MODEL PARTICIPATION RULES (MPRs)

CONSOLIDATED FEEDBACK – ARNECC RESPONSE

MPR	Comment	ARNECC response/action
2.1	Include definitions of *ELN* and *ELNO*.	Amended – all definitions from ECNL listed in MPR/MOR definitions refer to definition in ECNL.
2.1	The rules should clarify the difference between a *Subscriber Representative*, a *Responsible Subscriber*, a *User* and a *Signer* and if these must be different individuals or if these are the same person conducting multiple roles.	A *Subscriber* is the individual or entity that signs up with the ELNO to use the ELN, and may or may not act as a *Representative* (ie on behalf of a client). A *User* is an individual authorised by a Subscriber to access and use the ELN on its behalf. The term *Representative Subscriber* is no longer used.
2.1	Review definition of *Insolvency Event*. Concern raised that this may unintentionally capture securitization/fundraising transactions.	Amended.
2.1	Should be amended to clarify that a *User* authorized by a *Subscriber*, who is a *Representative*, to sign and certify documents should be a legal practitioner or licensed conveyancer and should not be a contractor.	Not amended – this is covered by new MPR 5.3 which requires a *Representative* to have any necessary industry qualifications (ie solicitor/ conveyancer) to act for a client in a conveyancing transaction, and to take reasonable steps to ensure that any *Signer* they appoint has the necessary qualifications. It is not appropriate to exclude contractors because this may (for example) exclude locum solicitors which may cause difficulties for small practices. *User* and *Signer* are general terms which also apply to principal subscribers – no change required. Note that insurers or professional regulators may also impose restrictions on roles of *Users*/*Signers* who are members of a profession, beyond those imposed by the Registrars under the MPR.
2.1	The definitions section includes the terms *Client Party* and *Client Party Representative* which both reference the concept of a 'legal person'. This should be amended to refer to *Person*.	Amended to refer to *Person* as defined in the ECNL rather than “legal person”.

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2.1.2	State *ADI* in full	Amended.
2.1.2	*Business Day*: Given transactions can operate nationally; this definition should cover all states and territories.	Amended to ECNL definition.
2.1.2	A *Client* is defined as a person who has appointed a *Subscriber* "in accordance with these Participation Rules". In fact, a Client does not appoint a Subscriber pursuant to the Participation Rules, as the Participation Rules only apply to the actions of a Subscriber, not a Client. Accordingly the definition should refer to "a person who has or persons who have appointed a Subscriber as their Representative for the purposes of these Participation Rules".	Amended to refer to appointment of a *Subscriber* pursuant to a Client Authorisation (rather than in accordance with the Participation Rules).
2.1.2	The use of the terms *Digitally Sign* and *Digital Signature* incorrectly reflect the process of digitally signing.	Amended - MPRs to reflect changes to the ECNL and the process of creating a Digital Signature.
2.1.2	Changes are suggested to the definitions of *Lodgement Case* and *Outstanding Conveyancing Transactions*: *Lodgement Case* means Registrar's Instructions and one or more related Registry Instruments which are or will be presented for Lodgement at the same time. *Outstanding Conveyancing Transaction* means a Conveyancing Transaction for which an Electronic Workspace has been created in the ELN but the Lodgement Case for which have not been Lodged.	Amended, with some changes to wording, in accordance with changes made to the draft MOR.
2.1.2	*Personal Information*: The definition is identical to the definition currently used in section 6 of the *Privacy Act 1988* (Cth). That definition is, however, currently the subject of debate and may change in the near future. It would accordingly be preferable to state that Personal Information has the same meaning as defined in the *Privacy Act 1988* (Cth) as amended from time to time.	Amended to refer to "has the meaning given to it in the Privacy Act...".
2.1.2	*Privacy Laws*: The reference to "policies" is ambiguous and, of itself, does not constitute a "law". It should be deleted. This definition should be amended to include equitable and contractual duties of confidence, such as the implied term of confidentiality in the banker and customer contract.	Amended to delete reference to "policies". Not amended. It is not the role of the MPRs to specify every obligation with which a Subscriber must comply. It is up to an individual Subscriber to comply with its own contractual or other professional obligations.

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2.1.2	*Subscriber* should be defined.	Amended.
4; 6.2; 9	If a solicitor who is a subscriber has been stuck off the roll and can no longer practice, unless the ELNO is informed, the solicitor who has been removed from the roll of practitioners may still be able to continue accessing and using the ELNO and perpetrate fraud. There needs to be a process/mechanism to ensure the ELNO has an up-to-date list of eligible Subscribers to ensure that only eligible subscribers can use the system.	The MOR contains an obligation on the ELNO to monitor compliance (including ensuring that information regarding professional registration is up to date) and the MPR requires Subscribers to provide notification if a User is struck off.
4.1	Solicitors and conveyancers are licensed to operate in a particular state. Given the broad definition of "Conveyancing Transaction" in the ECNL, this may not be practical in multiparty transactions. This definition may need to be finetuned or 4.1 modified. Licensed conveyancers are not recognized under ACT or Queensland laws.	New MPR 5.3 has been inserted to ensure that Representative Subscribers must be appropriately qualified in the relevant jurisdiction. The MPRs are not capable of overriding and are not intended to override the existing legislative arrangements regarding entitlement to carry out conveyancing work in various jurisdictions. Resolution of cross-border issues is a subject for national professional licensing reform.
4.1	Limit Participants to Solicitors and non-solicitor Conveyancers only and for Subscribers to be those approved by the jurisdictional Registry. We see an opportunity for "unqualified" persons to operate in the space if that is not done. Every Signer should be a regulated professional (lawyer or conveyancer).	As above, amendments have been made by inserting new MPR 5.3 to ensure that Representatives must be appropriately qualified in the relevant jurisdiction. New MPR 5.3 also requires a Subscriber to take reasonable steps to ensure that every Signer they appoint holds the necessary qualifications in that jurisdiction. In NSW only solicitors or conveyancers are entitled to be Signers; in other jurisdictions it is up to the Subscriber to make a decision as to whether they only authorise lawyers/conveyancers to be Signers, or other trusted employees, agents or contractors.
4.3	The MPR should ensure that all requirements placed on a Subscriber are appropriate to the role that the Subscriber has in a transaction. For example, in parts of the MPR a Subscriber must comply with the laws applicable to those who conduct a conveyancing transaction. This requirement is only applicable where the relevant Subscriber is carrying out conveyancing (ie acting as a Representative), and not where they	This is covered by the new MPR 5.3, which applies only to a Subscriber who is acting as a Representative.

MPR	Comment	ARNECC response/action
	may be otherwise connected to the transaction such as a financier.	
4.4	Concern raised that this provision is too onerous, as a lawyer/conveyancer must already be of good character to get their professional registration.	These requirements are necessary because the MPRs apply to all Subscribers and Users, not just those with professional registrations. Amendments have been made so that particular professionals who must meet a "good character" requirement as part of their registration process are exempt from the character requirements in this MPR.
4.4	Should be clarified to only include persons who have access to the ELN. Particular concern raised regarding the reference to contractors without qualification. Query also raised regarding what will constitute reasonable steps to ensure that employees/agents/contractors meet the requirements.	Amended for employees, agents and contractors – ie only those who have access to the ELN are required to meet the character test. It is up to the Subscriber to determine what "reasonable steps" are – and there are a number of ways that this could be achieved, hence ARNECC did not want to be prescriptive as to how this is to be done. Many of these steps may already be taken as part of existing risk management policies and practices.
4.4	This MPR should only include matters which are likely to affect a person's duties in relation to the ELN. The requirement that a Subscriber or any of the specified persons not have had disciplinary action taken against them nor have been adversely mentioned in a report is not necessarily related to a person's duties in relation to an ELN.	Not amended in respect of 4.4(c)(i)-(iii) – 4.4(c)(iv) amended to refer to matters that may impact on a Conveyancing Transaction.
4.4	Review this provision for consistency with privacy laws and laws relating to spent convictions.	MPR amended to require "reasonable steps" – failure to identify spent convictions would not be a breach of this MPR.
4.4(b)(i)-(v)	Subparagraphs (i) to (v) contain a range of criteria upon which Subscriber personnel must effectively be disqualified. There should be a rider to the effect that the Registrar can waive the requirement in individual circumstances.	There is a general power to waive, although it is very unlikely that these requirements would be waived – and a specific power to waive these particular provisions is therefore not appropriate. Note the amendment to provide for "deemed compliance" by lawyers/conveyancers.

