

Model Participation Rules (MPR) Consultation Draft 7 – Explanatory Notes

This table outlines the key proposed amendments in Consultation Draft 7 of the MPR published in August 2021.

IMPORTANT NOTE:

ARNECC has decided to release the draft MPR in August 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 MPR in December 2021. ARNECC welcomes stakeholder feedback on the Consultation Draft 7 of the MPR.

#	Rule	Amendments	Explanatory Notes
General			
1.	Multiple	Replaced 'the ELN' with 'an ELN' throughout the MPR.	As a Person may be a Subscriber to more than one ELN, a Subscriber's obligations under the Participation Rules apply with respect to every ELN operated by an ELNO with which it has a current Participation Agreement.
MPR 2.1 – Definitions			
2.	Conveyancing Transaction	Amended definition of Conveyancing Transaction to include Interoperable Conveyancing Transactions.	Interoperable Conveyancing Transactions are relevant in the same provisions in the MPR as Conveyancing Transactions. The definition in the next draft of Version 7 of the Model Operating Requirements (MOR) will be amended for consistency (i.e. amended to 'may include').
3.	Electronic Workspace	Amended definition of Electronic Workspace to include Interoperable Electronic Workspace.	Interoperable Electronic Workspaces are relevant in the same provisions in the MPR as Electronic Workspaces. The definition in the next draft of Version 7 of the MOR will be amended for consistency.
4.	Information Fees	Replaced 'the ELN' with 'an ELN'.	The definition in the next draft of Version 7 of the MOR will be amended for consistency.
5.	Interoperability	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"> • Subscribers using different ELNs to complete a Conveyancing Transaction; and • the preparation of documents using data from different ELNs. This term is only used in the definition of Interoperable Conveyancing Transaction in the MPR.
6.	Interoperable Conveyancing Transaction	Added definition of Interoperable Conveyancing Transaction.	This definition extends the existing definition of Conveyancing Transaction to Conveyancing Transactions conducted by means of Interoperability. This term is used in the MPR in the definitions of Conveyancing Transaction, Interoperable Electronic Workspace and Interoperable Lodgment Case.

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7.	Interoperable Electronic Workspace	Added definition of Interoperable Electronic Workspace.	<p>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.</p> <p>The term is only used in the MPR in the definition of Electronic Workspace.</p> <p>The definition in the next draft of Version 7 of the MOR will be amended for consistency (i.e. addition of the word 'and').</p>
8.	Interoperable Lodgment Case	Added definition of Interoperable Lodgment Case.	<p>This definition extends the existing definition of Lodgment Case in the 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).</p> <p>The definition is only used in the MPR in the definition of Lodgment Case.</p>
9.	Licensed Conveyancer	Amended definition of Licensed Conveyancer.	<p>This change is not related to the interoperability reform.</p> <p>This definition was amended because:</p> <ul style="list-style-type: none"> • a Licensed Conveyancer is not known as such in every Jurisdiction; • the new wording is consistent with other definitions in the MPR and MOR referring to other legislation; and • of changes to the mutual recognition scheme.
10.	Lodgment Case	Amended definition of Lodgment Case to include Interoperable Lodgment Case.	<p>Interoperable Lodgment Cases are relevant in the same provisions in the MPR as Lodgment Cases.</p> <p>The definition in the next draft of Version 7 of the MOR will be amended for consistency.</p>
11.	Lodgment Fees	Replaced 'the ELNO' with 'an ELNO'.	<p>The definition in the next draft of Version 7 of the MOR will be amended for consistency.</p>
MPR 5.5 – Subscriber as trustee and partnerships			
12.	5.5.2	Amended to refer to an ELNO with which a Subscriber has a current Participation Agreement.	<p>In Version 6, the MPR states that a Subscriber must do anything the ELNO requires. The amendment clarifies that the Subscriber must do anything required by an ELNO with which it has a current Participation Agreement, not any ELNO.</p>
MPR 7.1 – Protection measures			
13.	7.1(b)	Replaced 'the ELN' with 'any ELN'.	<p>Interoperable ELNs will communicate with each other through input of data and actions taken by Subscribers. The amendment clarifies that the Subscriber's obligation to take reasonable steps to not do anything that could adversely affect the operation, security, integrity, stability or the overall</p>

