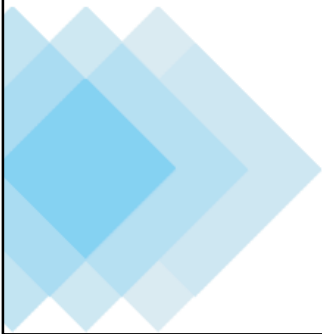


**Australian Registrars' National  
Electronic Conveyancing Council**

**INDUSTRY FORUM**

**Version 6  
Model Participation Rules  
Model Operating Requirements**

Melbourne, 5 February 2020





- Introduction of ARNECC and ARWG members present.
- The ACT Government is currently modernising its land titles system to make buying a property simpler, safer and more efficient. The reform initiatives include adopting the Electronic Conveyancing National Law to allow for the introduction of electronic conveyancing in the ACT.
- This presentation refers to the major areas of change in the Model Participation Rules (MPRs) and Model Operating Requirements (MORs) and the reasoning behind how some of these changes came about.
- Members of ARNECC and the ARWG will respond wherever possible to any questions following the presentation regarding these areas or other areas not addressed.

## Moving into a New Decade



As electronic conveyancing is moving into the new decade, it is imperative that the legal framework governing the industry is robust.

In this regard, ARNECC commissioned an independent review of the cyber security requirements currently placed on Electronic Lodgment Network Operators (ELNOs) and Subscribers under the MPRs and the MORs to understand whether they represent industry best practice for mitigating against cyber fraud within the boundaries of what is within the Registrars' power under the Electronic Conveyancing National Law to require. Recommendations from this review have resulted in a number of amendments to the MPRs and MORs and ARNECC will continue to implement security improvements to ensure cyber risks are proactively managed, including the ongoing reinforcement and communication of best practice cyber security awareness principles to ELNOs and Subscribers.

There have also been a number of reports released throughout 2019 that make recommendations to bring about changes in the electronic conveyancing market. It is recommended that both Subscribers and ELNOs review these documents to understand the importance of being able to adapt to a changing regulatory environment. These reports include:

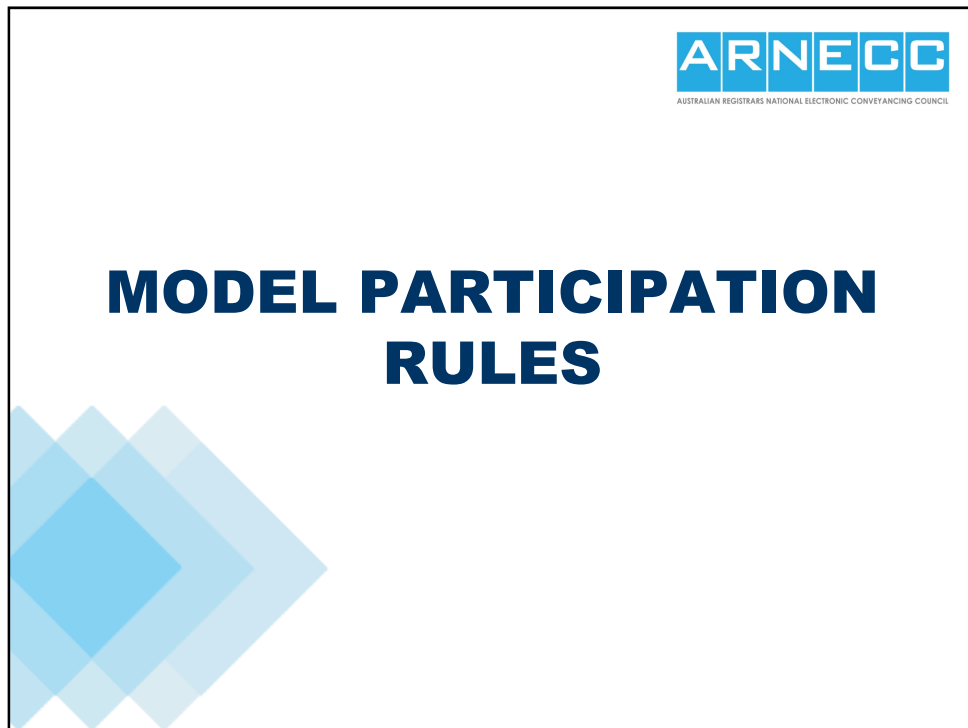
[Review of the Pricing Framework for Electronic Conveyancing Services in NSW](#) (IPART)