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4.4	In relation to the character requirements, there is no provision for information sharing between the ELNO and professional regulatory authorities. Query how the ELNO will ensure that information about disciplinary action or adverse mentions is current.	It is not within the scope of the MPR or the power of the Registrar to impose a requirement regarding information sharing between the ELNO and professional regulatory authorities. It may be open to the ELNO to enter into an information sharing arrangement with the professional bodies, but this is not something that can be mandated by the Registrar.
4.5	Issues raised regarding the manner in which Rule 4 of Schedule 5 seeks to carve out solicitors and conveyancers from complying with the requirements to obtain professional indemnity insurance and fidelity insurance under Rules 1 and 2 of Schedule 5. It is suggested that a simpler and more effective approach to the issue covered by Rule 4 could be to exempt a Subscriber from complying with Rules 1 and 2 where the Subscriber has professional indemnity cover and fidelity insurance cover which satisfies the regulatory requirements of the jurisdiction which has issued the Subscriber's practicing certificate or licence.	Amended so that lawyers and conveyancers are deemed to comply.
4.5	The focus should be on fidelity fund coverage rather than any contribution to the fidelity fund as the entity making the contribution to the fidelity fund may not be the same as the Subscriber entity.	Amended to refer to a law practice that contributes to “or on whose behalf a contribution is made” to a fidelity fund.
4.5	There is a concern that the policies described in Rules 1 and 2, particularly the requirements under sub-rules (b) and (c) may not be capable of being satisfied.	Lawyers and licensed conveyancers are not required to comply with sub-rules (b) and (c) by virtue of rule 4.
5.1	The circumstances in which a Subscriber acts on its own behalf in lodging a mortgage instrument should be specified. This is of particular importance because under section 199(2) of the *National Credit Code*, a person cannot authorise a credit provider, or a person associated with a credit provider, to enter into a mortgage on the person’s behalf. Section 199(3) of the *National Credit Code* provides that a credit provider, or a	We note that a Mortgagee cannot act on behalf of a Mortgagor and therefore will not be entering into a Client Authorisation with a Mortgagor. See MPR 6.3 which applies only where the Subscriber is a Representative. A Representative is a Subscriber who acts on behalf of a Client in the ELN. A Subscriber such as a financial institution will not be a Representative. The financial institution is acting for itself (unless it

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	person associated with a credit provider, that purports to act as agent of a mortgagor in entering into a mortgage commits an offence which bears a criminal penalty.	chooses to appoint a Subscriber to act for it). Amendment made to clarify process – see new MPR 6.13.
5.1	It is suggested that a note be included in the Client Authorisation stating that it is not to be used for the appointment of a mortgagee, or anyone acting on its behalf, to enter into a mortgage to which the *National Credit Code* applies. This would also assist in addressing the concern that Section 9(1) of the ECNL may imply that a financier which is a Subscriber when signing a mortgage on its own behalf, may also be signing it under any client authorisation that has been given in relation to the conveyancing transaction.	See new MPR 6.13.
5.1	The rules should make it clear that a Subscriber includes a Subscriber's employees.	Not amended – the primary obligations in the MPR are on the Subscriber, because the Subscriber carries the insurance. Where appropriate the MPRs require the Subscriber to ensure that its Users comply with certain obligations.
5.3	There is no provision covering how a Subscriber can select a Responsible Subscriber to be liable for lodgement fees and the resolution of requisitions issued by the Registrar.	Amended MPR 5.3.1 to say that the Participating Subscribers must agree on a Responsible Subscriber for every Lodgement Case. The nomination of Responsible Subscriber will be made within the Electronic Workspace. Definition of Responsible Subscriber amended to clarify their role.
5.3	Remove the requirement for a Responsible Subscriber to ensure that they do not pass on information obtained from another Subscriber that may be incorrect, incomplete etc as this provision goes further than the current role of a lodging party and it is unclear how a Responsible Subscriber could take on the obligation for the accuracy of information entered by other Subscribers.	Not amended – the obligation is already limited to taking reasonable steps not to pass on information that the Subscriber knows or suspects to be incorrect or incomplete. This is considered to be a reasonable obligation and consistent with current obligations in a paper environment.

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5.4	MPR 5.4.2(b) should be reviewed for consistency with partnership law.	Seek Clarification – what is the inconsistency with partnership law? The MPR is intended to make it easier for Subscribers that are partnerships so that they do not have to re-execute the Participation Agreement every time there is a change to the partnership.
5.4.1	This is not appropriate for security trustees.	Amended to provide that a trustee acts in its personal capacity and not in its capacity as trustee.
6.1	Subscriber should not be responsible for all use of the ELN by its Users. Subscribers should just be responsible for the actions of its Users in operating the ELN.	Not amended – Subscriber's select their Users and should therefore be responsible for their use of the ELN.
6.1	This MPR is too broadly drafted and extends beyond usual due diligence requirements such as taking reasonable steps to ensure compliance and being responsible for acts within the actual or implied authority of an employee or agent. Add the words 'take reasonable steps' to MPR 6.1.1.	Amended to provide that Subscribers have to ensure that all Users are aware of the Participation Rules.
6.3	The requirement to verify authority should not replace the current ability to rely on the presumption regarding directors authorised to act on behalf of a company which exists under the Corporations Act.	Amended 6.3(d) to require "reasonable steps" to verify authority. We do not consider that the presumption in the Corporations Act is negated by this MPR and a note to this effect has been included in paragraph 14 of the Client Authorisation Completion Guide.
6.3	MPR 6.3(d) provides that the 'Subscriber must verify the authority of each person entering into a Client Authorisation on behalf of a Client Party. MPR 6.4 requires the Subscriber to establish that their Client is entitled to enter into the Conveyancing Transaction. Would the 'person' in MPR 6.3(d) be the 'Client' for the purposes of MPR 6.4?	The "person" in 6.3(d) may not necessarily be the Client; it could be the Client's agent.
6.3	Review the requirement that a CA is required before any act is performed in the ELN because in many cases it may not be convenient or	MPR 6.3(b) amended so that Client Authorisation (CA) must be signed before the Subscriber can Digitally Sign any Document on behalf of the

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	possible to obtain the CA at the commencement of the transaction.	Client, however best practice would be to have the CA signed much earlier in the process.
6.3	The liability in this MPR is an absolute one and not just one where negligence is present. There is no similar provision under the Torrens systems at present. Liability is created for Subscribers above what exists in the current paper conveyancing system.	Amended 6.3(d) to address this concern (obligation limited to "reasonable steps").
6.3(a)	The Client Authorisation Form should be deemed a template and not a prescriptive document for use by a Subscriber. Will the client authorisation form be prescribed or will there be an opportunity to tailor it? There may be system limitations with importing a prescribed template.	Everyone must use the same CA for consistency so there will be no opportunity to "tailor" the document. (Note that amendments will be made to the template in consultation with stakeholders.) Note that CA is not relevant to Banks in relation to Mortgagors.
6.4	Concerns raised regarding the breadth of the obligation to establish a Client's right to deal. The right to deal involves identification and the state of the register but the drafting of MPR 6.4 appears wider than this. Amend to refer to taking "reasonable steps" to establish the right to deal. The fundamental aspects of a right to deal should be spelled out or guidance provided as to how to establish a Client's right to deal.	MPR 6.4 has been amended to require the Subscriber to take "reasonable steps" to establish that their Client is entitled to enter into the transaction. (Note that this is not relevant to Banks, as a Bank will not have a "Client".) It is not possible for the Registrar to prescribe how a Subscriber would establish entitlement to enter into a Conveyancing Transaction as prudent practice will depend upon the facts and circumstances of each matter.

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6.4	In the Victoria E-conveyancing system, an eCT is used. In NSW, Clayton Utz recommended the implementation of 'an optional no certificate of title where only APRA regulated subscribers can opt to have a no certificate on issue and for all other titles there will be a CAC security certificate of title on issue'. A CAC security has a unique Certificate Authentication Code (CAC). Would ARNECC be adopting the NSW recommendations for the national system? This lack of harmonisation between the states and territories only undermines the quest for a truly national system, and one conveyancing process.	ARNECC is seeking as much consistency as possible in relation to CT policies and practices. Also note that possession of CT is not necessarily evidence of the entitlement of a person to enter into a Conveyancing Transaction. ARNECC believes that the introduction of electronic conveyancing will assist in driving national consistency in registry practices and the members of ARNECC are committed to working collaboratively through the IGA.
6.5	The provisions regarding verification of identity need to be consistent with the criteria recently released in W.A. and likely to be adopted by other jurisdictions. As drafted the verification rules are inconsistent.	WA will amend their rules to be consistent with the national standard once the national standard is finalised.
6.5	Noted that the verification of identity rules allow ADIs the opportunity to rely on AML/CTF identification systems as an alternative conditional upon there being no right to rely on the statutory indefeasibility of title guarantee, in other words to self-insure. A Registrar in denying access to the statutory guarantee in respect of an identity fraud mortgage transaction should have to establish that reliance on the mandatory VOI standard would have averted the commission of the identity fraud.	Amended – now requires the Subscriber to take "reasonable steps" to verify identity which is up to the Subscriber to determine; use of the VOI Standard will be deemed to be "reasonable steps". If a Subscriber elects to use another method (such as AML/CTF) the onus will be on the Subscriber to establish that they have taken reasonable steps in that particular case. The provisions regarding verification of identity are not intended to change the existing regime regarding indefeasibility of title. Where a Subscriber can establish that they have taken reasonable steps, then (subject to any specific legislation in the relevant jurisdiction) there will be no impact on indefeasibility or on the right of a party to claim from the assurance fund (or State). However, the onus remains on the Subscriber to establish that they have taken reasonable steps and not on the Registrar to show that use of the VOI Standard would have averted

