

Model Participation Rules (MPR) Version 5 Consultation Draft – Feedback Table

This table responds to the feedback received on the Consultation Draft of the MPR published in March 2018

#	Rule	Stakeholder Feedback	Action Taken	ARNECC Response
PR 2.1.2 – Definitions				
1	Approved Insurer	Basis for change in definition queried and would like clarification in relation to this.	None.	Approved Insurer was amended to be in line with the Insurance Act 1973 (Cth).
2	Approved Insurer	Changes supported but note that: 1. The providers of professional indemnity insurance to the legal profession in Victoria does not meet this definition; 2. ARNECC should ensure that industry professional indemnity insurers are not inadvertently impacted by these changes	None.	Feedback noted. The substance of the changes requested by the relevant insurer have been adopted.
3	Client Authorisation - Attorney	Opposes the use of a 'Client Authorisation' outside of the 'Representative-Client' relationship. Accordingly, the introduction of a separate definition for an Attorney is both unnecessary and undesirable	None.	A Client Authorisation Form is required under Section 12 of the ECNL.
4	Digital Signature and Digitally Sign	Both are defined in clause 2.1.2 by reference to the ECNL. However, the MOR refers to 'Digital Signing' in clause 7.2.2. It is submitted that the use of terms needs to be standard.	None.	Covered by MPR 2.2.6.
5	Donor Agent	If this definition is to be retained, it is suggested that would read better with the insertion of a comma after the words 'means' and after the words 'body corporate'.	The MPR have been amended.	Amended as suggested.
6	Power of Attorney	If a definition is to be inserted, it is suggested that the reference to '[registered]' should be removed as it is confusing and sufficiently addressed in MPR 5.6(c)(i). It is also submitted that the words 'as agent' should be deleted. The addition of this phrase is unnecessary and arguably not appropriate.	The MPR have been amended.	Removed '[registered]'.

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PR 4 – Eligibility Criteria				
7	4 Subscriber Eligibility	<p>Consideration needs to be given to non-standard Subscriber types. For example:</p> <p>Insolvency and accounting firms where the organisation is the Subscriber, but the practitioner is appointed as an external representative in their personal capacity. E.g. Trustee in bankruptcy, liquidator, receiver manager, etc.</p> <p>Whilst these entities are not caught by the mandating dates, the network will need solutions for these Subscriber types as we transition to 100% digital processing of conveyancing transactions.</p>	None.	Entities will have to become a Subscriber in their own right or be represented.
PR 5 – The Role of Subscribers				
8	5 Subscriber	Concerned about allowing an 'in house' arrangement for ADIs and property developers (and their subsidiaries) to operate under a power of attorney.	None.	Noted.
9	5 Subscriber	<p>It should be a requirement that any subscriber conducting a transaction as an attorney be a legal practitioner or conveyancer.</p> <p>Expanding the subscriber rules to include Local Government organisations should be subject to the same rigour as other subscribers. Therefore MPR PR 5.3 should apply.</p> <p>If property developers are allowed access under a power of attorney, it will open the system to other players causing major issues in relation to lack of transparency, lack of protocols and enforcement of conduct rules.</p>	None.	Subscribers must comply with Jurisdictional laws about who can conduct conveyancing transactions. See MPR 6.15.
10	5 Subscriber	No clear national signing protocol.	None.	Stakeholders need to address this with the regulators of conveyancers and lawyers.
11	5.1 Subscriber's Roles	5.1.1(c) not sufficiently limited - potentially allows non-qualified persons to act for others in electronic conveyancing by procuring a power of attorney.	None.	Subscribers must comply with Jurisdictional laws about who can conduct conveyancing transactions. See MPR 6.15