[Estimating costs of Electronic Conveyancing Services in NSW](#) (AECOM)

[Electronic Conveyancing Market Report](#) (ACCC)

[IGA Review Final Report](#) (DMC)

ARNECC is also undertaking a project to compare the costs, risks and liabilities of various electronic conveyancing market structures. This work will be used to assist ARNECC members in providing advice to governments on the most appropriate future structure for electronic conveyancing in Australia. This work will also include the alignment of activities currently being undertaken (for example, the NSW/SA interoperability process) and consider the recommendations outlined in the reports previously mentioned.



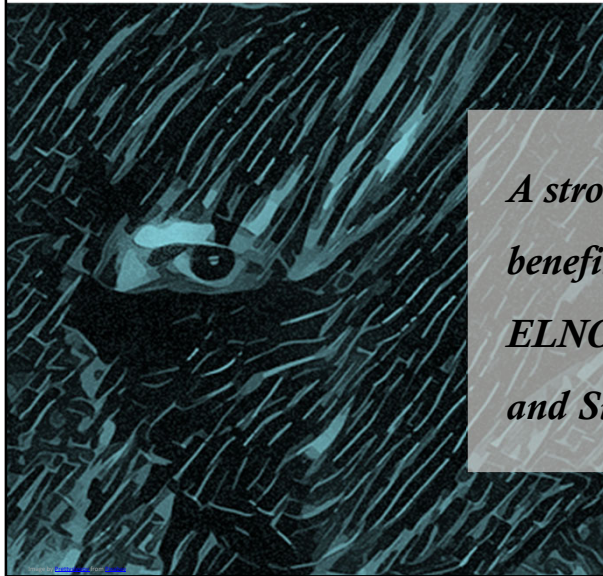
The major changes to the Model Participation Rules (MPRs) relate to:

- strengthening verification of identity (VOI) requirements
- enhanced security requirements including the use of Digital Certificates
- removal of the Subscriber as Attorney provisions

Other changes to the MPRs relate to:

- eligibility criteria
- verification of authority where a Client Authorisation is optional
- Client Authorisations

## Verification of Identity



*A strong VOI regime  
benefits all Clients,  
ELNOs, Land Registries  
and Subscribers*

- The independent security review highlighted risks relating to the current VOI provisions, particularly what constitutes taking reasonable steps.
- Reasonable steps have been interpreted very broadly by industry.
- As a result MPR 6.5.2 has been amended to require use of the VOI Standard (Schedule 8) unless the Subscriber, or mortgagee represented by the Subscriber, is reasonably satisfied the VOI Standard cannot be applied.
- If the VOI Standard cannot be applied:
  - the Person must be identified in another way that constitutes taking reasonable steps
  - evidence must be retained as to why the VOI Standard cannot be applied (MPR 6.6(d))
- A strong VOI regime benefits all Clients, ELNOs, Land Registries and Subscribers by minimising the risk of error or fraud.
- Definition of Identity Agent – clarification that as an agent of a Subscriber, or mortgagee represented by the Subscriber, an Identity Agent's appointment must be in writing.

- New VOI requirements for mortgagors when there is an amendment/variation of mortgage or transfer of mortgage (MPR 6.5.1(b)).
- New VOI requirements for other Users who must be identified before they access an ELN (MPR 6.5.1(f)).