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		the commission of the identity fraud.
6.5.1(c)	Concern where a Subscriber representing a mortgagee relies on verification of identity of a mortgagor undertaken by a mortgagee and loss arises out of the mortgagee not taking reasonable steps to verify the identity of the mortgagor.	Added an additional term to the General Terms in the Client Authorisation Agreement to indemnify the Subscriber where the Subscriber suffers loss as a result of relying on the mortgagee's verification of identity of the mortgagor.
6.6	Concern that this provision requires Subscribers to retain their whole paper file for 7 years. That may not be consistent with current business arrangements with regard to scanning files and sending them to the "clouds". External advice suggests that this is a clear and distinct directive to keep the paper file for seven (7) years.	Not amended. The MPR does not specify how the records must be retained, and this is a decision for Subscribers. The professional regulators may wish to set guidelines regarding document retention but this is not a matter for the MPRs.
6.6	The rationale for the width of this Rule needs further explanation from ARNECC, in particular the phrase 'in connection with a conveyancing transaction'. The nature of the documents required to be retained should be clarified.	Amended – MPR 6.6(b) deleted.
6.6	Provision should be made for the situation in which a Client requests that a Subscriber hand over his file. Concern that this provision places a legal practitioner in conflict with the obligation to hand over files to clients on request, as set out at rule 7 of the Professional Practice and Conduct Rules 2005.	Amended – MPR 6.6 now includes copies.
6.6	Consider the provision of an electronic repository, or an indefinite instrument storage facility with the Registrar or to which the Registrar has access, for the documents referred to in this MPR.	Not amended – the Registrars will not be providing this facility. Once documents are registered with the Land Registry, the Land Registry will retain those records in the same way as it currently does for documents lodged in paper format.

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6.6	Consider retention when Subscribers cease operating a business.	Existing practices would apply. Note that MPR 3(c) requires a Subscriber to continue to comply with document retention obligations after ceasing to be a Subscriber.
6.6	A comprehensive list of the documents required to be retained should be provided.	Amended to limit the scope of documents to be retained.
6.6(a)(iii)	The requirement for a Subscriber to retain any material obtained when verifying identity under the VOI rules is practically onerous.	Retention of copies of documents used for VOI is not considered to be an onerous obligation.
6.6(b)	Where the Subscriber has been obliged, at some time in the prescribed period, by law, to make the documents available to some third party (such as under subpoena or summons), this should displace the obligation of retention in the MPR.	ARNECC assumes that a Subscriber would retain a copy of documents supplied in response to a subpoena or summons, and this would be sufficient to satisfy document retention requirements. MPR 6.6 amended to clarify that retaining a copy is sufficient – it is not expected that Subscribers would retain original identity documents.
6.8	There are a number of references in the Rules to the “”Prescribed Requirements”. This is defined to mean any requirement of the Registrar that Subscribers are required to comply with. However there are no provisions stating how Subscribers will be informed of these requirements and any changes to them.	MPR 6.8 has been deleted. However, the definition of Prescribed Requirement has been amended to limit the requirements to those Published.
6.8.2	MPR 6.8.2 - Does this MPR imply a certification above and beyond the matters set out in Schedule 2 and, in the case of South Australia, a certification above and beyond that required pursuant to the Real Property Act at present?	MPR 6.8 has been deleted.

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6.9	Further clarification is required as to when this MPR could be invoked, as the Subscriber should not have to assist either the ELNO or the Registrar to comply with all applicable laws. Each party has its own direct obligation to comply with all applicable laws and to the extent specific actions are required from the Subscriber, these should be specified.	This MPR may be of assistance to a Subscriber who has misplaced a document and is required by law to provide a copy, which may be held by another Subscriber. The obligation is limited to providing "reasonable assistance" and is not considered to be onerous. The MPR has also been amended to limit it to compliance with the ECNL and Land Titles legislation in relation to a particular Conveyancing Transaction.
6.10	The Subscriber should be required to take the proposed reasonable steps with respect to any person "within the Subscriber's control".	MPR 6.10 amended to clarify the obligation.
6.10	The Subscriber is required to protect information from other unauthorised use etc if that information "is not publicly available". Under privacy law, the Subscriber is required to protect personal information from unauthorised use, reproduction or disclosure whether or not that information is publicly available. The words "that is not publicly available" should be deleted.	Amended.
6.11	This duty should be modified so that the Subscriber must take reasonable steps to ensure the accuracy and completeness of information.	Amended.
6.12	A bank Subscriber requires flexibility to assign access to the ELN to another member of its corporate group.	Not amended – a Subscriber's registration is personal to it because the Subscriber must meet the eligibility requirements in order to be registered. However, once registered a Subscriber may appoint Users within its organisation, agents and contractors and allocate digital certificates to enable the signing of documents as it sees fit (subject to the MPRs).
6.12	In relation to assignment, novation or transfer of an ELN subscription, this provision could also include a prohibition on lending and hiring out the subscription analogous to section 13 of the *Property, Stock and Business Agents Act 2002* (NSW).	Amended to prohibit the Subscriber from "transferring or otherwise dealing with" their Subscription. Change has been made generic so as not to apply only to the NSW legislation mentioned here.

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	There needs to be provision for dealing with mergers and dissolutions of partnerships and reconstitution of and takeovers of corporate entities where transactions are underway in the ELN.	With respect to partnerships, this should be covered by the provision dealing with partnerships (MPR 5.4.2). A change in shareholding in a Subscriber that is a corporate entity would generally not affect the Subscriber's registration. If a new entity were created then the new entity would need to apply as a Subscriber in its own right.
7.1	Concern that professional indemnity insurance is not available in relation to "technology risks", only for claims arising from the failure to take reasonable care to protect access credentials and safe custody of digital certificates.	Amended– "reasonable steps" to apply to (a), (b) and (c); (b) split into two parts to clarify "not do anything which" and "not fail to do anything the omission of which" would have an adverse effect.
7.1	The information technology measures required to implement the ELN would seem to be beyond the capacity of many small and sole practitioners.	The security of the system will depend to some extent on measures built in to the design of the ELN, as well as measures taken by Subscribers. The ELNO must produce a security policy with which Subscribers must take reasonable steps to comply with it. ARNECC anticipates that the ELNO will provide guidance and/or training to Subscribers as to how to comply with the policy. Participation in electronic conveyancing is optional and it will be up to practitioners to determine whether they have the IT capability to participate.
7.1	If capacity constraints are likely to be foreseen in the day to day operations of the national system (for example if bulk lodgements are to be permitted), MPR 7.1(f) might make reference to the existence of prior notification of these constraints to Subscribers.	Not amended – the issue of capacity constraints and the notification to Subscribers of those constraints is not an issue for the MPRs and should be taken up with the ELNO (and if necessary included in any Participation Agreement).
7.1 (d)	Caching – will turning this off affect the operations of any other software?	Amended – deleted.
7.1 (j)	What is meant by the word mitigate?	Amended – deleted.
7.3	The time at which identity and integrity of a signer needs to be verified should be clarified. There is lack of clarity and certainty about whether	Amended - MPR 6.5.1 has been amended to clarify that the identification must occur prior to the initial allocation of a digital certificate.

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	the subscriber needs to verify identity and that the signer is not or has not been subject to the specified events before each decision to authorize a signer to use a digital certificate.	
7.3	A signer's eligibility should be verified along with the signer's identity and integrity. The LCA has adopted a policy position that a user who signs and certifies documents for a subscriber, who is a representative, should be a legal practitioner or licensed conveyancer.	Amended – compliance with requirements of the laws of the jurisdiction by a Signer is covered in amended MPR 5.3(b). It is open to a professional body or insurer to set a policy requirement in relation to who can be a Signer that is in addition to the requirements of the MPRs. A Subscriber will also need to make its own decision as to whether to only allocate signing rights to lawyers/conveyancers in their organisation, or to other trusted employees (if that is permitted under the law of their jurisdiction).
7.3	The requirement for the Subscriber to take reasonable steps to ensure that the signer is not or has not been subject to specified events is too broad and leads to a lack of clarity and certainty about its effect. It is not appropriate to require this additional character test in respect of lawyers and conveyancers.	Amended for consistency with MPR 4.4 regarding character. It is up to the Subscriber to determine what constitutes reasonable steps in the circumstances.
7.3	Concern raised regarding the absence, in either the ECNL or the MPRs, of an exclusion from all liability of a Subscriber for the incorrect identification of a Client where the Subscriber or the Subscriber's Agent has, in identifying the Client, complied with ECNL and the MPR. There should be no attribution of liability on the part of a Subscriber where the ECNL and the MPR can be shown to have been complied with.	Amended MPR 6.5 to require the Subscriber to take reasonable steps to verify identity; if the VOI standard is complied with, then this will be considered to constitute "reasonable steps". If reasonable steps are taken and an identity fraud still occurs, then the existing liability and compensation framework would apply as it does today in a paper environment, including the potential for a claim against the Assurance Fund or State.
7.4	We suggest that the threshold requirement 'must ensure' in this section be revised to be 'must take reasonable steps to ensure' or 'must ensure to the best of the subscriber's knowledge'.	Not amended because the information supplied to a Certification Authority or Registration Authority is completely within the control of the Subscriber and in this situation an absolute obligation rather than "reasonable steps" is appropriate.