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			efficiency of the ELN extends to any ELN, even those ELNs to which it is not a Subscriber. This is an important aspect of ensuring the security of the electronic conveyancing system.
14.	7.1(c)	Replaced 'the ELN' with 'any ELN'.	The amendment extends the Subscriber's obligation in MPR 7.1(c) to any ELN. See MPR 7.1(b) for the rationale for this amendment.
MPR 7.3 – User access			
15.	7.3.2	Expanded the requirement for a Subscriber to have at least one Subscriber Administrator to require a Subscriber to have at least one Subscriber Administrator for each ELN provided and operated by an ELNO with which it has a current Participation Agreement.	A Person may be a Subscriber to more than one ELN. There must be a Subscriber Administrator for each ELN a Subscriber is registered with. It may or may not be the same Person.
MPR 7.8 – Revoking Authority			
16.	7.8.1(a)	Added 'of an ELN' and replaced 'the ELN' with 'that ELN'.	A Person may be a Subscriber to more than one ELN and the Subscriber's Users may be Users of one or more ELNs. The purpose of these amendments is to clarify that a Subscriber may revoke a User's access to one ELN, but retain their access to another ELN. There is an obligation to Promptly revoke access because, to ensure the security of the ELN, the ELN should only be able to be accessed by Users who the Subscriber permits and intends to access the ELN.
17.	7.8.1(b)	Added 'of an ELN' and replaced 'the ELN' with 'that ELN'.	See MPR 7.8.1(a). The amendment clarifies that a Subscriber may revoke a Signer's signing rights within one ELN, but retain the Signer's signing rights within another ELN.
18.	7.8.1(c)	Added 'of an ELN' and replaced 'the ELN' with 'that ELN'.	See MPR 7.8.1(a). The amendment clarifies that a Subscriber may revoke a Subscriber Administrator's administrative rights within one ELN, but retain the Subscriber Administrator's administrative rights within another ELN.
19.	7.8.3	Amended to refer to an ELNO with which a Subscriber has a current Participation Agreement and replaced 'the ELN' with 'that ELN or any affected ELN'.	The amendment clarifies that the Subscriber must Promptly prevent any of its Users from accessing and using an ELN where an ELNO with which it has a current Participation Agreement restricts the Subscriber's use of that ELNO's ELN. The Registrar may restrict a Subscriber's access to any ELN.
MPR 7.9 – Compromised Security Items			
20.	7.9.1(a)	Replaced 'the ELN' with 'any ELN affected'.	A Person may be a Subscriber to more than one ELN and its Users may be Users of multiple ELNs. A Compromised Security Item, such as a Compromised Digital Certificate, may affect multiple ELNs. If

