MOR 6.2 – Further testing</b> |       |   |   |
| 38.                              | 6.2   | Added an obligation to test functionality to implement Interoperability prior to its implementation.  | This addition extends the existing requirement to test new functionality to Interoperability.   |
| <b>MOR 7.2 – Access to ELN</b>   |       |   |   |
| 39.                              | 7.2.1 | Added the words 'it has' to clarify that the ELNO must ensure that only Subscribers it has registered are able to access and use its ELN.   | Where multiple ELNOs exist, a Subscriber may be a Subscriber to only one ELNO, or multiple ELNOs. This amendment has been made to clarify the position that the ELNO is only responsible for ensuring that Subscribers it itself has registered are able to access and use its ELN.   |
| <b>MOR 7.3 – Security of ELN</b> |       |   |   |
| 40.                              | 7.3.2 | Added a requirement that the ELNO obtain a SOC 2 Type 2 report at least once a year and Promptly take any action required to ensure the ELNO's controls and processes are effective and rectify any identified weaknesses.  | A SOC 2 Type 2 examination is an audit procedure that ensures that an organisation is securely managing data. Given Interoperability involves the exchange of data between ELNs, ARNECC considers that the requirement for each ELNO to obtain a SOC 2 Type 2 report is appropriate. The requirement to Promptly take any action required to ensure the ELNO's controls and processes are effective and rectify any identified weaknesses is intended to ensure controls remain effective over time and in light of any changes to risks. The measures under 7.3.2 will support greater confidence in the system by ELNOs, Registrars, Subscribers, Users and Client. |
| <b>MOR 7.4 – Data</b>            |       |   |   |
| 41.                              | 7.4.2 | Added a new requirement that Data an ELNO receives from another ELNO in an Interoperable Electronic Workspace may only be used for certain narrow purposes.   | Existing MOR 7.4.1 limits the ways in which an ELNO may use data from a Land Registry. New MOR 7.4.2 limits the ways in which an ELNO may use data received from another ELNO in an Interoperable Lodgment Case. The aim of this addition is to protect the data sent by Subscribers to their ELNO from inappropriate use by another ELNO.  |

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| <b>MOR 7.9 – Notification of Jeopardised Conveyancing Transactions</b>                  |           |   |  |
| 42.   | 7.9       | Added a requirement for an ELNO to notify other ELNOs in an Interoperable Lodgment Case of a Jeopardised Conveyancing Transaction.  | This addition extends the existing requirement for ELNOs to notify the Registrar and Subscribers involved in a Jeopardised Conveyancing Transaction to ELNOs involved in such a transaction. This will enable the ELNOs to attempt to prevent further issues where possible, and to effectively deal with the matter.  |
| <b>MOR 7.10 – Obligations in relation to Notification of Compromised Security Items</b> |           |   |  |
| 43.   | 7.10(e)   | Added a requirement for an ELNO to notify other ELNOs in an Interoperable Lodgment Case where it is notified by a Subscriber of a Compromised Security Item.  | This addition extends the existing requirement for ELNOs to notify the Registrar of a Compromised Security Item to ELNOs involved in an Interoperable Lodgment Case that may be affected by the Compromise. This will enable the ELNOs to attempt to prevent further issues or losses where possible, and to effectively deal with the matter.   |
| <b>MOR 7.11 – Data Breach Notification</b>  |           |   |  |
| 44.   | 7.11.2(a) | Added a requirement for an ELNO to provide details of Data Breaches with ELNOs it Interoperates with.   | This addition extends the existing requirement for ELNOs to notify the Registrar and affected Subscribers of a Data Breach to ELNOs it Interoperates with. This will enable the ELNOs to attempt to prevent further issues where possible, and to effectively deal with the matter.  |
| <b>MOR 7.12 – Cloud Service</b>   |           |   |  |
| 45.   | 7.12.1(e) | Amended the requirement to specify that the Cloud Service Provider is to use the ISO 27001, or, if superseded, comply with the ISO Standard that has superseded it.   | This change is not related to the interoperability reform.<br>This amendment has been made for clarification purposes and prevents the potential use of a lesser or less appropriate Standard.   |
| <b>MOR 9.2 – No increased risk of fraud or error</b>                                    |           |   |  |
