

Model Participation Rules (MPR) Version 4 Consultation Draft – feedback table

This table responds to the feedback received on the Consultation Draft of the MPR published in December 2016.

#	Rule	Stakeholder feedback	Action taken	ARNECC response
1	2.1.2	<p>The proposed inclusion of the definition of 'Certifier' appears appropriate in isolation and expressly applies only to certifications under the Certification Rules – ie it does not apply to various other types of certifications required by the MPR (eg the Identity Agent's certification). However, the definition of 'Signer' in the same clause uses language that does not mirror the wording of the definition of 'Certifier' (there may be other examples). It is suggested that some minor adjustment be considered.</p>	The MPR has been amended.	Definition of Signer amended to delete reference to certifying.
2	2.1.2	<p>Proposed amendment to definition of 'Client Authorisation Form'. It is noted that 'substantial compliance' with the Client Authorisation Form reflects a lower standard of compliance than is currently required of Subscribers. The proposed amendment is likely to cause confusion amongst Subscribers.</p> <p>What is meant by 'substantial compliance'? Is ARNECC's intention to allow Subscribers to only make superficial changes or are substantive amendments to the terms of the Client Authorisation also permitted?</p> <p>Are Subscribers able to vary the terms of the Client Authorisation by way of inclusion of additional terms in their client engagement letter?</p> <p>If ARNECC's intention is to allow Subscribers to vary the terms of the Client Authorisation, an alternative approach may be to require Subscribers to submit their proposed amendments to ARNECC for approval. ARNECC could seek external legal advice and pass the cost onto the Subscriber. This approach would provide the industry with flexibility, whilst giving Subscribers certainty that their use of an amended version of the Client Authorisation will not contravene the provisions in the MPR.</p> <p>In the alternative, it is requested that MPR Guidance Note 1 be revised to include detailed guidance regarding what is meant by the term 'substantial compliance' in MPR Guidance Note 1.</p>	None.	Only superficial changes are permitted. Subscribers are not able to vary the terms of the Client Authorisation. Further guidance will be provided in Guidance Note #1 - Client Authorisation.

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3	4.3.2, 7.4.2, Schedule 8	The definition of 'Local Government Organisation' includes councils other than municipality and district councils. It should be expressly limited to municipality and district councils.	The MPR has been amended.	Amended as suggested.
4	4.3, 4.3.3, 7.4.2	<p>The proposed inclusion of Local Government Organisations should be removed.</p> <p>The proposed inclusion in the MPR of Local Government Organisations as Subscribers is a matter of very great concern. It would introduce major new risks for transacting parties and the Register. Unlike all other Subscribers, dealings with land are not core business for Local Government Organisations. Whilst Local Government Organisations have significant landholdings and deal with land, they do so as transacting parties, not as advisers: hence, whilst some Local Government Organisation staff will have some knowledge of real property transactions, they do not have the expertise in the processes and requirements for a representative of a transacting party.</p>	None.	<p>Local Government Organisations (LGOs) are already Subscribers in some jurisdictions. Some act for themselves both in paper and electronic conveyancing. However, where the laws of the Jurisdiction prevent a LGO certifying an instrument they will not be able to act on their own behalf.</p> <p>LGOs cannot represent a Client.</p> <p>Compliance examinations apply to all Subscribers.</p>
5	4.3.3	The Australian Bureau of Statistics reports that local government in Australia in June 2016 employed 186,500 people (see 6248.0.55.002 - Employment and Earnings, Public Sector, Australia, 2015-16). "Local Government Officer means an employee or officer of a Local Government Organisation" (see MPR clause 2.1.2) and any one of that unmanageable number of CEOs, clerks, cleaners, gardeners, etc. could, by authority, negligence or illegal activity, gain access to PEXA and transact. Indeed, the skillsets of almost all officers and employees of a Local Government Organisation would not coincide with the skillset required by a Subscriber: the closest likely specifiable skillset across all local government staff would be for a Local Government Officeholder who is defined in para 1 of Schedule 8 – Verification of Identity Standard as "a chief executive officer or deputy chief executive officer (however described) of a Local Government Organisation".	None.	The proposed amendment is too limiting. LGOs are only able to act on their own behalf and should be free to select who digitally signs for them as they do in paper conveyancing today.