- A Subscriber's System is defined as the IT systems, both hardware and software, used by the Subscriber.
- Users and anyone else accessing a Subscriber's System must receive security awareness training including, as a minimum, secure use of:
  - an ELN/Subscriber's System
  - email/other electronic communication (MPR 7.2.1(c)).
- Good character requirements have been included for all Users (MPR 7.2.3).
- Subscribers must conduct police background checks for all Users every three years (MPR 7.2.3).
- Conveyancers, lawyers, local government officers, public servants and statutory body officers are deemed to comply unless there is evidence they do not (MPR 7.2.4).
- Digital Certificates and Access Credentials (e.g. user ids and passwords) must be kept safe and only be used by the person they are allocated to (MPR 7.5.5). ARNECC is aware of instances when Users have shared Digital Certificates or asked someone else to use theirs.



- If a transaction is compromised, instruments must be unsigned if possible and the ELNO and Registrar must be notified in all cases (MPR 7.7.1).
- Each ELNO is required to publish a Subscriber security policy which can be found on their respective websites.
- Subscribers must make themselves aware of the Subscriber security policy for the ELNO they use and implement appropriate actions to comply with it.

## Subscriber as Attorney



- *Limited demand*
- *Extensive technical changes required*

ARNECC has reassessed the Subscriber as Attorney regime in light of the:

- very limited demand for these provisions
- extensive technical changes required for both ELNOs and Land Registries
- priorities of the broader electronic conveyancing industry

As a result, the Subscriber as Attorney provisions, including MPR 5.6, have been removed.

## Eligibility Criteria Requirements



- A Subscriber must take reasonable steps to ensure its principals, directors, partners, officers and Subscriber Administrators have not held any of these roles with a Subscriber that:
  - has been refused an application to an electronic lodgment service
  - is currently suspended in any Australian jurisdiction
  - has been terminated in any Australian jurisdiction (MPR 4.3.1(c))
- Subscribers and the Subscriber's principals, directors, partners, officers and Subscriber Administrators who are deemed to comply with the good character requirements will do so unless there is evidence they do not (MPRs 4.3.2 and 4.3.3)
- Subscribers wishing to use business names in an ELN must:
  - comply with the Business Names Registration Act 2011 (Cth) or any other relevant legislation
  - own the business name
  - not use a duplicate business name (MPR 4.5)

**Client Authorisation Form** **ARNECC**  
AUSTRALIAN REGISTRARS NATIONAL ELECTRONIC CONVEYANCING COUNCIL

When this form is signed, the Representative is authorised to act for the Client in a Conveyancing Transaction(s).

**Version 5.0**

**Privacy Collection Statement:** The information in this form is collected under statutory authority and used for the purpose of maintaining publicly searchable registers and indexes.

Representative Reference:

**CLIENT DETAILS**

NAME: CLIENT 1  
ADDRESS: CLIENT 2

**TRANSACTION DETAILS**

PROPERTY ADDRESS: LAND TITLE REFERENCE(S) (and/or property description):  
CONVEYANCING TRANSACTION(S):

**AUTHORITY TYPE**

☐ **SPECIFIC AUTHORITY** (set out conveyancing transaction details below)  
☐ **STANDING AUTHORITY** ends on revocation or expiration date: \_\_\_\_/\_\_\_\_/\_\_\_\_ (tick relevant conveyancing transaction(s) below)  
☐ **BATCH AUTHORITY** (attach details of conveyancing transaction(s))

**CONVEYANCING TRANSACTION(S) 1**

☐ TRANSFER ☐ MORTGAGE ☐ CAVEAT  
☐ PRIORITY NOTICE ☐ DISCHARGE/RELEASE OF MORTGAGE ☐ WITHDRAWAL OF CAVEAT  
☐ OTHER

**CONVEYANCING TRANSACTION(S) 2**

☐ TRANSFER ☐ MORTGAGE ☐ CAVEAT  
☐ PRIORITY NOTICE ☐ DISCHARGE/RELEASE OF MORTGAGE ☐ WITHDRAWAL OF CAVEAT  
☐ OTHER

ADDITIONAL INSTRUCTIONS:

I CERTIFY that: CLIENT 1 / CLIENT AGENT

- Amendments to clause 4 'Privacy and Client Information':
  - clarification that the purpose is limited to completing and processing conveyancing transactions or as required by law including compliance examinations
  - covers collection and use & disclosure and use
  - Representatives and Subscribers included
- Definition of Representative Agent – clarification that as an agent of a Representative a Representative Agent's appointment must be in writing

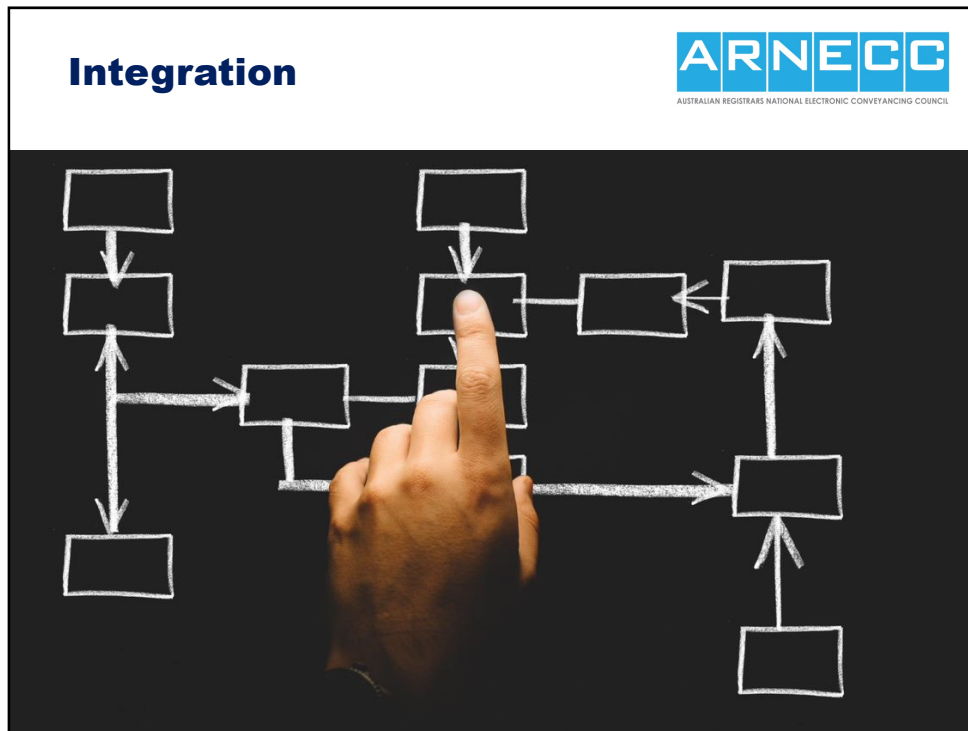
## **Client Authorisation - Verification of Authority**



- If there is no Client Authorisation, a Subscriber must take reasonable steps to verify the authority of each Person providing instructions on behalf of the Client to bind the Client (MPR 6.3(f))

# **MODEL OPERATING REQUIREMENTS**





### Integration

The Integration requirements in Model Operating Requirement 5.5, which were first introduced in version 5, have now been revised and clarified in response to feedback from ELNOs about how the requirements were being implemented in practice.

In response to concerns about the level of technical, security and other confidential information that would need to be included in published Integration terms and conditions, a revised regime has been introduced which instead provides for an ELNO to publish a process for a Person Wishing to Integrate to obtain a copy of the ELNOs integration terms and conditions and / or principles (MOR 5.5.1(b)). The ELNO will be required to maintain records of requests made for a copy of these documents including whether each request was approved or refused and the basis for refusal where applicable (MOR 5.5.1(c)).

In response to advice that in practice it is not possible to develop a standard set of Integration terms and conditions for particular types, levels or classes of Integration, an ELNO is now permitted to develop a set of principles upon which full Integration terms and conditions will be negotiated (MOR 5.5.1(a)(ii)). These principles will be required to be made available on request in the same manner as any standard Integration terms and conditions.