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12	5.1 – Subscriber’s Roles and PR 5.3 – Restriction on acting as Attorney	<p>Given the complexities and lack of conveyancing knowledge, a Local Government Organisation should not be able to –</p> <ul style="list-style-type: none"> * act as a Representative except in relation to entities related to it (eg water boards); or * assist a self-represented party in a transaction. <p>It is submitted that this limitation should be set out in clause 5.3 (ie in place of the proposed deleted passage) and that the words “subject to Participation MPR 5.3” in clause 5.1 be retained.</p>	None.	Subscribers must comply with Jurisdictional laws about who can conduct conveyancing transactions. See MPR 6.15
13	5.3 Deleted	Relocation of MPR 5.3 to MPR 6.15 could lead to confusion. MPR 6.7 already contains a general obligation for all Subscribers to comply with laws generally and the proposed change would assist in breaking down the barriers to unqualified representatives carrying out legal work.	None.	Relocation of this MPR clarifies that every type of Subscriber is bound by Jurisdictional laws about who can conduct conveyancing transactions.
14	5.6 Subscriber as Attorney	<p>For the purposes of the MPR and a bank’s related third-party entities the "Attorney" will be a corporate entity because it will be the Subscriber.</p> <p>The MPR does not state how the Donor appoints the Attorney. Agree this is unnecessary to prescribe.</p>	None	Noted.
15	5.6 & 6.3.2 - Subscriber as Attorney	<p>Impractical and unnecessarily onerous for banks and their related and other entities where Existing Powers of Attorney exist or would be created as necessary.</p> <p>The inclusion of “or other Subscriber” is intended to cover third party mortgagees which are not related entities of a bank but where the bank has acquired the loan book of the third party but transfers of its mortgages to the bank had not been registered. In some cases, after acquisition, these mortgages may have been held by a custodian and not the bank itself. The types of transactions most likely to be required include discharges of mortgage where the loan has been paid out, a variation of mortgage or possibly a transfer under the power of sale.</p>	None.	New Powers of Attorney will be required together with a Client Authorisation to both comply with the laws of agency and section 12 of the ECNL. Under the ECNL a Client Authorisation is not a Power of Attorney.
16	5.6 & 6.3.2 Subscriber as Attorney	Appear to have the potential to provide e-lodgment services by subscribers to other conveyancing agencies or law firms creating a third-party agent opportunity. Supportive of a mechanism that facilitates e-lodgements.	Amended to include 5.6(a).	Not intended for Representatives. A Client Authorisation from the Representative’s Client is essential.

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17	5.6 Subscriber as Attorney	<p>MPR 5.6(c) requires a number of clarifications:</p> <ol style="list-style-type: none"> 1. It is not sufficiently clear that the proposed requirement to 'lodge' applies only in jurisdictions where registration is not required. Furthermore, it is unclear what is required by the reference to 'lodged'; presumably less than registration. 2. Under s156 of the Real Property Act 1886 (SA) powers of attorney are 'deposited', not registered or lodged, and only if it is to be used to execute an 'instrument' which does not include a Client Authorisation in the Act. Unclear why proposed MPR 5.6(c) requires powers of attorney to be 'registered' or 'lodged' as this does not prevent use of a forged or fraudulent power of attorney or not provide any assurance that the power of attorney has not been revoked. 3. Suggests that the words 'in any other case;' be added at the end of MPR 5.6(c)(i). 4. Queries the benefit of requiring lodgment with the Registrar if further Land Registries are privatised. This requirement merits further consideration. 5. Rules 5.6(b) and (e) appear to overlap and may lead to confusion. 	None.	<ol style="list-style-type: none"> 1. It is 'either / or'. 'Lodge' is defined in the ECNL. 2. In South Australia, Powers of Attorney are deposited for registration. 3. Additional words not required. 4. Private operators act as the Registrar's delegate. 5. These sub-rules cover two separate concepts e.g. Powers of Attorney granted in QLD but used in NSW. The Power of Attorney must comply with QLD's laws regarding making it and be valid for use for land in NSW.
18	5.6, 6.3.2 & Schedule 4 - Subscriber as Attorney	<p>It is not the ELNOs role to review Powers of Attorney. Recommend that:</p> <ul style="list-style-type: none"> * The Registrars remain responsible for reviewing and approving Powers of Attorney. The Donor is required to obtain approval from the Registrar or ARNECC that the Power of Attorney is valid and effective in a prescribed form that the ELNO can rely on OR * Subscriber selects the capacity in which they are acting (Representative or Attorney), and PEXA should not be required to 'look behind' the attorney role. The Registrar relies on the certification the Subscriber is required to make under clause 7.10.2. This approach is consistent with the current Client Authorisation arrangements where PEXA is not required to review or assess the client engagement documents between practitioner and client. If necessary, ARNECC could include an obligation in the MPR so that Subscribers have an obligation to provide the ELNO with a certified copy of the Power of Attorney, however the ELNO is not required to review this for validity. 	None.	Registrars will continue to review the validity of the Power of Attorney, however, the Operator will need to review the registered / lodged Power of Attorney to understand who is the Donor and who is the Attorney and what is authorised.