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7.4	Would the ELNO provide a directory of Gatekeeper Accredited Service Providers?	It is up to the ELNO to determine whether it provides such a list.
7.5	Concern regarding the wording of MPR 7.5 as an absolute obligation.	Amendment made to require a Subscriber to take reasonable steps to ensure that no one other than a User is able to access the ELN.
7.5	Should be amended to require subscribers to 'take reasonable steps to ensure' that users receive adequate training and are aware of the MPR obligations.	Amended to refer to providing training that is appropriate to the User's role, rather than "adequate" training.
7.6.3(b)	Amend so that the Subscriber is not prevented from making a claim against the person making a change without authority.	Amended.
7.6.4(b), (c)	This is outside the control of the Subscriber. This MPR should be moved to the Model Operating Rules, as this is a matter that should be under the control of the ELNO.	Amended – MPR (a), (b) and (c) deleted.
7.6.4(c)	Amend to read: "*(c) their Users' Access Credentials are changed in accordance with the ELNO's security policy*."	MPR (c) deleted.
7.7	Will there be a mechanism built into the system platform to expedite the notification process or is this likely to be a manual process?	This is an issue for the ELNO; the Registrars cannot respond to this query.
7.7	Further, it should be considered whether notification could compromise insurance claim rights.	ARNECC has held discussions with an insurer in relation to this issue and understands that based on their policy an obligation to notify the ELNO would not be an admission of liability that would affect a right to claim under the policy.

MPR	Comment	ARNECC response/action
7.7.1	This MPR is vague with regard to "compromised". A definition would be advantageous. There has been discussion with NECDL about not abandoning a transaction which may require an intervening document (for example including a document which relies on a source document) which can be lodged on a face to face basis and accepted for registration (generally to correct a Transferor's position) and recommence the transaction.	In the example given, we would not consider that the transaction has been compromised. For clarity, the term has been changed to "Jeopardised" and a new definition of "Jeopardised" inserted. The MPR does not require a transaction to be abandoned; it only deals with taking action such as unsigning the document(s) where possible to do so, and where it is not possible notifying the ELNO that the transaction has been compromised (Jeopardised).
7.8, 7.9	If the subscriber does not revoke its authorisation to sign from a person who has ceased to be an employee/agent/contractor for the subscriber, and that person perpetrates fraud, and/or a User's security item is jeopardised, would the defrauded owner claim compensation from the State and/or against the subscriber?	The defrauded owner may potentially have a claim against the State and/or the Subscriber, depending on the facts of the situation.
7.9.1 (b)	Will the system identify where in the Electronic Workspaces a Digital Certificate has been used, ie will a report be available?	This is a question for the ELNO.
8	Query whether Subscribers to seek some leeway in complying with amendments to the Participation Rules, particularly if the amendments are imposed without consultation pursuant to MPR 2 of Schedule 1. Consider amending to read "The Subscriber must, as soon as practicable, comply with …"	Not amended. A number of changes have been made to Schedule 2 to clarify the process for changes to the Participation Rules.
8	Will subscribers be provided with (i) the Participation Rules amendment program, inclusive of the frequency and notification process (ii) notice of specific amendments and (iii) transition time to comply? This MPR is absolute and should include reference to 'reasonably comply'.	At this stage there is no set "program" for review of the MPRs and changes will be considered and made as required. A review is likely to be triggered when system implementation milestones are reached. Notice of amendments is covered in Schedule 1, 1.2, and the ECNL specifies a minimum notice period (s25). Where possible, the date on which changes take effect will take into account any necessary transition period which may be required by stakeholders to implement the changes. Not agreed to change to "reasonably comply".

MPR	Comment	ARNECC response/action
9	We note that section 28 of the ECNL provides a right of appeal for a decision of the Registrar to restrict suspend or terminate a subscriber's use of the system. Having said that section 9.1 provides the ELNO the right to restrict access of a subscriber without the direction of the Registrar and we are concerned that this decision may not be capable of appeal by the subscriber as it falls outside of the rights conferred by section 28 of the ECNL and may not be open to challenge under administrative law. Propose that a review mechanism is inserted into the MPR or the ECNL to deal with the restriction of use of a subscriber by an act of the ELNO, without a direction of the Registrar. Alternatively the power for an ELNO to act in this way independent of the Registrar could be removed.	MPRs 9.1 and 9.2 amended so that the obligations only apply to directions given by the Registrar directly to a Subscriber, or directions of the ELNO that are given as a result of a direction by the Registrar to the ELNO. It is therefore the decision of the Registrar to give the direction that is subject to appeal, not the action of the ELNO in passing on the direction. Any other right for the ELNO to suspend or restrict the Subscriber or give directions to the Subscriber would be governed by the Participation Agreement and would be subject to contractual actions or remedies rather than statutory appeal or judicial review.
9.1	Compliance with Registrar's directions: The heading states "Comply with Registrar's Direction" but in fact MPR 9.1 deals with directions by both the Registrar and the ELNO. The heading should be changed to "Comply with Directions from Registrar and ELNO".	Amended.
9.1	Suggest inserting the word "reasonably" before "direction". This would render MPR 9.1 consistent with 9.2 which only requires the implementation of "reasonable" directions by the Registrar regarding use of the ELN.	ARNECC does not consider this change necessary as a decision to restrict/suspend/terminate is subject to appeal under the ECNL.
9.1	How will directions from the Registrar / ELNO be communicated – from the Registrar to the ELNO, then the Subscriber or direct from the Registrar to all ELNOs and all Subscribers?	The means of communication between the Registrar and ELNO will be determined between those parties; the ELNO will communicate with Subscribers in accordance with notice provisions in the Participation Agreement (which may be via the ELN).

MPR	Comment	ARNECC response/action
9.1, 9.2	These provisions are very broadly drafted and do not include any defined parameters specifying when a change can be requested other than in the case of a direction of the Registrar, where the obligation is limited to those which are "reasonable". Unless there are clear criteria against which such requests can be assessed, a requirement to implement any direction without appropriate checks and balances, and without sufficient time to evaluate the request and/or consider cost implications, introduces a potentially significant amount of uncertainty. Furthermore, there is no obligation on the Registrar to consider either the impact on other jurisdictions of any such direction, or any duty to ensure that any action it requests is in keeping with the objective of delivering a national system.	There is a distinction between a direction to restrict use of the ELN under 9.1, which is subject to appeal under the ECNL and therefore is not limited to "reasonable" directions, and other directions under 9.2now in 6.14.2. In relation to national consistency, in the Intergovernmental Agreement all participating jurisdictions commit to cooperating to endeavour to maintain national consistency to the greatest possible extent.
9.2	Although MPR 9.1 refers to compliance with directions from both the Registrar and the ELNO regarding use of the ELN, MPR 9.2 provides only that the Subscriber must implement a direction "of the Registrar". MPR 9.2 should be extended to refer to a direction "of the Registrar or the ELNO".	Amended – but the MPR only applies to directions of the ELNO that are given at the direction of the Registrar. The Participation Agreement may also include provisions allowing the ELNO to give directions to Subscribers of its own accord.
9.2	Consider whether Subscribers should have an ability to recover the costs of implementing a future direction of the Registrar regarding their use of the ELN if implementation (or compliance) comes at a cost.	Not accepted.
9.3, 9.4	Banks and other ADIs are prudentially regulated entities. It is common under Commonwealth legislation that suspension or termination of an ADIs authority to operate with respect to its banking business is a decision either made by or after consultation with the relevant Commonwealth Minister. The right to suspend or terminate an ADIs access to the national system should be subject to a similar requirement.	The Commonwealth process may be appropriate where the rights of an ADI as an ADI are impacted; in this case the right to use the ELN is unrelated to an entity's status as an ADI and it is not appropriate to make the power to suspend or terminate subject to this process. The Registrar's powers to suspend/terminate are already restricted by the ECNL, subject to a statutory right of appeal and governed by administrative law principles and remedies.

MPR	Comment	ARNECC response/action
10(c)	The paragraph should read "… remedy any non-compliance with these Participation Rules within 14 days from when it becomes aware that it has breached these Participation Rules, and take such action as is practicable in order to avoid a breach in circumstances where it has become aware that it may in the future be no longer able to comply with these Participation Rules".	Amended (with some changes to proposed wording).
10(c)	Remediation of non-compliance may not be achievable in 14 days depending on the complexity of the breach and if there are system changes to be made as part of the remediation plan.	Amended in 10(c) to allow for Registrar to determine such other time having regard to the nature of the breach.
12	Please confirm whether the Participation Rules or the Jurisdiction Specific Rules will take precedence if there is a conflict between them and the MPR.	The ECNL provides that the Registrar in each jurisdiction will determine Participation Rules, having regard to the Model Participation Rules, so the entire set of rules is specific to the jurisdiction once adopted. The document may contain "Additional Rules" that the Registrar in that jurisdiction has added to the MPRs. As the rules will be additional to those in the MPRs, there should be no conflict between the MPRs and the additional rules.
Sch 1	As the system will operate nationally, a Registrar should only be permitted to amend the Rules if the same amendment is to be made by all Registrars.	Each Registrar is appointed as a statutory officer pursuant to the relevant legislation in their jurisdiction and it is not permissible to fetter the statutory discretion of the Registrar to determine the Participation Rules in their jurisdiction. However, in the IGA all participating jurisdictions have agreed to implement the MPRs and MORs as the applicable rules in their jurisdiction and to cooperate, through ARNECC, to coordinate amendments to the rules and to endeavour to maintain national consistency to the greatest extent possible.