Relevant definitions have also been amended to clarify that the Integration requirements do not apply to Back End Infrastructure Connections, including connections to the Land Registries or Duty Authorities (MOR 2.1.2 – definitions of Back End Infrastructure Connection and Integration).





### Enhanced Security Requirements

The systems used by the electronic conveyancing industry must be trusted and system operators must apply industry best practices which mitigate fraud and misuse by unauthorised parties. The independent security report also made a number of recommendations for enhancements to the security requirements in the Operating Requirements.

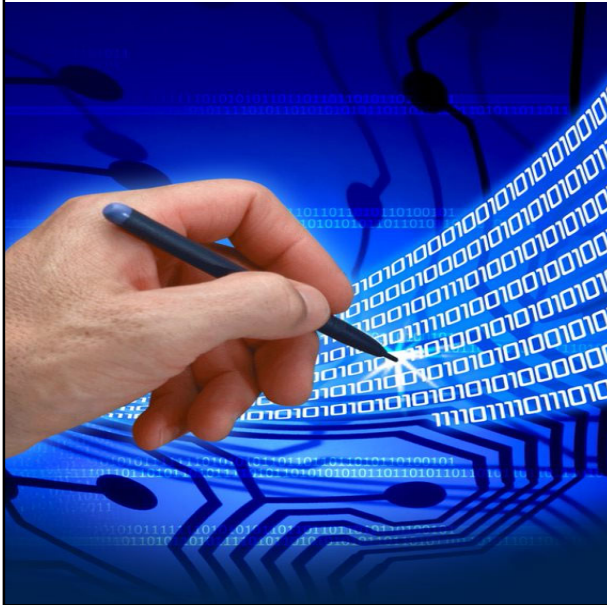
ELNOs will now be required to include undertakings in their agreements with individuals and companies that provide services to the ELNO to promptly notify the ELNO if the Supplier becomes aware of any incident that affects or may affect the ELN and carry out yearly cyber security due diligence reviews. Suppliers will include any person that handles, stores or processes information relevant to the ELN. The new requirements are intended to reduce supply chain risk, especially where the suppliers provide core services or store or handle sensitive data (MOR 7.3(g) and MOR 2.1.2 – definition of Supplier).

ELNOs will also be required to develop and test incident response plans to assist them to respond to incidents. Incidents include events which cause or may cause the providing or operation of the ELN to cease, be interrupted, or which causes or may cause a reduction in the service or quality of the services provided by the ELNO or data breaches. Incidents could include a denial of service attack, malware infection or supplier failure. It is

intended that having well-constructed and tested incident response plans will reduce the costs and ongoing impacts in the event an incident occurs (MOR 7.1(b)(iii), 7.3(h), 7.3 (i) and MOR 2.1.2 – definition of Incident Response Plan and Incident).

A requirement was introduced in version 5 requiring an ELNO's agreement with any cloud service provider to include an undertaking by the cloud service provider to provide a Soc 2, Type 2 report to the ELNO. This requirement has now been clarified and strengthened by explicitly requiring the cloud service provider to take action to rectify any identified weaknesses and the ELNO to receive the Soc 2, Type 2 report and implement any complementary user entity controls (MOR 7.12 (d) and 7.12 (e)).

## Open Digital Certificates



*Requirement to  
permit Subscribers  
to use open digital  
certificates*

### Open Digital Certificates

Currently two types of digital certificates exist, open digital certificates which can be used to digitally sign documents in multiple environments and closed digital certificates which can only be used to digitally sign documents in closed environments or communities of interest such as a particular ELN.

The Model Operating Requirements now explicitly require ELNOs to permit Subscribers to use open digital certificates to digitally sign instruments and documents in their ELN. This will ensure that Subscribers who already have an open digital certificate which meets the Model Operating Requirements will be not be required to purchase additional digital certificates (MOR 7.6.3).