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PR 6 – General Obligations				
19	6.3 Client Authorisations	Although supporting a limited provision for a Subscriber, as Attorney, to act for a related entity, the proposed use of a Client Authorisation by an Attorney Subscriber is strongly opposed. Proposed changes to MPR 6.3 are not required, and the introduction of a Client Authorisation for an Attorney Subscriber is unnecessary and undesirable. The proposal appears to create a new category of Subscriber who can act for a client based on the power of attorney, rather than in the context of a solicitor/client relationship.	None.	Subscribers must comply with Jurisdictional laws about who can conduct conveyancing transactions. See MPR 6.15 Amendment intended to replicate existing long-standing practices.
20	6.3 – Client Authorisation	It is submitted to add a requirement that the Subscriber must verify the mental capacity of a signatory in circumstances that create some doubt about the mental capacity at the time of signing.	Model Participation Rules Guidance Note #4 to be updated.	Capacity is something that should be assessed in confirming a person's right to deal.
21	6.3.2 – Client Authorisation	It is submitted that a further requirement be added to clause 6.3.2 that, where the Power of Attorney was entered into more than 5 years before the Subscriber Digitally Signs the Registry Instrument as Attorney for the Donor, the Subscriber must verify with the Donor that the Power of Attorney has not been revoked unless the Donor is incapable of giving formal instructions to revoke the it.	None.	New certification 7 covers non-revocation.
22	6.4 Right to Deal	In MPR 6.4(c), the word 'remains' should be replaced with the word 'is' to mirror the wording of MPR 6.4(a). If this is a reference to enquiries being made to ensure that the power of attorney has not been revoked, this is already covered in new MPR 7.10.	The MPR have been amended.	Amended as suggested.
23	6.5 Verification of Identity	Changes to MPR 6.5.1(b) are supported. 1. MPR 6.5.1(f) would not be necessary if Attorney Subscribers were limited to related parties (ie subsidiaries). Additionally, this requirement should be limited to circumstances where a donor is appointing the Subscriber as Attorney, otherwise the identity of all donors would appear to require verification. 2. MPR 6.5.4(b) should be clarified to ensure that the Person Being Verified is the same person who was verified in the original process, especially considering the change to the definition of 'Person Being Verified'.	None.	1. Subscribers must comply with Jurisdictional laws about who can conduct conveyancing transactions. See MPR 6.15. 2. "Reasonable steps" covers this - further information is provided in Guidance Note #2, specifically clause 5.1.

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24	6.6 Supporting Evidence	MPR 6.6(f) requires amplification. It is suggested that it be amended to refer to a certified copy of the power of attorney. This amendment will also be necessary if the proposal to lodge the original power of attorney with the Registrar proceeds in jurisdictions where registration is not required.	None.	In all cases, original Powers of Attorney are returned in the registration or lodgment process.
25	6.9 Assistance	Expand MPR 6.9 to include assistance in the context of compliance with the Operating Requirements and the Participation Rules as well as the ECNL.	None.	Both are covered by the ECNL.
26	6.10 Protection of information	In view of the possibility of there being a new ELNO, consider amending MPR 6.10 to refer to 'an ELNO' rather than 'the ELNO'. The Rules should be reviewed for similar references that should be amended.	None.	The relevant ELNO is the one with which the Subscriber has a Participation Agreement.
27	6.13 Mortgages	Should MPR 6.13.1 be modified to only apply the rule to all mortgagees, as the system does not allow for a mortgagor to be represented by a Subscriber in the system, similar to the amendment to MPR 6.5.1(b).	None.	The provision is permissive in case in the future an ELNO permits a mortgagor or its Representative to sign a mortgage in an ELN.
28	6.15 Conduct of Conveyancing Transactions	The proposed clause 6.15 appears to be to ensure that Subscribers and Signers situated outside a Jurisdiction comply with its laws with respect to the performance of their respective tasks for land situated within it. If the proposed clause has a broader or more specific focus, further comment may be required.	None.	Jurisdictional laws and licensing requirements apply. Applies to all Subscribers i.e. those based within the jurisdiction in which the land is situated as well as those outside.
29	6.15 Conduct of Conveyancing Transactions	Proposed new clause 6.15 (formerly clause 5.3) continues the possibility that different jurisdictions may impose different requirements governing who can conduct and who can digitally sign Registry Instruments. Different jurisdictions imposing different requirements is a backward step to achieving national consistency.	None.	Subscribers must comply with Jurisdictional laws about who can conduct conveyancing transactions. See MPR 6.15.
30	6.15 - Conduct of Conveyancing Transactions	It is not the ELNOs responsibility to police this requirement, particularly in relation to the execution of Registry Instrument.		Noted. This is a matter for industry regulators.
31	6.15 - Conduct of Conveyancing Transactions	What is the purpose of this amendment and the risk(s) it is attempting to address.		To ensure all Subscribers comply with Jurisdictional laws about who can conduct conveyancing transactions.