| 46.   | 9.2(b)    | Added a requirement for an ELNO to use reasonable endeavours to ensure that the design and implementation of Interoperability between its ELN and another ELN does not result in a greater risk of fraud or error for Interoperable Lodgment Cases compared to the risk of fraud or error for comparable Conveyancing Transactions conducted solely on its own ELN or lodged in a paper medium. | This addition is an extension of the existing obligation on ELNOs to ensure that Lodgment using their ELN does not increase the risk of fraud or error compared to the paper medium. An ELNO must design and implement Interoperability in such a way that it does not increase the risk of fraud or error compared to another type of Conveyancing Transaction. The purpose of this extension is to protect Clients and the integrity of the Titles Register. |

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| <b>MOR 10.3 – Data Standards</b>  |          |   |  |
| 47.   | 10.3.2   | Added a requirement for ELNs to use the NECIDS for Interoperable Lodgment Cases and to comply with the business rules and any requirements in the NECIDS.                   | The NECIDS is the data standard currently being developed to facilitate Interoperability between ELNOs. In addition to enabling data to be exchanged for Interoperable Lodgment Cases, the NECIDS may also contain business rules and other requirements, for example related to security or performance, which the ELNO will be required to comply with.  |
| <b>MOR 10.8 – Presentation once Associated Financial Transaction is irrevocable</b> |          |   |  |
| 48.   | 10.8     | Amendment of this provision to use definition Associated Financial Transaction, as defined in the ECNL, instead of Financial Settlement. Minor rewording of this provision. | <p>This is a minor change to adopt the definition of Associated Financial Transaction that is already in the ECNL, and to reflect the fact that only the Responsible ELNO (who undertakes Lodgment with the Land Registry) in an Interoperable Conveyancing Transaction is able to ensure the correct sequencing between settlement and Lodgment.</p> <p>ARNECC is currently determining its policy around requiring Independent Certifications that an ELNO's System is fit for purpose or complies with the relevant industry code in relation to Associated Financial Transactions.</p> |
| <b>MOR 10.9 – Presentation following Duty payment or commitment</b>                 |          |   |  |
| 49.   | 10.9     | Minor rewording of this provision.  | This is a minor change to ensure consistency with the wording changes at MOR 10.8.   |
| <b>MOR 10.10 – Land Registry Fees</b>   |          |   |  |
| 50.   | 10.10(a) | Amendment of this provision to provide for the payment of Lodgment Fees in an Interoperable Electronic Workspace.   | In an Interoperable Electronic Workspace, it is the ELNO providing the ELN used by the Responsible Subscriber who is responsible for the payment/irrevocable commitment of Lodgment Fees to the Land Registry. Mostly this will be the Responsible ELNO but it may be a Participating ELNO.  |
| <b>MOR 21.2 – Minimum requirements of a Transition Plan</b>                         |          |   |  |
| 51.   | 21.2(f)  | Inclusion of Interoperability in the list of matters that a Transition Plan must provide for.   | ARNECC considers it important that when an ELNO is winding down, the Transition Plan takes into account Interoperable connections with other ELNOs. The purpose is to avoid or minimise the impact of possible disruptions to other ELNOs and their Subscribers.   |

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| <b>SCHEDULE 3 – Reporting requirements</b>             |                             |   |   |
| 52.  | Schedule 3, Category, Three | Added three new Category Three Self-Certifications in relation to MOR 5.7, 7.3.2 and 10.3.  | There is an obligation to self-certify compliance with additional MOR 5.7, 7.3.2 and 10.3 relating to Interoperability.   |
| <b>SCHEDULE 8 – Interoperability Agreement Matters</b> |                             |   |   |
| 53.  | Schedule 8                  | Added Schedule 8, which lists the matters that must be dealt with in Interoperability Agreements.   | <p>The subject matters specified in Schedule 8 are the minimum matters that must be contained within Interoperability Agreements. They have been included because they are essential to the efficient or effective implementation or operation of Interoperability, or because they protect other parties.</p> <p>Schedule 8 does not specify any specific mandatory terms, as these are to be agreed between the ELNO and ELNO Requesting Interoperability. However, it does specify some detail as to the types of matters that must be included. It also requires that terms be drafted in such a way as to achieve a desired outcome (e.g. efficiency or effectiveness).</p> <p>ARNECC is of the view that this level of regulation will achieve the best outcome in the current electronic conveyancing environment.</p> |