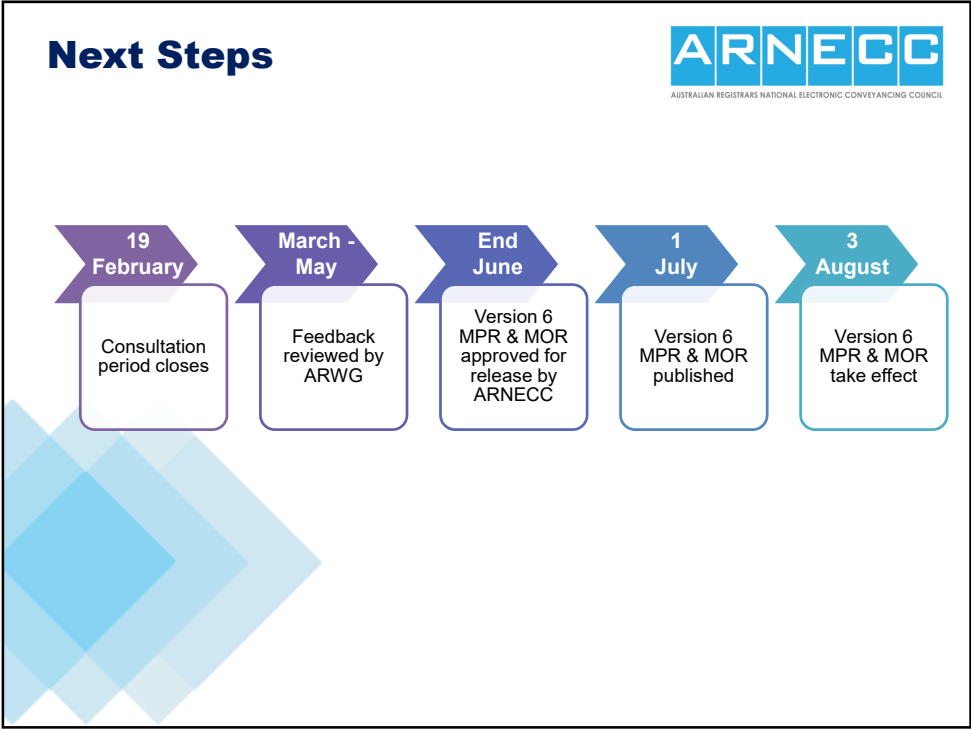


### **Subscriber Registration**

Currently under Model Operating Requirement 14.1.2 (b) the ELNO must only register a potential Subscriber if they have verified the identity of that potential Subscriber and any person representing them in accordance with the Subscriber verification of identity standard.

It is understood that from time to time an existing registered Subscriber may change the structure of their business and accordingly need to reregister as a Subscriber to an ELN. For example a sole practitioner may become the principal of an incorporated legal practice or two legal practices may merge into a new entity.

Under the new Model Operating Requirement 14.1.3 an ELNO will no longer need to verify the identity of each potential Subscriber and each person representing the potential Subscriber in accordance with the Subscriber verification of identity standard, if the ELNO has verified the identity of that potential Subscriber and/or the person representing them within the previous two years and takes reasonable steps to ensure it is dealing with the same potential Subscriber or person.



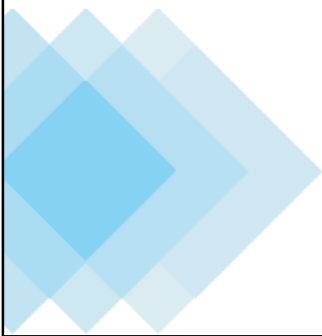
Indicative timeframe.

## Q&A Session



### ARWG Panel Members

- Jane Allan (VIC)
- Edith Graveson (QLD)
- Bianca Uyi (NSW)
- Leanne Hughes (NSW)



## **Thank you for attending**

We look forward to receiving further feedback and  
submissions at

[chair@arnecc.gov.au](mailto:chair@arnecc.gov.au)