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PR 7 – Obligations Regarding System Security and Integrity				
32	7.2 Users	Does MPR 7.2.1 need to be subject to or qualified by MPR 7.2.2, which can apply generally and alongside MPR 7.2.1.	None.	Removing this phrase could lead to ambiguity.
33	7.2 Users	It is also submitted that MPR 7.2.2 is drawn unnecessarily broadly. A Subscriber holding a 'batch' Client Authorisation, and which has in place a process for ensuring that a matter is checked and approved by a User before being placed into a batch for later signing by a Signer, should not be prevented from making use of a batch signing process.		This rule does not relate to batch signing. Instead it permits application to application processing of data entry.
34	7.2 Users	Supports the proposed changes. Consider revising paragraph (b) to make it clearer that a Subscriber may use systems to access the ELN and that the requirement that the User be a natural person does not apply in that scenario. Then add an additional paragraph (c) to require signing and admin functions must be carried out by a natural person.	The MPR have been amended.	Feedback noted. MPR 7.2 has been amended in the updated consultation draft.
35	7.2.2 Users	Welcome addition as it recognises and supports the use of integration partners who have achieved efficiencies.	None.	This rule permits application to application processing of data entry.
36	7.2.2 Batch Authorities / Digital Signing	Of critical concern is our ability to use Batch Authorities to undertake efficient or batch Digital Signing. In accordance with Schedule 4 of the Model Participation Rules (MPR), we have the ability to be granted authority by our clients to act for the client in a batch of Conveyancing Transactions as set out in the Client Authorisation. When acting for vendor developers and financiers, this means that we are usually granted the authority to sign all transfers or discharges as they relate to that development. However, the inclusion of the proposed new rule 7.2.2 of the Model Operating Requirements (MOR) and new rule 7.2.2 of the MPR severely restricts our ability to use the Batch Authority and the ELN for efficient signing of Conveyancing Transactions. In our view, proposed rule 7.7.2 of the MPR and the MOR should not be included in the MPR and the MOR in its current form. Rather the rules should expressly provide for the use of efficient signing provided that a Batch Authority is held (or alternatively prohibit the use of efficient signing unless a Batch Authority is held).	None.	This rule does not relate to batch signing. Instead it permits application to application processing of data entry.
37	7.5.1 Digital Certificates	In MPR 7.5.1 is a Private Key necessary when ARNECC has only approved a Gatekeeper Public Key Infrastructure signing regime. If ARNECC were to approve a different type of signing technology this would need to be changed to describe both.	None.	If the Registrars approve a different regime the MPRs will be revisited.