| 54.  | Assistance                  | The Interoperability Agreement must include a mutual obligation for ELNOs to provide reasonable assistance to one another to enable each ELNO to comply with the ECNL and the Operating Requirements. | <p>This subject matter is important as an ELNO may require assistance from another ELNO to ensure that its ELN remains secure and operational and to ensure that it can comply with its obligations under the MOR and ECNL.</p> <p>For example, under MOR 7.13, an ELNO must ensure that vulnerability and penetration testing is completed. The ELNO is likely to require assistance from all other Interoperating ELNOs to complete the testing and comply with this requirement.</p> <p>Inclusion of this requirement will also ensure that obligations arising in future versions of the MOR are accounted for under this general clause.</p>   |
| 55.  | Dispute resolution          | The Interoperability Agreement must include a dispute resolution process for resolution of disputes arising under the Interoperability Agreement, including a process for mediation.                  | <p>A dispute resolution process in the Interoperability Agreement will provide the Interoperating ELNOs with a clear pathway to manage and resolve disputes. The detail of the process will be left to the ELNOs to negotiate.</p> <p>The requirement to include a process for mediation ensures that there is a timely and inexpensive process for involving an independent third party to manage the dispute and assist with its resolution.</p> <p>Also see MOR 5.7 for notes about the benefits of mediation. As noted above, ARNECC is currently considering whether to include arbitration provisions</p>   |

| #   | Rule                | Amendments  | Explanatory Notes   |
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|     |                     |   | under MOR 5.7 and Schedule 8 as an additional step in the dispute resolution process. ARNECC invites stakeholder comment on this issue.   |
| 56. | Claims management   | The Interoperability Agreement must include a process for the management of Subscriber, Client and third-party claims arising in relation to Interoperability. This must include obligations to cooperatively investigate and resolve claims and share information where reasonably required.   | <p>The main purpose of including claims management as a mandatory subject matter in Interoperability Agreements is to protect Subscribers, Clients and third parties who may be impacted by an issue arising as a result of Interoperability.</p> <p>The extent or detail of the issue may not be known without information sharing and cooperative investigation between the Interoperating ELNOs.</p>   |
| 57. | Change management   | The Interoperability Agreement must include a process for the management of changes between Interoperable ELNOs, including implementation of changes related to Interoperability required by another Person, such as a Land Registry, Duty Authority or financial institution (other than in its capacity as a Subscriber).   | Changes to an ELN may impact Interoperating ELNOs and their Subscribers. It is therefore important that the Interoperating ELNOs agree on a process for the management of changes.  |
| 58. | Root cause analysis | <p>The Interoperability Agreement must include a process for the identification and rectification of any fault, issue or failure (including an Incident) affecting Interoperability between ELNs or the provision of any Interoperability service between ELNs, including:</p> <ul style="list-style-type: none"> <li>(a) a mutual obligation for ELNOs to conduct root cause analysis; and</li> <li>(b) the appointment of an independent expert to identify the cause where the ELNOs are unable to do so, and the making and implementation of recommendations for rectification.</li> </ul> | <p>The main purpose of including root cause analysis as a mandatory subject matter in Interoperability Agreements is to protect Subscribers, Clients and third parties who may be impacted by an issue arising as a result of Interoperability.</p> <p>An independent expert may provide helpful assistance with carrying out an investigation to determine the root cause of an issue. This is particularly so where there are technical issues that may require specific technical knowledge about the workings of the ELN and may not be understood by a layperson or another dispute resolution authority, such as a mediator.</p>  |