MPR	Comment	ARNECC response/action
Sch 1	Clause 3 states that the amendment is effective when the Registrar "Publishes" a revised version of the Rules on its website. It is not clear how the timing of publication will relate to the notice to be given to Subscribers under Clauses 1.2 and 2.2, particularly where the changes are urgent and therefore made without consultation.	Paragraph 3 to be deleted; covered by ECNL which requires publication at least 20 Business Days before it comes into effect. Paragraph 2.2 wording to be amended to be consistent with 1.2; both 1.2 and 2.2 to state that notice will contain effective date.
Sch 1	The Registrar should be required to give actual notice to each Subscriber when the revised version is published to avoid the need for Subscribers to maintain constant checks of websites. The Registrar should also be required to publish the revised Rules in a prominent place on its website or to provide a clearly identifiable link to them.	With respect to notice to Subscribers – MOR to be amended to require ELNO to give notice to Subscribers of changes to MPR (at direction of ARNECC). Section 25 of the ECNL also sets out how publication may occur – it is anticipated that changes would be published on the ARNECC website and notified through the ELNO as a minimum.
Sch 1, 1.2	20 business days notice for amendments is not likely be sufficient to review, change, implement, test and train staff for all relevant processes for any amendments. Some simple/ non complex system based changes are known to take at a minimum 90 days. The relevant notification should be "in a reasonable time according to the circumstances".	Prior to the amendment being published, consultation will have occurred; and the commencement date of the amendment wherever possible will reflect a reasonable time for stakeholders to implement changes in order to comply with the amendment.
Sch 1, 1 & 2	The Subscriber will need to be consulted for any material change to the Participation Rules. The Registrar should be required to consult with peak bodies for Subscribers	Provision is already made for consultation in relation to any material change except where the change is required in an emergency or required by law. Paragraph 2.1(c) deleted. Amended to refer to consultation with peak bodies.
Sch 1	These provisions should be redrafted to make them objective, as the scope of the consultation should not be 'reasonably determined' by the Registrar, and neither should whether the change will have a material adverse impact be something the Registrar determines.	Amendments made to paragraphs 1 and 2.
Sch 1, 2.1(c)	The Registrar can unilaterally amend the Participation Rules without consultation with the Subscriber if the amendment will not have a materially adverse impact "on any Subscriber". The impact on the ELNO	Paragraph 2.1(c) has been deleted.

MPR	Comment	ARNECC response/action
	should also be considered in this context. It would better read "… adverse impact on the Subscriber, any other subscriber or the ELNO".	
Sch 1, 2.1(d)	The Registrar can amend the Participation Rules without prior consultation with subscribers where this is "required to maintain the operation, security, integrity or stability" of the Network. This is broad and vague. The word "urgently" should be inserted before "required". Section 25(3) of the ECNL states that changes may only be implemented with less than 20 business days' notice if such changes "need to take effect urgently because an emergency situation exists". Section 25(4) defines what is meant by an "emergency".	Amended. Also added reference to emergency situation as defined in the ECNL to clarify what is meant by “emergency”. Changes required by law would only occur **without** consultation where the Registrar determines that it is not possible to undertake consultation. If time permits, then the usual process for changes with prior consultation would be followed.
Sch 1, 4	If the 20 day rule is to be overridden then there must be valid circumstances and some oversight, perhaps the Registrar must inform the relevant Minister why this has/must occur.	Paragraph 4 deleted. All decisions of the Registrar are governed by the usual administrative law framework and the Registrar has a duty to act in good faith in carrying out his or her statutory function.
Sch 2	Item 1 – add “unless it is an ADI and has certified as to the application of its AML/CTF systems”.	Not amended; however MPR 6.5 has been amended to require a Subscriber to take reasonable steps to identify their client, and certification 1 has been amended to reflect this.
Sch 2	Item 2 – the words “properly completed” should be omitted.	Not amended - section 11 of the ECNL requires a Client Authorisation to be properly completed to have effect.
Sch 2	Item 3 – it should be clear that copies must be retained in electronic form.	It is up to the Subscriber to determine in what format they retain records.
Sch 2	Paragraphs 1 and 3 should refer to retaining records in accordance with the Document Retention requirements in MPR 6.6.	Not amended, however certification 1 has been amended to reflect the amendments to MPR 6.5 in relation to verification of identity and certification 3 has been amended so that it only relates to supporting evidence for “this electronic Registry Instrument/Document”.

MPR	Comment	ARNECC response/action
Sch 2	Item 3 – it was queried what "verified" means eg if a Subscriber reviews a driver's licence as part of a Verification of Identity, does the Subscriber then have to contact the issuing authority to verify its validity.	Amended to delete "verified".
Sch 2	Item 4 - the breadth of this certification was questioned and it was queried whether it could be limited to the land titles legislation.	Not amended as a number of different pieces of legislation could be relevant eg the Bankruptcy Act 1966 and the Corporations Act 2001.
Sch 2	Item 5 – the sentence "The Subscriber holds a properly completed counterpart of this electronic Mortgage signed by the Mortgagor" is unclear. It also potentially confuses the counterpart of the electronic mortgage with the Subscriber's (bank's) mortgage executed and lodged on its own behalf. It should provide that the Subscriber holds a mortgage document duly executed by the mortgagor which is identical in substance with the electronic mortgage. It should also make it clear that this document may be held in electronic form.	Certification 5 amended to "The Subscriber or the mortgagee it represents… holds a mortgage on the same terms as this Registry Instrument, signed by or on behalf of the mortgagor". It is up to the Subscriber to determine the format/medium of the mortgage signed by the mortgagor.
Sch. 2	The certifications require the Subscriber to "properly consider" as well as "verify" all supporting evidence for the conveyancing transaction as well as the registry instrument. This requirement creates a legal duty to properly consider the plethora of issues in a conveyancing transaction (including the contract) and to owe a duty not only to the client but also to the ELNO, Registrar and the other parties to the transaction. This is a huge increase in liability for Subscribers. There is no similar provision under the Torrens systems at present.	Certification 3 amended by deleting "properly" and "the Conveyancing Transaction and" – ie certification now limited to supporting evidence relevant to the electronic Registry Instrument/Document.
Sch 2	The certification that the conveyancing transaction is compliant with all relevant legislation as well as the PRs and prescribed requirements extends the Subscriber's liability beyond what is required under the Torrens systems at present.	Certification 4 has been amended so that it now reads: The Subscriber has taken reasonable steps to ensure that this electronic Registry Instrument is correct and compliant with relevant legislation and any Prescribed Requirement.

MPR	Comment	ARNECC response/action
Sch 2	We note that certification one requires the subscriber to have 'properly identified' a client under the Vol rules. We are not certain what 'properly' means in this circumstance, ie whether a person who fraudulently provides VOl evidence has been 'properly' identified even though there may have been no objective material to suggest that a fraud was being conducted. We propose that this threshold should be revised to be 'The subscriber has taken reasonable steps to identify'.	Amended to reflect amendments to MPR 6.5 which now requires the Subscriber to take reasonable steps to identify their client.
Sch 2	Item 5a) – in order to be satisfied that the mortgagee it represents has taken reasonable steps to identify the mortgagor, the Subscriber will need to conduct the Verification of Identity itself. Suggest insertion of wording to the effect that the mortgagee has confirmed that it has taken reasonable steps.	Not amended. The certification that needs to be provided by the Subscriber. The Client Authorisation has been amended to include a suggested indemnity provision.
Sch 3	Client Authorisation – many comments were received in relation to the drafting of the Client Authorisation and they have not been set out here.	Revision of the Client Authorisation is proposed to be undertaken in consultation with industry hence limited amendments have been made to CA/guidance notes at this stage.
Sch 4	Paragraph 3.1. Should be deleted. The test in paragraph 3.2 should be the only determinant for retention and return of documents.	Amended.
Sch 4	In paragraph 5, define or provide guidance as to how to establish a 'material breach'. 'Any issues identified by the Registrar' should be defined as issues relating to some negligence by the Subscriber. Liability for costs will be excluded from professional indemnity cover.	"Material breach' would be defined by reference to case law; it is not possible to specify exactly what would constitute a material breach in advance. It is considered preferable from a Subscriber's point of view to leave in the word "material breach". Amended to refer to cost of any actions required to remedy any breach of the Participation Rules. Also amended to limit to "reasonable" costs.