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38	7.5.3 Digital Certificates	MPR 7.5.3 should be clearer, stating that a Subscriber must take reasonable steps to ensure that only Signers authorised in respect of a transaction sign electronic 'Documents' in that transaction and that only the person to whom a digital certificate is issued as a Signer uses that certificate to sign and certify electronic 'Documents', to guard against misuse of digital certificates.	None.	Refer to the definition of a 'Signer'.
39	7.10.2 Certifications	<p>1. MPR 7.10.2 is supported and could be enhanced by adding that the Certifier has taken reasonable steps to ensure that the power of attorney has been registered where so required by the laws of the jurisdiction in which the land the subject of the conveyancing transaction is situated. Where registration is not required, the power of attorney has been lodged with the land registry in that jurisdiction, if the lodgment requirement is retained.</p> <p>2. With the addition of MPR 7.10.2 the proposed new certification 7 in Schedule 3 is unnecessary.</p> <p>3. There is a typographical error in the sub-paragraph numbering of MPR 7.10.2.</p>	<p>1. None.</p> <p>2. None.</p> <p>3. The MPR have been amended.</p>	<p>1. In the ELN, the Registrars will only permit registered / lodged Powers of Attorney to be used.</p> <p>2 The certification is required to ensure Subscribers consider the matters within it on each signing.</p> <p>3. Noted.</p>
40	7.10.2 Certifications	It appears the reference in clause 7.10.2 to certification 4 should be to certification 7 in Schedule 3	The MPR have been amended.	Noted.
Schedule 1 – Additional Participation Rules				
41	Schedule 1 - Additional Participation Rules	<p>This Schedule lists a number of Rules and says they 'can only apply in South Australia to a prescribed Person under section 273 of the Real Property Act 1886 (SA)'. The definition of 'prescribed person' under that section includes a legal practitioner, a registered conveyancer and an unrepresented party. There is no indication which of the persons referred to in the specified Rules must be a 'prescribed person'. Is it the 'Subscriber'? The 'Donor'? The 'Attorney'? For example, MPR 6.5.1(f) refers only to 'Donors' and 'Donor Agents' - must Donors or Donor Agents be legal practitioners, conveyancers or unrepresented parties? If so, why, and why only in South Australia?</p> <p>If ARNECC is now amenable to including a jurisdiction specific requirement, the Law Society of New South Wales requests an additional rule excluding Certification 6 from operation in New South Wales.</p>	The MPR have been amended.	<p>Schedule 1 identifies differences in Jurisdictional requirements and will be updated for clarification.</p> <p>All certifications are applied by the system as and when required.</p>

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42	Schedule 1 - Additional Participation Rules	The Registrars need to develop a sustainable and practical approach for non-ADIs in South Australia.	None.	Under review by the Registrar General of South Australia.
Schedule 3 – Certification Rules				
43	Schedule 3 - Certification Rules	In New South Wales, a guardian does not have authority to sign documents relating to the disposition of property. The Law Council suggests that Guardians should be excluded and if this is a necessary inclusion for Victoria, an appropriate additional participation rule could be added in a provision in Schedule 1. If there is any reason to include a general guardian term (meaning guardian of a minor), then the Law Society of New South Wales advises that the term must to be defined so as to exclude a guardian for the purposes of the Guardianship Act 1987 (NSW).	The MPR have been amended.	'Guardian' has been removed from Certification 1.
44	Schedule 3 - Certification Rules	Suggest the inclusion of a note either after Certification MPR 1 or at the end of the Schedule clarifying it is only necessary to include the applicable role of the person identified and not all of the possibilities for the transaction.	None.	The ELN system determines which certifications are required for each document.
45	Schedule 3 - Certification Rules	New Certification MPR 7 is unnecessary in view of the new MPR 7.10.2 and would potentially be difficult to implement, requiring either manual inclusion by a 'tick-the-box' or creation of a new Subscriber Role in the system.	None.	The certification is required to ensure Subscribers consider the matters within it on each signing.
46	Schedule 3 - Certification Rules	An appropriate transitional period will be necessary to achieve this change requirement on banks to amend their mortgage certifications.	None.	Noted.
Schedule 4 – Client Authorisation				
47	Schedule 4 - Client Authorisation	<p>A separate Client Authorisation form to authorise an Attorney Subscriber to sign documents on behalf of the donor of the power of attorney is unnecessary.</p> <p>A Client Authorisation is only necessary for a Representative as they do not already have that authority arising out of the Solicitor Conveyancer/Client relationship in cases where the transaction disposes of property or creates a binding right (as in a restrictive covenant) affecting the client.</p> <p>The new dichotomy proposed by PR 5 for a 'Client Authorisation – Attorney' and a 'Client Authorisation – Representative' is of concern.</p>	None.	A Power of Attorney is required under local legislation and a Client Authorisation is required under Section 12 of the ECNL.