| 59. | Testing             | <p>The Interoperability Agreement must include a process for the testing of functional and non-functional requirements of Interoperability, including a mutual obligation for the ELNOs to:</p> <ul style="list-style-type: none"> <li>(a) cooperate and provide reasonable assistance to enable each ELNO to comply with its testing obligations; and</li> <li>(b) notify the other Interoperating ELNO of changes or enhancements to its systems that may impact Interoperability; and</li> </ul>   | <p>MOR 6.2 has been expanded to include a requirement that, before the ELNO implements Interoperability functionality between its ELN and another ELNO's ELN, it must first undertake testing of the new functionality. It follows that it is critical for the effective implementation of Interoperability that the ELNOs include testing obligations and terms within the Interoperability Agreement.</p> <p>It is important that it be included as a standalone and specific subject matter in addition to the general obligation to provide reasonable assistance.</p> <p>A requirement to notify other Interoperating ELNOs of changes to its systems that may impact Interoperability ensures that other ELNOs are able to accommodate and assess any impacts on their ELN and act accordingly.</p> |

| #   | Rule        | Amendments   | Explanatory Notes   |
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|     |             | (c) use reasonable endeavours to meet timelines agreed upon between the ELNOs for the performance and completion of testing.   | The obligation on an ELNO to use reasonable endeavours to meet timelines agreed upon between the ELNOs for the performance and completion of testing ensures that ELNOs do not disrupt attempts of ELNOs to implement enhancements. Any such enhancements to functionality are likely to benefit others, such as Land Registries and Subscribers.   |
| 60. | Security    | The Interoperability Agreement must include a process for the management of security risks that may impact Interoperable Electronic Workspaces, including cyber security risks. The process must specifically address the management of security controls to prevent and detect such risks and the communication between ELNOs where the risk may impact on an Interoperable Electronic Workspace. | <p>Management of security is an essential component of the electronic conveyancing framework and is a critical inclusion in Interoperability Agreements. The effective management of security risks benefits ELNOs as well as Subscribers and their Clients.</p> <p>Given that the failure of security controls has the potential to impact Interoperable ELNOs, it is essential that Interoperating ELNOs work together to ensure their controls are effectively implemented and are maintained, monitored, reviewed and kept updated. Continuous review and improvement are especially important in the context of cyber security risks, which may have the potential to evolve quickly.</p> <p>The requirement to include a process for communication between ELNOs where the risk may impact on Interoperable Electronic Workspaces also ensures that the eventuation of any risk is able to be mitigated where possible.</p> |
| 61. | Privacy     | The Interoperability Agreement must include an acknowledgement by each ELNO that it will comply with the Privacy Laws in relation to any Personal Information sent or received in relation to Interoperable Electronic Workspaces.   | Some of the information exchanged between ELNOs will be Personal Information within the meaning of the Privacy Act. A mutual acknowledgement by each ELNO to comply with the Privacy Laws may alleviate any concerns that ELNOs may have in relation to the management of data sent by it to another ELNO, and any concerns Subscribers and Clients may have with respect to the exchange of their Personal Information.  |
| 62. | Fee sharing | The Interoperability Agreement must include a framework for managing the allocation and sharing of Lodgment Fees between Subscribers in an Interoperable Electronic Workspace and Information Fees between ELNOs in an Interoperable Electronic Workspace.   | A specific framework around the allocation and sharing of fees will provide certainty to both ELNOs and Subscribers as to the costs they are liable to pay.   |