MPR	Comment	ARNECC response/action
Sch 4 – 1.1	Section 34(2) of the ECNL provides for compliance checks. Concern raised regarding the Registrar seeking additional information about the identity of a client post settlement as it is not reasonable to expect a Conveyancer to have to identify a person for a third time. There may also be practical problems finding a vendor who has moved address or even getting them to provide additional information once settlement is complete. Any compliance check must exclude any requirement to re-identify a client or to provide additional information.	A compliance examination would not require a Subscriber to go back and re-identify a Client. A compliance examination is a review of relevant parts of a file relating to the conveyancing transaction (ie those relating to compliance with the MPR) and the Subscriber may be asked to produce the evidence of the VOI and other documents related to the transaction. The Subscriber would not be asked to produce documents that they do not hold.
Sch 5	Should refer to run off cover.	Not amended. Run off cover is not commercially available outside of the professional insurance arrangements.
Sch 5	"Approved insurer: should be defined as an insurer authorised by law to conduct that type of business.	Definition amended to refer to an insurer approved by APRA to offer general insurance in Australia.
Sch 5	ARNECC should meet with representatives of the Law Council, PI and fidelity insurers to review the proposed insurance requirements, particularly relating to excesses and to address the benefits of run off cover.	Meetings have been held.
Sch. 5, 4	The focus should be on fidelity fund coverage rather than any contribution to the fidelity fund as the entity making the contribution may not be the same as the subscriber entity.	Amended to clarify.
Sch 5, 1(b) and 1(c)	Concern regarding additional costs of compliance with Schedule 5.1 (b) and 5.1 (c). Participants Professional Indemnity Insurance before and after the introduction of electronic conveyancing should remain static and that the MPR and MOR should be consistent in respect of risk sharing. That could be dealt with as an indemnity to the Participants for certain circumstances or loss. The scale and scope of Professional Indemnity Insurance should remain with individual jurisdictions and not a matter for ARNECC.	Insurance Rule 4 deals with this - lawyers and conveyancers are deemed to comply. The PI insurance requirements remain for the individual jurisdictions to determine, and the insurance rules reflect this position.

MPR	Comment	ARNECC response/action
Sch 5, 4(a) and 4(b)	The rules in 4(a) and (b) regarding fidelity insurance are vague. The fidelity cover in the majority of jurisdictions is incorporated into Professional Indemnity policies but for some States the cover is scant or not obligatory or not incorporated.	Amended to clarify.
Sch 5	Some of the rules imply complete liability for fraud on Subscribers which is not the intention – the intention is that there will only be liability when the Subscriber does not follow procedures	Note that amendments have been made to a number of MPR provisions regarding liability.
Sch 5	Paragraph 3 purports to provide an exemption from the insurance rules for ADIs. However the requirement that the ADI be in compliance with all prudential requirements of and guidelines issued by APRA is so wide as to possibly negate the benefit of the exemption. It is not clear what "additional insurance" is referred to in paragraph 4 of Schedule 5 and which Subscribers might be required to take it out.	Amended to delete the reference to "in compliance with all prudential requirements…". Insurance Rule 4 amended.
Sch 5 -	Who will set this level of PI and Fidelity cover each year? What will happen if the PI Insurer or the Fidelity Insurer refuse to agree to the amounts required in this document? In WA these amounts are currently met, but what if they are not met in the future.	Under Insurance Rule 4 conveyancers who have the standard level of insurance cover required for conveyancers do not need any further insurance.
Sch 6	Need detail of Jurisdiction Specific Participation Rules as soon as possible to review and determine impact.	There are no Additional Participation Rules at this stage.
Sch 7	This MPR needs to include an appeal process and a very tight timeframe for the appeal to be heard as potentially this MPR prevents a Conveyancer from earning a livelihood.	There is already an appeal process in the ECNL. A notice/show cause procedure has been added so that a Subscriber must be given notice before being suspended or terminated.
Sch 7	Termination is likely to be significant event for a Subscriber and should not be something that could be determined on a subjective basis. These provisions should be redrafted to use neutral objective criteria for determining whether breach or suspension is warranted (by way of example, "if there has been a material breach", not "if the Registrar	A decision as to whether a material breach has occurred needs to be made by someone, and it is appropriate for the Registrar to make this decision. The Registrar is a creature of statute and any decision is subject to administrative law principles. A notice/show cause procedure has been added to give Subscribers the opportunity to object to a proposed

MPR	Comment	ARNECC response/action
	reasonably considers that the Subscriber is in material breach"). In section 2(c), if failure to comply with a written direction of the Registrar could result in termination, further controls need to exist around what type of direction may be given and the circumstances under which it can be issued.	suspension or termination (except where the decision to suspend or terminate must be made urgently – in which case separate notice procedures apply), and the ECNL contains appeal provisions.
Sch 7	Paragraph 2(a) should be redrafted as follows: A Subscriber's registration may be terminated by the Registrar or at the direction of the Registrar, at any time, if, at that time the Subscriber: (i) is in material breach of any of the Subscriber's obligations under the Participation Rules; or (ii) has acted fraudulently, (iii) has acted negligently or more than 2 occasions in a manner that created material loss or created or creates a risk of material future loss, or (iv) reasonably poses a threat to the operation, security, integrity or stability of the ELN , or (v) has engaged in conduct with the ELN or in conveyancing transactions that is unreasonable or adverse to the interests of other subscribers or the registrar, or (vi) is subject to an order or direction of a court, tribunal or professional regulator or disciplinary body that makes the subscriber's continued registration with ELNO and participation in the ELN unreasonable or risky to other subscribers, the ELNO or the registrar.	(i)(ii) Someone has to make a decision as to whether there has been a material breach and it is appropriate for the Registrar to make this decision – as above. (iii) Amended so that the negligence test only applies to negligence in the use of the ELN/conduct of Conveyancing Transaction. (iv) No change required. (v) Amended so that the conduct must be related to use of the ELN or a Conveyancing Transaction. (vi) Amended to add this (with some changes).
Sch 7	Decision making on objective standards should apply where there is sufficient time to properly investigate and adjudicate the matters at issue. The decision making for termination should be by a tribunal or court. Suspension for non-payment should only be allowed after notice and warning has been given to the subscriber	An administrative procedure has been added and it is considered appropriate for the Registrar to make the decision after following this process. An appeal process exists once the Registrar makes the decision.
Sch 7	In paragraph 2(b), (c) and (d) add the words 'take reasonable steps' and	2(b) and (c) amended to add "without reasonable excuse". Not agreed to

MPR	Comment	ARNECC response/action
	'without reasonable cause'.	add "without reasonable cause" to 2(d). The paragraph already allows for a reasonable period of time to remedy the non-payment.
Sch 7, 1(a)(i), 2(a)(i), 2(a)(ii), 2(a)(iii)	First word should be 'suspects'.	1(a) amended to "knows or has reasonable grounds to suspect"; 2(a) amended to "knows or has reasonable grounds to believe".
Sch 7, 2(a)(ii)	The Registrar can terminate the Subscriber's registration if he believes that the Subscriber "has or may have acted fraudulently or negligently". This is too broad and should be reworded: "… acted fraudulently or negligently in connection with a Conveyancing Transaction or in its use of the ELN".	Amended.
Sch 7, 2(b)	The Registrar can terminate a Subscriber's registration if the Subscriber "fails to produce documents within a reasonable time specified in a request from the Registrar". The only right of the Registrar to request the production of documents is in the context of a compliance examination as authorised by section 34 of the current draft of the ECNL. Accordingly the wording should read "fails to produce documents within a time reasonably specified in a request from the Registrar pursuant to [section 34] of the ECNL".	Amended.
Sch 8	Remove the requirement to identify mortgagors where a discharge of mortgage is being given. This requirement is unnecessary and onerous, particularly where mortgagors are located in rural, regional and remote areas and are required to travel to attend a face- to- face in- person interview.	Amended to remove the requirement to identify mortgagor where there is a discharge of mortgage.
Sch 8	Reconsider the face-to-face in-person interview requirement. The face-to- face requirement will be virtually impossible to meet in jurisdictions where subscribers, client parties and client party representatives reside	The VOI Standard allows for the use of a Subscriber Agent to conduct the verification of identity which should assist with identifying Clients in rural and regional areas.

