

Model Operating Requirements (MOR) Version 5 Consultation Draft – Feedback Table

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

#	Rule	Stakeholder feedback	Action Taken	ARNECC response
OR 2.1.2 – Definitions				
1	Separation Plan Conveyancing Services Downstream Services	The definition of 'Separation Plan' in clause 2.1.2 may be unnecessary if an ELNO and any related entity is unable to provide conveyancing services and the proposed clause 5.6 ('Separation') is deleted. A definition of 'Conveyancing Services' is required which includes acting as a Representative or signing a Registry Instrument on behalf of a Representative or Party. The definition of 'Downstream Service' must, in relation to an ELNO or an entity related to the ELNO, expressly exclude 'Conveyancing Services'. It should be noted that the exclusion should not prevent an unrelated Person Who Has Integrated from offering Conveyancing Services.	None	MOR 5.6 has been introduced in response to concerns raised about the absence of controls to prevent an ELNO from operating in a way which could confer an unfair competitive advantage on a business unit of the ELNO or an entity related to the ELNO which supplies a Downstream Service. MOR 5.6 requires an ELNO to operate in a manner, which separates its ELN services from any downstream service and requires the two entities to act independently at arm's length. MOR 5.6 attempts to balance the need for there to be some controls on the ELNO's conduct with the ELNO's need for flexibility in structuring their operations. It would not be reasonable to prohibit a separate business unit or separate legal entity from operating a legal or conveyancing business, particularly where the ECNL acknowledges an ELNO may provide services additional to those provided by the ELN.
2	Digital Signature and Digitally Sign	'Digital Signature' and 'Digitally Sign' are both defined in clause 2.1.2 by reference to the ECNL. However, the MOR refers to 'Digital Signing' in clause 7.2.2 and the heading to clause 7.7. It is submitted that the use of terms needs to be standard.	None	Digital Signature and Digitally Sign are defined separately in MOR 2.1.2 as they are both defined and have different meanings in the ECNL. MOR 2.2.5 (Interpretation) outlines that "where a word or phrase is given a defined meaning, any other part of speech or grammatical form in respect of that word or phrase has a corresponding meaning." MOR 7.2.2 and 7.7 have been reviewed and the use of the part of speech is considered appropriate in its context.
3	Downstream Service	An improved definition or some notes or examples should be included in Requirement 2. As currently drafted, it is unclear what is meant by this term but it plays an important role in the changes made in MOR5.	None	Examples of Downstream Services will be included in the Model Operating Requirements Guidance Notes.
4	Equivalent Basis	The inclusion of "equivalence" in the first line and "by" in paras (a)-(c) appears superfluous.	None	The current drafting fits more closely with the other definitions.
5	Related Body Corporate and Related Party	A definition of 'Related Entity' should be included which should be defined to mean a 'Related Body Corporate' and a 'Related Party'.	The MOR have been amended.	Amended as suggested.

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6	Subscriber Review Process	How does the "Subscriber Review Process" definition and concept in Requirement 2 fit with ARNECC's Subscriber compliance audits?	None.	The requirement to establish, review and keep current a Subscriber Review Process, which documents a process for reviewing the compliance of Subscribers with the Participation Rules, varies the existing obligation in MOR 14.7 for an ELNO to have in place appropriate arrangements to monitor the compliance of Subscribers with the Participation Rules. The obligation to 'monitor' was interpreted as requiring a level of continuous supervision by the ELNO which was not the intention. The process will remain independent of the compliance examinations conducted by the Registrars under MPR 10 and Schedule 5.
OR 5 – Operation of ELN				
7	5.2 National system and minimum Document capability	'Document' is a defined term and should be capitalised in the heading of Requirement 5.2.	The MOR have been amended.	Amended as suggested.
8	5.2 National system and minimum Document capability	Are new documents to be added to Requirement 5.2(b) as they come online?	None.	MOR 5.2 outlines a minimum list of Registry Instruments and other electronic Documents which an ELN must enable to be Lodged for a national system. While it may be updated in the future it is not intended to list all Registry Instruments and other electronic Documents that are capable of Lodgment through an ELN. MOR 5.2 (b) (vi) and (viii) have been amended to remove Settlement Notice as these are no longer capable of Lodgment.
9	5.3 General Obligations	Noted that Requirement 5.3(e)(ii) means that these Requirements must be in force prior to 1 July 2018. Pending additional ELNOs being approved, this existing requirement is no longer necessary. Should only apply when there is a sole operational ELNO. If the amendments to Schedule 8 are adopted in any fashion, the existing regime for base fee setting under MOR 5.3(e) should to be extended to any new ELNO commencing operation prior to 1 July 2023.	None.	ARNECC received a considerable amount of feedback on the consultation draft of Version 5 of the MOR. The feedback has been carefully reviewed and some significant revisions to the Version 5 draft are being made as a result. Given these changes, ARNECC has taken the decision to undertake a second round of consultation. As a result no changes to the MOR will be in force prior to 1 July 2018.