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48	Schedule 4 – Client Authorisation	<p>Is it necessary or desirable to provide that Client Authorities given to Subscribers prior to the adoption of Versions 5 remain fully valid post adoption – given that those CAs will no longer be in the prescribed form. I see the definition of 'Client Authorisation' refers to 'as amended from time to time' and 'in substantial compliance, but I have a residual concern that a pedant could say:</p> <ul style="list-style-type: none"> • the phrase 'as amended from time to time' only operates prospectively and will not include CAs granted before this definition was inserted; and • the changes to the CA are more than would be cured by 'substantial compliance'. 	None.	The Client Authorisation Form that was valid at the time of signing is the relevant form.
49	Schedule 4 – Client Authorisation	The mysteries of SA and the special attorney provisions might be worthy of an explanation by ARNECC when the new drafts are finalised for those Subscribers who operate nationally and (like me) have no idea about the purpose of these provisions.	None.	South Australian legislation does not permit anyone other than a prescribed person under section 273(4) of the Real Property Act 1886 to make certifications, therefore an Attorney Subscriber cannot apply in South Australia.
50	Schedule 4 – Client Authorisation Templates	Will each remain on a single side (to fit within one page). More than a single sided form will increase processing time and compliance instances.	None.	Client Authorisation Forms are currently longer than 1 page. ARNECC has attempted to reduce the length.
51	Schedule 4 – Client Authorisation Meaning of Words	<p>Why are many of the definitions are being deleted from the Client Authorisation as we understand that the Client Authorisation is intended to be self-sufficient, and not require a Client to refer back to the Rules for the definition of a term used in the Client Authorisation. Removing the capitalisation of a term such as 'person' in the Client Authorisation form suggests these terms have a different meaning to 'Person' or 'Document' as defined in MPR 2.1.2, noting that the preamble to that MPR states that the definitions apply to the capitalised term. The same issue applies in relation to removing the capitalisation of 'Australian legal practitioner' in the definition of 'Representative' and possibly elsewhere. Removing such capitalization could have unintentional and undesirable consequences. Strongly prefer the retention of definitions in the Client Authorisation and capitalisation to remain as per the current version of the Model Participation Rules. Are there any instances where the reference to Registrar should be to the Land Registry in jurisdictions where these organisations are now separate private entities?</p>	None.	Definitions have been removed in an attempt to shorten the form as requested in previous stakeholder feedback. Conveyancers and lawyers will be able to explain the meaning of the removed definitions to their Clients, if necessary.
52	Schedule 4 - Client Authorisation	Simplify rules so only a client authorisation form to be provided from the third-party entity to the relevant ADI is required.	None.	A Power of Attorney is required under local legislation and a Client Authorisation is required under section 12 of the ECNL.

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53	Schedule 4 - Client Authorisation	There should be no need to have to identify or check the authority of the Donor.	None.	Verification of Identity is a fundamental principle.
54	Schedule 4 - Client Authorisation	It should not be necessary for the ADI Subscriber only to be able to act through a Prescribed Person under section 273 of the Real Property Act 1886 (SA) in South Australia when acting for the non-ADI subsidiary of the ADI (the Donor).	None.	Section 128 of the Real Property Act 1886 requires certification by the mortgagee on title, therefore does not allow an ADI subscriber to certify when acting for a non-ADI.
55	Schedule 4 – Client Authorisation	An Attorney is a specific appointment under a Power of Attorney. Could a Signer defined to be a User authorised to sign on behalf of the Subscriber, be construed to be a ‘delegate’ of a Subscriber Attorney and therefore in breach of the legal rule that an Attorney can’t delegate its power under the PA - unless the power provides for that?		Careful consideration needs to be given to the drafting of any new Power of Attorney.
56	Schedule 4 Client Authorisation - Attorney	Client Authorisation permits a subscriber to enter data into a workspace in documents and to create instruments, in fact prepare and sign conveyancing documents, i.e. conduct the conveyancing. If done for fee or reward in Victoria they would presumably be conducting a "conveyancing business" and therefore need to be licensed under the Conveyancers Act 2006.	None.	Subscribers must comply with Jurisdictional laws about who can conduct conveyancing transactions. See MPR 6.15.
57	Schedule 4 - Client Authorisation - Attorney	The Subscriber, as Attorney, must enter into a Client Authorisation - Attorney with the Donor before the Subscriber digitally signs a registry instrument or other electronic document. The form of Client Authorisation - Attorney includes a certification which theoretically can be made by the Donor. This model does not recognise other forms of signing that are available under internal powers of attorney of corporate entities such as described above relating to banks.	New MPR Guidance Note to be drafted.	Only a Subscriber can be appointed but the new Power of Attorney could include a power to sub-delegate. Further information will be provided in an additional Guidance Note.