MPR	Comment	ARNECC response/action
	or work in particular rural, regional and remote locations.	
Sch 8	Remove the provision placing all liability on Subscribers where VOI is conducted by a VOI Agent as the subscriber has no real practical control over the conduct of the particular VOI process by the subscriber agent. If the subscriber or agent complies with the requirement, the subscriber should not be liable in the event that the party identified acted fraudulently.	Provisions of the VOI Standard regarding the use of agents have been amended to remove strict liability for the actions of agents. If the Subscriber complies with the VOI Standard including the provisions regarding agents (eg appoint a reputable and competent agent who holds insurance) then the Subscriber will be deemed to have taken reasonable steps.
Sch 8	Consider practical alternatives to the prescriptive identity documents requirements. Subscribers who represent persons who do not possess a number of specified documents will not be able to use the electronic conveyancing system. For example, in certain Indigenous communities in Queensland, many people do not have any form of birth certificate or other primary identification. Moreover, production of a passport, a full birth certificate and another form of government issued identification is onerous for foreign investors.	The document categories in the VOI Standard have been reviewed. A new category 4(b) has been added to take account of people living in regional/remote areas who do not have a birth certificate, allowing them to use an Identifier Declaration from a Declarant within specified categories, plus one other form of identification. Amendments have also been made to the categories applicable where the Person to Be Identified is not an Australian citizen or resident.
Sch 8	Reconsider the liability of Subscribers who rely on 'exemptions' relating to known or previously identified clients. Subscribers who verify the identity of a person upon taking instructions should not be required to subsequently identify the person if they recognise the person.	Amended – MPR 6.5 now requires the Subscriber to take "reasonable steps" to identify the client; it is up to the Subscriber to determine what is reasonable (if they do not wish to use the VOI Standard). The VOI Standard also provides that the Subscriber need not re-identify a Client who has been identified within the previous 24 months.
Sch 8	The CIV rule adopted by the Canadian Federation of Law Societies represents a more practical approach. Under this rule, a legal practitioner is required to record specified information about the client and to 'take reasonable steps' to verify the identity of the client using what the legal practitioner considers to be 'reliable, independent source documents, data or information'. For individuals such documents may include driver's licences, birth certificates, health insurance cards,	Amendment has been made to require "reasonable steps" to be taken. In order to gain the benefit of the "deemed reasonable steps" provision in the MPR, visual (face to face) identification is considered a necessary part of the VOI Standard to mitigate the risk of fraudulent transactions occurring. If a Subscriber does not wish to use the VOI Standard then it is up to the Subscriber to determine what constitutes reasonable steps.

MPR	Comment	ARNECC response/action
	passports and other government issued identification. The Canadian CIV rule does not require visual identification or face-to-face interviews.	
Sch 8	The Australia Post VOI proposal may be a practical alternative to the onerous requirements in the current VOI rules but only if Australia Post accepts liability for any loss caused through the relevant person not being identified correctly.	Noted. Further discussions have been held with Australia Post, and Australia Post will meet with interested stakeholders to discuss their services and proposed contractual arrangements with Subscribers.
Sch 8	The MPRs should contain a standard form of contract for Subscriber Agents.	Not amended. The Registrar has no role in contractual arrangements between Subscribers and third parties.
Sch 8	The VOI Rules also appear to be in excess of the standards required in other jurisdictions which have existing electronic registration systems. We are unsure whether fraud occurs in Australia at any greater rate than in those jurisdictions and we question why Australian identification requirements must be set at such an onerous level.	The overall legal environment of the electronic conveyancing systems in other jurisdictions is different to that in Australia and it is not necessarily appropriate to compare the identification requirements from other jurisdictions. In other jurisdictions with "lower" document production requirements, there is no "deeming provision" whereby a person following the standard is deemed to have taken reasonable steps. It is considered reasonable to set a high standard where the benefit of the deeming provision is available.
Sch 8	It seems likely that a formal arrangement will be introduced by which one or more third party agencies (for example, Australia Post) may be allowed to conduct VoI checks even though not a Subscriber. It would be useful to have a paragraph to this effect in the VoI Rules (Schedule 8) – that is, to provide for a category of prescribed Non Subscriber Agents who may undertake verification of identity on behalf of a Subscriber. As defined, a Subscriber Agent does not need to have any particular credentials.	Amendments have been made to require "reasonable steps" and the VOI Standard itself has also been amended as regards agents (an agent must be reputable and competent and hold insurance), however it is not considered appropriate for the MPR to specify a category of Non Subscriber Agents. It is open to the professional regulators and insurers to publish practices for their members to follow in relation to the use of agents.
Sch 8, 1.1	When a Subscriber represents a mortgagee or is the mortgagee, the Subscriber must identify the mortgagor in connection with the grant of a mortgage and discharges even when they are separately represented.	Amended so that Subscriber does not need to undertake a further verification of identity if this has already been done by the Mortgagee. Also amended so that where the Mortgagor is represented in their

MPR	Comment	ARNECC response/action
	The mortgagee or their representatives should not have to verify the identity of a mortgagor when the mortgagor is represented by another Subscriber.	capacity as Mortgagor, no further identification is required.
Sch 8, 1.2	Amend the rules to clarify whether a *Subscriber* or their employees can act as an *Identifier*. Amend the rules to make it clear that an *Identifier* is only required where documents from categories 1-3 are not able to be produced. Provide a clear definition of an *Identifier* and their role.	Amended so that an "Identifier" is now called a "Declarant". A Declarant is a person who personally knows the Person Being Identified and may be a Subscriber or their employee, but not a party to the conveyancing transaction. Amended to clarify that category 4 can only be used if categories 1-3 cannot be met.
Sch 8, 1.2	The WA Joint Practice defines 'facial characteristics' as 'the shape of the mouth, nose, eyes and the position of the cheek bones rather than the colour and cut of a person's hair or makeup used'. No such definition is provided in the Verification of Identity Rules. The lack of uniformity of terms may cause some confusion. As noted above, the opportunity provided by the ELN should not be lost with disparate state and territory responses.	Amended to include an explanation of what is meant by "facial characteristics". In relation to uniformity, the WA Joint Practice has been introduced in response to recent allegations of fraud in the jurisdiction and the intention is that the WA standard will be amended to be consistent with the national standard once the national standard is finalised. Those jurisdictions with existing VOI regimes intend to adopt the national standard once it is finalised.
Sch 8, 3.1	Amend the definition of *Subscriber Agent* to clarify that it can be any natural person. If a *Subscriber's Agent* conducts the verification, the agent should be able to send the information to the *Subscriber* or the mortgagee. The *Client Authorisation* should then be able to be sent separately to the Client/mortgagor for signing.	Amended to "person" which includes a natural person. The Subscriber Agent should send documentation to the principal who appointed them or as directed by the principal. To mitigate the risk of fraudulent transactions, the CA must be signed in the presence of the person who conducted the VOI.
Sch. 8, 4	The requirement to produce original documents is onerous and not supported by any evidence of problems associated with the production of certified copies, which are accepted for identification in other contexts, such as client identification for the electronic payment of duties.	Amended to require originals of the documents in categories 1-5 (originals not required for other supporting evidence); this is not considered to be an onerous obligation. It may in fact be more onerous for some people to have to produce certified copies than to produce the originals of their identity documents.

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Sch 8 – 4.1	In its submission to Landgate regarding the Consultation Draft: Verification of Identity the Institute has proposed the existing 100 point check be retained as it is felt the ranking of documents into Categories 1-5 does not add to the verification of identity process.	The documents in categories 1-5 is a simplified version of the 100 point check. The ranking of the documents is intended to ensure that the best possible evidence of identity is provided.
Sch 8 – 4.3	This MPR says an original copy of all documents must be provided. A birth certificate issued in WA is not an original document it is a true copy.	A birth certificate is an "original" although it is stated to be a true copy of the information in the birth register.
Sch 8, 4.4	The documents table does not make it clear that Identifiers can only produce documents from categories 1-3.	A Declarant can use categories 1-3 or 5 to provide evidence of their identity, but can not produce a further Identifier Declaration to identify themself. See paragraph 4.2.
Sch 8 – 4.4	Concern with the need to apply the very prescriptive mandatory minimum categories of identification documents set out in clause 4.4 of Schedule 8; concern that routine use of just these specific documents could lead to an attitude of just "ticking the box" without truly verifying the identity of the person in front of them. Prefer that ADIs rely on current AML/CTF identification systems and face to face verification process coupled with internal fraud controls and consider that statutory indefeasibility of title guarantee remain where this occurs.	Amended to require the Subscriber to take "reasonable steps"; it is up to the Subscriber to determine what constitutes "reasonable steps". In relation to the concern re "ticking the box", paragraph 11 re further checks where there is any reason for suspicion addresses this concern. The VOI rules themselves do not have any effect on the availability of a claim against the guarantee fund/State or on indefeasibility, except in those jurisdictions that have specific statutory provisions requiring mortgagees to undertake VOI.
Sch 8, 5	Identifier declarations may be open to abuse by fraudsters. Some further risk mitigation questions are raised for ARNECC's/NECDL's consideration.	These measures are not considered appropriate for inclusion in the MPRs. Suggest that these issues are raised with the ELNO. It is also open to professional regulators and insurers to publish policies regarding the use of Identifier Declarations.
Sch 8, 5	The rules should make it clear that an Identifier is not required where adequate documentation from categories 1-3 has been produced and verified. If documents from category 4 are being used, the Identifier Declaration (rule 5.4) and associated process (rules 5.1-5.3) is	Amended.