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			that is the case, the amendment clarifies that the Subscriber's obligation to immediately revoke the User's authority to access and use an ELN, and to prevent the User from accessing and using an ELN, extends to any ELN affected by the Compromise.
21.	7.9.1(b)(iii)	Extended requirement to apply to all ELNOs who provide and operate an ELN affected by the Compromise.	<p>A Person may be a Subscriber to more than one ELN and its Users may be Users of multiple ELNs. Where the Compromise affects a Digital Certificate, the obligation has been extended to require the Subscriber to notify all ELNOs who provide and operate an ELN affected by the Compromise. The purpose of the amendment is to protect the security of each ELN, as a Compromised Digital Certificate may be used on multiple ELNs.</p> <p>The proposed amendment to MOR 7.10(e) requires that an ELNO notify other ELNOs in an Interoperable Lodgment Case where it is notified by a Subscriber of a Compromised Security Item.</p>
22.	7.9.2(b)	Amended the obligation to limit it to notification of the situation to the ELNO on whose ELN the electronic Registry Instruments and other electronic Documents were Digitally Signed.	<p>A Person may be a Subscriber to more than one ELN. The purpose of the amendment is to clarify that the Subscriber need only notify the ELNO on whose ELN the electronic Registry Instruments or other electronic Documents were Digitally Signed if any of its Private Keys have been used to Digitally Sign without its authorisation or the authorisation of the Client.</p> <p>The proposed amendment to MOR 7.10(e) requires that an ELNO notify other ELNOs in an Interoperable Lodgment Case where it is notified by a Subscriber of a Compromised Security Item.</p>
MPR 9.5 – Further steps by Subscriber			
23.	9.5(b)	Amended to refer to any ELNO with which a Subscriber has a current Participation Agreement.	Amended to clarify there may be more than one ELNO with which the Subscriber has a current Participation Agreement.
MPR 10 - Compliance			
24.	10(b)	Amended to refer to an ELNO with which a Subscriber has a current Participation Agreement.	The amendment clarifies that the Subscriber is to give written notice to any ELNO with which it has a current Participation Agreement if it becomes aware that it has breached or may not be able to comply with the Participation Rules. Breaches of the Participation Rules would be relevant to any ELNO with which the Subscriber has a current Participation Agreement.
Schedule 1 – Additional Participation Rules			
25.	Schedule 1	Amended to note Participation Rule 6.5.1(c) does not apply in New South Wales.	<p>This amendment is not related to the interoperability reform.</p> <p>On 11 October 2021, certificates of title will be cancelled in New South Wales. The proposed effective date for Version 7 is December 2021, at which point certificates of title would have been cancelled in New South Wales. MPR 6.5.1(c), which requires a Subscriber to verify the identity of persons to whom certificates of title are provided, will no longer be a requirement in New South Wales.</p>

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Schedule 4 – Client Authorisation			
26.	Privacy and Client information	Amended from ‘the ELNO’ to ‘ELNOs’.	The amendment expands the acknowledgment statement in the Client Authorisation to clarify that a Client’s Personal Information may be collected, stored and used by, and disclosed to, stored and used by multiple ELNOs provided they are involved in the completion or processing of the Conveyancing Transaction(s) set out in the Client Authorisation. The amendment is necessary because, in an Interoperable Conveyancing Transaction, Personal Information may be shared between ELNOs.
Schedule 6 – Insurance Rules			
27.	Proof of insurance	Amended to refer to an ELNO with which a Subscriber has a current Participation Agreement and replaced ‘the ELNO’ with ‘that ELNO’.	Under MOR 14.4, ELNOs have an obligation to ensure Subscribers meet the Insurance Rules. It follows that the Subscriber must be required to provide evidence of insurance to any ELNO with which it has a current Participation Agreement, where the ELNO requires it.
Schedule 7 – Suspension Events, Termination Events and Suspension and Termination Procedure			
28.	1(a)(iv)	Replaced ‘the ELN’ with ‘an ELN’.	The purpose of the amendment is to clarify that a Suspension Event may arise where the Registrar knows or has reasonable grounds to suspect that the Subscriber poses a threat to the operation, security, integrity or stability of any ELN, not only the ELN to which it is a Subscriber.
29.	2(a)(iv)	Replaced ‘the ELN’ with ‘an ELN’.	The purpose of the amendment is to clarify that a Termination Event may arise where the Registrar knows or has reasonable grounds to suspect that the Subscriber poses a threat to the operation, security, integrity or stability of any ELN, not only the ELN to which it is a Subscriber.
30.	3.2(a)	Replaced ‘the ELN’ with ‘an ELN’.	The purpose of the amendment is to clarify that an urgent decision to suspend or terminate a Subscriber may occur to protect the operation, security, integrity or stability of any ELN, not only the ELN to which it is a Subscriber.
31.	3.2(c)	Replaced ‘the ELN’ with ‘an ELN’.	The amendment clarifies that a direction to reinstate the Subscriber is to be made to the ELNO(s) to which the Registrar provided the urgent direction.
32.	3.3(a)	Replaced ‘the ELN’ with ‘an ELN’.	A direction to suspend or terminate can be made to multiple ELNOs.
33.	3.3(b)	Replaced ‘the ELN’ with ‘an ELN’.	A direction to suspend or terminate can be made to multiple ELNOs.