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58	Schedule 4 Client Authorisation - Attorney	<p>Commends proposed model.</p> <p>Minor drafting issues in Client Authorisation - Attorney and proposes language changes:</p> <p>I certify that:</p> <p>a. I am either the Donor or a Donor Agent; and</p> <p>b. I have the legal authority to instruct the Attorney in relation to the Conveyancing Transaction(s); and</p> <p>c. If I am acting as a Donor Agent, that I have no notice of the revocation of my authority to act on behalf of the Donor; and</p> <p>d. I have, or where I am a Donor Agent, the Donor has, appointed the Attorney under a power of attorney which complies with the laws of the Jurisdiction in which it was made; and</p> <p>e. The power of attorney authorises the Attorney to act on my behalf, or where I am a Donor Agent, to act on behalf of the Donor in the Conveyancing Transaction(s) and to sign documents on my behalf (or where I am a Donor Agent, on behalf of the Donor) as required by the Conveyancing Transaction(s); and</p> <p>f. The power of attorney is valid under the laws of the Jurisdiction in which the land the subject of the Conveyancing Transaction(s) is situated; and</p> <p>g. I have not revoked the power of attorney, or where I am a Donor Agent, I am not aware of the Donor having revoked the power of attorney.</p> <p>I authorise the Attorney to act on my behalf, or where I am a Donor Agent, to act on behalf of the Donor, in accordance with the terms of this Client Authorisation and any Participation Rules and any Prescribed Requirement to:</p> <p>a. Sign documents on my behalf as required for the Conveyancing Transaction(s) ...</p>	The MPR have been amended.	The substance of the proposed amendments has been adopted.
59	Schedule 4 - Client Authorisation - Representative	<p>Requests that "or other subscriber" be added to the definition of 'Representative'.</p> <p>If this change is made, the separate Client Authorisation - Attorney form would no longer be necessary.</p>	None.	Not agreed.

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Schedule 5 – Compliance Examination Procedure				
60	Schedule 5 – Compliance Examination Procedure, Clause 1.2	Where a notice is issued by the Registrar’s Delegate, the notice be required to cite the delegation.	None.	Standard practice to sign under delegation.
61	Schedule 5 – Compliance Examination Procedure, Clause 1, Clause 5.1	Consideration be given to better limiting the imposition or recovery of fees from the Subscriber. Additionally, there should be a right of review.		No limit will be applied. The decision to suspend or terminate is a reviewable decision.
Schedule 6 – Insurance Rules				
62	Schedule 6 - Insurance Rules	Expand MPR 3(c) to include other transactions such as lodging a caveat or a priority notice. when the residual document strategy is implemented, releasing or varying a restrictive covenant or providing consent to a release or variation should also be included.	The MPR have been amended.	Noted.
63	Schedule 6 - Insurance Rules Clause 4.1(a)	<p>It is proposed to introduce into clause 4.1(a) of Schedule 6 of the Rules the words “which includes coverage for Conveyancing Transactions”. The rationale for the introduction of those words is not apparent from the drafting, nor has it been explained by any accompanying material that we have been able to find on ARNECC’s website.</p> <p>Literally construed, our professional indemnity insurance policy (or other professional indemnity policies generally) do not insure Conveyancing Transactions per se. It is not title insurance or transaction-specific insurance. The policy is a liability policy which indemnifies an insured law practice for claims made against the law practice during the period of insurance in connection with their legal practice.</p> <p>Further information is requested re the proposed change to Schedule 6 clause 4.1(a). Instead of the proposed new wording in clause 4.1(a) of the Participation Rules, a more accurate form of words would be:</p> <p>“(a) an Australian Legal Practitioner or a Law Practice who holds or is covered by professional indemnity insurance which indemnifies the Australian Legal Practitioner or Law Practice for claims arising from the conduct of Conveyancing Transactions in their legal practice...”</p>	The MPR has been amended.	The substance of the proposed amendments has been adopted.