MPR	Comment	ARNECC response/action
	completed.	
Sch 8, 5	Provide precise details of matters to be addressed in the Identifier's statutory declaration in accordance with what an Identifier is actually capable of declaring.	The matters to be included in the statutory declaration are set out in paragraph 4.4.
Sch 8, 5	How do they know that the person is who they purport to be as per 5.4 (g)?	Amended 4.4(h)
Sch 8, 5	In 5.4, what is meant by "known"?	The usual definition of "known" would apply.
Sch 8 – 5.1	The term Identifier is not defined.	The term is now "Declarant" which is defined.
Sch 8 – 5.1	Why would the subscriber need to meet with the person and the identifier, if they are required to do that they would just do the identification themselves, this is not a practical requirement.	The Subscriber needs to meet face to face with the Declarant and the Person Being Identified at the same time. If the Subscriber knows the Person Being Identified personally, then the Subscriber may act as the Declarant.
Sch 8 – 5.2	In its Consultation Draft: VOI, Landgate has proposed categories of persons who may be identifiers, individuals are not on that list, so they should be removed from this MPR.	No longer relevant as WA draft practice has been amended and no longer includes a list of identifiers.
Sch 8 – 5.3	This MPR places too much onus on the Conveyancer. How is a Conveyancer to establish that the identifier has known the person for more than 12 months and if their names are different is not a relative? This is just impractical.	The obligation is already limited to taking "reasonable" steps to establish these matters. For example, the Subscriber may make enquiries of the Declarant and the Person Being Identified.
Sch 8 – 6	Incorporated associations may also be unable to provide minutes verifying the officeholders, as the meeting electing officeholders likely takes place only once per year and records may be lost or destroyed. Currently a statutory declaration is provided (which carries with it the penalty of perjury if incorrect) as to the officeholders and who is permitted to sign. The current arrangement of providing a Statutory	Para 5(b) has been amended to require "reasonable steps" to establish who is authorised to sign on behalf of the association. Because the laws governing incorporated associations are state-specific, it is not possible to specify what will constitute reasonable steps – it is up to the Subscriber to determine this taking into account what steps are open to them in their jurisdiction.

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	Declaration is sufficient to identify the person(s) capable of signing.	
Sch 8, 9	Delete MPR 9(a).	Amended to remove strict liability for use of agents.
Sch 8 -8	Concerned that a Subscriber cannot guarantee at time of appointment of a Subscriber Agent that the Subscriber Agent is reputable and competent.	Amended paragraph (a) to provide that at the time of appointment of a Subscriber Agent the Subscriber reasonably believes the Subscriber Agent is reputable and competent.
Sch 8 – 9 b)	What if the Subscriber Agent is located elsewhere in Australia, face to face is not practical unless NECDL is prepared to pay for travel expenses and time costs.	The Subscriber can select a Subscriber Agent who is located near the Person to be Identified.
Sch 8 - 9 c)	Who is certifying the copies of the documents? What power does a Subscriber Agent have to certify documents? Where is the legislation to support this action?	Amended to clarify that the Subscriber Agent endorses the copies of the documents as true and correct copies.
Sch 8 -9	For Subscribers who are subject to the licensing regime established by the National Consumer Credit Protection Act 2009 (Cth), or who are ACLs or credit representatives of those licensees, these individuals (together with employees of Australia Post, lawyers, and accountants) should be given special status to act as Subscriber's Agents and as Identifiers. There should be no need for Subscribers to specifically appoint those types of individuals as Subscriber's Agent. Subscribers should be able to rely on that identification unless the Subscriber knew or ought to have known that the identification was not properly carried out. Subscribers should not have to guarantee the performance of those agents.	Not accepted. Amendments have been made to the provisions regarding agents and no further change is considered necessary. The provision regarding strict liability for agents has been amended.
Sch 8, 9	It would appear that the cost of the face to face identification process would more than offset any cost savings involved in avoiding a physical settlement, quite apart from the inconvenience for clients especially if they are remotely located. Unless there are recognised geographically diverse ways of identity verification, there will be an inappropriate risk	Prudent practice now would be to identify clients, and it is expected that most jurisdictions will introduce VOI requirements in the paper system as a fraud mitigation measure. Given that an agent may be used to conduct the VOI, it is considered that the cost of a face to face VOI can be kept to a minimum. It is noted that several jurisdictions already have a statutory

MPR	Comment	ARNECC response/action
	and inconvenience imposed on Subscribers, which will lead to low take up of the system. It would obviously disadvantage persons in remote locations.	obligation on Mortgagees to conduct VOI on Mortgagors.
Sch 8, 9	For verification of identity conducted overseas, presumably the Subscriber will use an agent to conduct the verification of identity. In the WA Joint Practice, the class of persons who can verify identity overseas is restricted to consular officers. Would a similar restriction apply to the Verification of Identity Rules?	The VOI Standard has been amended to provide that overseas identification may be undertaken by consular officials or Australian Defence Force Officers. The WA practice will be amended to conform with the national standard once the national standard is finalised.
Sch 8 - 10	The Conveyancer cannot charge a fee for Verification of Identity checks so why should the Conveyancer have to undertake further steps, particularly to help an Identifier. If there are discrepancies identified then they should be referred back to the identifier to resolve.	It is intended that the Settlement Agents Act will be amended to enable conveyancers to undertake and charge for VOI. The obligation is on the Subscriber to undertake the VOI, so if there are any discrepancies the obligation remains on the Subscriber to resolve those discrepancies.
Sch8 -10	Clarification of when a Subscriber or Subscriber Agent is required to take further steps to verify the identity of the Person Being Identified.	Amended to clarify that further steps to be taken when the Subscriber or Subscriber Agent knows or ought reasonably to have known.
Sch 8, 11	There is no explanation of what is meant by' Subscriber accepts all liability'- in what way? For example, if identity is not verified following 11.1(a) and fraud occurs, would the defrauded owner claim compensation from the State and/or the Subscriber?	Amended. Unless there are specific statutory provisions dealing with indefeasibility, then there is no effect on the current compensation framework.
Sch 8, 11	The practical benefit of the 'exemptions' is undermined by the qualification that the Subscriber accepts all liability for any loss arising from reliance on these 'exemptions'. Reconsider the liability of subscribers who rely on 'exemptions' relating to known or previously identified clients.	Amended. As MPR 6.5 now requires a Subscriber to take "reasonable steps" rather than requiring use of the VOI rules (now the VOI Standard), the "exemptions" have been removed. However, the VOI Standard provides that where a Subscriber has identified a Client within the previous 24 months, there is no need to undertake a further verification of identity.

MPR	Comment	ARNECC response/action
Sch 8	The requirement that legal practitioners must verify the identity of each client and each of their signers places increased risk on legal practitioners.	Prudent practice at the moment would be to verify the identity of clients. The obligation to verify identity is a risk mitigation measure and is considered to reduce risk. The appointment of "Signers" to digitally sign documents is a new arrangement in the electronic environment and the verification of the Signer's identity is considered necessary to reduce the risk associated with their appointment, given that the Subscriber retains liability for the Signer's actions. The Subscriber is only required to identify the Signer on the initial allocation of a digital certificate, not on the reissue/renewal of the digital certificate. The obligation has also been amended to "reasonable steps" to verify identity.
Sch 8	The completion of identification pursuant to an AML/CTF program should be sufficient identification. This is the type of identity verification currently required under NSW and Queensland law in respect of mortgagors. An increase in the level of enquiry is likely to reduce take up of the system. Allowing only ADIs to use the AML/CTF regime creates an unfair bias in favour of ADIs and will lead to inappropriate market distortion.	The "exemption" for AML/CTF has been removed; the obligation now simply requires "reasonable steps" to identify a person.
Sch 8	We propose that an *Identification Verification* can be completed once by an agent, and that verification remains current for a period of time and can be relied upon by any *Subscriber* or *Subscribers Agent* throughout the transaction or period of engagement with a particular client. It can also be shared between parties if identification confirmation is required.	The provisions have been amended to require the Subscriber to take "reasonable steps"; what constitutes reasonable steps outside of the VOI Standard is up to the Subscriber to determine. It is up to the Subscriber to put in place any arrangements with a Subscriber Agent. Professional regulators/insurers may publish practices for their members regarding the use of agents.

MPR	Comment	ARNECC response/action
Sch 8	Paragraph 2(b) refers to identifying the mortgagee "at or before the signing" of the mortgage or discharge/release of mortgage. A mortgagee would not normally be present at the signing of a mortgage by a mortgagor. Rather, the mortgage would be signed in the presence of, and witnessed by, a person independent of the mortgagee. The Verification of Identity Rules as they apply to mortgagors should be amended to be consistent with current conveyancing practices.	Different jurisdictions have different legal requirements regarding the identification of a Mortgagor by a Mortgagee. Ultimately the obligation is on the Subscriber to ensure that the person who signs the Mortgage as Mortgagor is who they purport to be. The identification must occur "at or before" the signing of the Mortgage, so it is not necessary for the Mortgagee to be present when the Mortgagor signs.
Sch 8	As the issues being addressed by the VOI requirements apply equally to the paper and electronic channels and so that there is not a 'competitive disadvantage' for the electronic lodgement channel, the same rules should be introduced into the paper channel ahead of the first ELN being available for use by Practitioners.	Most jurisdictions intend to introduce verification of identity requirements for the paper channel as well, to align the electronic and paper channels as far as possible. However the timing of this will vary between jurisdictions.