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6	6.5	There have been numerous instances where financial institutions (including major banks) have required the purchaser's conveyancer to provide a copy of the Identity Agent's Certification: the purpose, sometimes stated, is so that the financial institution does not need to undertake its own verification of identity under the Standard. This practice implements the view of some bankers and conveyancers that they may rely on a related party's verification of identity undertaken in accordance with the Standard and that, to do so, constitutes 'reasonable steps'.	None.	The obligation to undertake verification of identity rests with the Subscriber. They may use an Identity Agent or other agent to undertake a verification on their behalf. Further guidance will be provided in Guidance Note #3 - Certifications.
7	6.5.1(c)	Where a mortgagee uses an external Subscriber to register discharges of mortgages, the mortgagor's representative should be able to rely on the mortgagee's VOI to deliver any pCT to the mortgagor. Accordingly, paragraph (c) should be qualified in the same way as 6.5.1(b)(ii), namely 'however, the Subscriber need not take reasonable steps to verify the identity of each mortgagor or their agent if the Subscriber is reasonably satisfied that the mortgagee has taken reasonable steps to verify the identity of each mortgagor or their agent.'	The MPR has been amended.	Amended as suggested.
8	6.5.1(c)	We interpret the rule to require a VOI to be conducted at the time of handing over (ie 'giving') the paper Certificate of Title to the registered owner, and in States where we or the Lender we represent does not conduct an office, we have been unable to find an Identity Agent to conduct the VOI and handle the paper Certificate of Title as our Agent.	The MPR has been amended.	The word "giving" has been replaced with "providing" in PR 6.5.1(c)(i).
9	7.10	The certification rules fail to specify a) who is to require the certification(s) to be given and where the requirement is to be set out; b) who must give the certifications; and, c) the circumstances in which particular certifications are to be given.	None.	Subscribers provide the certifications required for the role they are undertaking. They are system driven based on Land Registry business rules. Further guidance is provided in Guidance Note #3 - Certifications.
10	Schedule 3 - Certification Rules	Certification 2 should provide that the Certifier holds a properly completed and signed Client Authorisation for the Transaction. Completion does not necessarily entail or require signing.	None.	To be properly completed a Client Authorisation must be filled in, signed and dated. Guidance Note #1 - Client Authorisation and Guidance Note #2 - Verification of Identity will be reviewed to see if further clarification is required.

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11	Schedule 4 - Client Authorisation Form	When completing and signing the Client Authorisation, there is ongoing confusion about who is a 'Client Agent' and who is an 'Agent'. To address this confusion, it is suggested that the definition of 'Agent' in para 6 be replaced with an identically defined definition of 'Representative's Agent' and that term is used in the Client Authorisation form as appropriate.	The MPR has been amended.	Amended as suggested.
12	Schedule 4 - Client Authorisation Form	The Transaction Details on the Client Authorisation refers to 'Withdraw Caveat'; however, para 6 includes a definition of 'Withdrawal of Caveat'. It is suggested that the same term should be used.	The MPR has been amended.	Amended as suggested.
13	Schedule 5 - Compliance Examination Procedure - para 2.2	It is submitted that the Registrar should be required to give a receipt, particularly as some documents are likely to be trust account records attracting legislative obligations for the conveyancer; accordingly, it is important that para 2.2 is retained.	The MPR has been amended.	Paragraph 2.2 reinserted and 'If requested by the Subscriber' included.
14	Schedule 6 - Insurance Rules - para 4.3	The proposed paragraph (which includes Local Government Organisations) should be removed (as per discussion at #5 above).	None.	LGOs that meet their obligations to hold insurance will be able to become Subscribers. However, where the laws of the Jurisdiction prevent a LGO certifying an instrument they will not be able to act on their own behalf.
15	Schedule 6 - Insurance Rules - para 5	On its face, para 5 enables an insurer to impose any requirements on the Subscriber or Identity Agent, even if they are in conflict with the MPR. It is suggested that para 5 should be made expressly subject to the MPR.	None.	Registrars have no ability to limit or control requirements of an insurer.
16	Schedule 7 - Suspension, Events, Termination Events, etc - para 2	It is suggested that "within a reasonable time" be inserted in the proposed para 2 (c).	The MPR has been amended.	Amended as suggested.

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17	Schedule 8, clauses 2 and 3	The VOI Standard in the Model Participation Rules currently requires verification of identity to be conducted during a face-to-face in-person interview between the identity verifier and the person being identified. This either requires the client to visit the identity verifier (or their agent) or vice versa; alternatively, the customer can visit Australia Post. Permitting verification of identity to be undertaken in a face-to-face electronic interview will significantly reduce the cost and time required to complete conveyancing transactions, particularly in regional and remote areas.	None.	New Guidance Query #6 (Does the use of video technology meet the requirements of the Verification of Identity Standard?) posted to ARNECC website.