#	Rule	Stakeholder Feedback	Action Taken	ARNECC Response
64	Schedule 6 - Insurance Rules Item 4.1	Delete proposed changes to item 4.1 of Schedule 6.	None	Not agreed.
65	Schedule 6 - Insurance Rules Item 4.1	Item 4.1(a) and (b) of Schedule 6 should be amended so that a practitioner “either holds or is covered by fidelity insurance...” This is consistent with the requirement to hold or be covered by professional indemnity insurance in the same item.	The MPR have been amended.	The substance of the proposed amendments has been adopted.
66	Schedule 6 – Insurance Rules – Crown	<p>An ELNO should not have to make a determination whether particular statutory corporations “represent” the Crown.</p> <ol style="list-style-type: none"> 1. Statutory Corporations should be included in the list of self-insuring Subscribers in item 3(c) of Schedule 6 – same as what is proposed for Local Government Organisations. 2. A consistent national approach should be adopted for central government agencies acting for other government departments. 3. Do Government Agencies representing the Crown, but potentially other agencies and departments, e.g. DPMC, register as a Representative Subscriber? And how is their ability to represent limited to the relevant departments and agencies? 	<ol style="list-style-type: none"> 1. The MPR have been amended. 2. None. 3. None. 	<ol style="list-style-type: none"> 1. Amended as suggested. 2. Noted. 3. They could be a Subscriber Attorney.
Schedule 7 – Suspension Events, Termination Events and Suspension and Termination Procedure				
67	Schedule 7 - Suspension Events	<p>The ELNO needs to have the ability to suspend Subscribers who fail to respond (adequately) to the Subscriber Review Process.</p> <ol style="list-style-type: none"> 1. The current definition of Suspension Event should be modified to include situations where Subscribers fail to respond, or fail to respond adequately, to the Subscriber Review Process; OR 2. Subscribers should have an express obligation to comply with an ELNO’s Subscriber Review Process, such that a failure to comply constitutes a Suspension Event under paragraph (a) of the current definition. 	The MPR have been amended.	The substance of the proposed amendments has been adopted.
Schedule 8 – Verification of Identity Standard				
68	Schedule 8 Verification of Identity Standard	If upon presentation of an ImmiCard, is the holder is able to enter into a property transaction in paper and/or electronically in PEXA?	None.	<p>Once Version 5 of MPRs are determined, the Verification of Identity Standard will include the ImmiCard as one of multiple documents. The ImmiCard will be required in combination with a driver’s licence.</p> <p>However, Subscribers are able to take their own reasonable steps.</p>

#	Rule	Stakeholder Feedback	Action Taken	ARNECC Response
69	Schedule 8 - Verification of Identity Standard	The definition of 'relative' includes 'domestic partner'. The meaning of 'domestic partner' is unclear and should be removed from the definition of 'relative'. The phrase 'has or is entering' is sufficient for MPR 4.4(d).	None.	Domestic partner is a recognised term. See for example section 35 of the Relationship Act 2008 (Vic.)
General Comments				
70	MPR - General	We would like ARNECC to consider the allocation of a sufficient transition lead time for introduction of the Version 5 changes. This will allow time to accommodate the inclusion of Immicards in all practitioner forms, appropriate training uplift as well as the management of registered practitioner expectations.	None.	Other persons undertaking Verification of Identity need to be able to use the revised Verification of Identity Standard as soon as possible.
71	MPR - General	Considering the NSW land registry requirement that all standalone discharges of mortgage, mortgages and refinances signed on or after 1 July 2018 must be lodged electronically, it will be important for an agreed position to be reached with ARNECC and for that position to be reflected in the NSW Participation Rules, as soon as possible so that banks will avoid the cost of using practitioners to make these lodgements. Alternatively, if this timing is not likely to be achieved by 1 July 2018, ARNECC is requested to support the NSW Registrar-General to provide a waiver for banks until the Participation Rules have been amended and a reasonable transitional period is agreed.	None.	This is a matter for the NSW Registrar General.