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10	5.4 and Schedule 8 - ELNO Service Fees	<p>Pricing to be regulated subject to a pricing plan submitted to an independent regulator / registrar and published for stakeholder feedback for a mandated consultation period. This will ensure that end users are not subject to unreasonable increases effecting end use pricing to their customers.</p> <p>The pricing period should be decreased to three years.</p> <p>When two or more ELNOs are operating in a jurisdiction each should not be constrained in their fee setting. If the proposed amendments are applied when more than one ELNO is operating in a jurisdiction, there will be no means for those ELNOs to compete on fees charged and for lenders and practitioners to reduce the costs they pass on to consumers of their services. Should only apply when there is a sole operational ELNO.</p>	The MOR have been amended.	<p>ARNECC received a considerable amount of feedback on the proposed regulation of ELNO Service Fees included in MOR 5.4 and Schedule 8 of the consultation draft. Amongst other technical matters, the feedback identified that the consultation draft of Version 5 of the MOR had been prepared when there was a single ELNO and no potential for natural regulation of price through competition. Since the initial consultation period for Version 5 closed, two additional potential ELNOs have been assessed as meeting the Schedule 3, Category 1 requirements of the Model Operating Requirements (MOR v4) and can now commence negotiations for approval to provide and operate as an ELNO with each State and Territory Registrar. In light of the feedback, a decision has been made to restrict the regulation of ELNO Service Fees in Version 5 of the MOR to limiting price increases to CPI for a three year period. After the three year period it is intended that a review be conducted to determine whether ELNO Service Fees require further regulation. It is considered that the CPI cap will be sufficient in the interim to prevent unfettered increases in ELNO Service Fees.</p>
11	5.4 - ELNO Service Fees	<p>Has consumer benefit in providing greater clarity for when an ELNO must publish its fees. Supportive of this rule.</p> <p>Supportive of measures to improve transparency and no fees higher than those published on 1 July can be charged.</p>	None.	Feedback noted. Feedback does not require further amendments.

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12	5.5 Integration	<p>The provisions setting out PEXA's obligations to integrate its platform with third-party downstream service providers are plainly inadequate and open to manipulation. For example, PEXA will write the terms on which integration can occur and will unilaterally determine whether a person wishing to integrate complies with those terms. There also do not appear to be any limits on the prices that PEXA charges, and no mandatory timelines, for integration.</p> <p>Proposed changes welcomed, however, it's unclear whether additional integration fees could apply for either the subscriber or second ELNO where multiple ELNOs are required to operate collectively in a single online lodgement.</p> <p>Consider the need for a control mechanism regarding integration fees. Further detail may be required for draft rules 5.5.1 - 5.5.7.</p> <p>Aims of this requirement are unclear.</p> <p>Suggests that a definition is necessary for the term 'integration' and queries the extent to which Requirement 5.5 requires disclosure of the potential integration partner.</p> <p>Furthermore, transitional arrangements in relation to Requirement 5.5 should be included.</p> <p>Notes that from the definition of 'Person Wishing to Integrate', Requirement 5.5.6(b) relates only to Downstream Services.</p> <p>An unclear and unnecessary concept. This section of the MOR should be removed in its entirety.</p> <p>5.5.2(c) does not provide upper timing limit. Integration key steps to be included in any integration terms published by the ELNO with minimum and maximum rollout periods.</p>	The MOR have been amended.	ARNECC received a considerable amount of diverse feedback on the proposed integration obligations in MOR 5.5. In light of the feedback received MOR 5.5 has been revised to be limited to imposing an obligation on an ELNO to publish a set of standard integration terms and conditions and treat any person the ELNO has integrated with on an Equivalent Basis. Guidance on the content of these terms and conditions will be provided in the Model Operating Requirements Guidance Notes. It is considered that this requirement will create transparency without risking unintended consequences.

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13	5.5 Integration	<p>Policy objectives are not clear and it is considered unnecessary to introduce proposed OR 5.5.1 to 5.5.7. If a regime dealing with integration is introduced:</p> <ul style="list-style-type: none"> * the rules would benefit from an overriding statement in the MOR as to its policy objectives * definitions are broad and greater clarity is required as to persons and services covered by 'Persons Wishing to Integrate', 'Downstream Services' and 'Related Party' * consider if necessary to include an obligation to treat all persons on an equivalent basis and if so how the obligation and the exceptions from that obligation can be clarified * amend MOR to ensure it is clear that Subscribers are not included in the definition of 'Persons Wishing to Integrate' and the Participation Agreements will not be subject to OR 5.5 * amend MOR to clarify that service providers are not captured by 'Persons Wishing to Integrate' and 'Downstream Service' and agreements between service providers and ELNOs are not governed by OR 5.5 * an obligation to treat third parties on an 'equivalent basis' may have a detrimental impact on the competitive process * definition of 'unreasonable barriers' is unclear * it is critical that any regulated integration regime does not impede an ELNOs freedom to contract on arms-length commercial terms with their parties * consider extending an exemption to compliance with any retained integration requirements for new entrants. <p>It is suggested that the Proposed MORs should give further consideration as to how the monitoring and enforcement of compliance with the open access obligations.</p> <p>The reporting framework of OR 15.2 and Schedule 3 would benefit from provisions prescribing the specific information that ELNOs should report to demonstrate compliance with Proposed MOR 5.5. Consider inserting equivalent provisions to the AER.</p> <p>Consider identifying how these requirements will be enforced The scope of exceptions to equivalent treatment should be clarified. OR 5.5.5 provisions should be clarified.</p>	<p>The MOR have been amended.</p>	<p>ARNECC received a considerable amount of diverse feedback on the proposed integration obligations in MOR 5.5. In light of the feedback received MOR 5.5 has been revised to be limited to imposing an obligation on an ELNO to publish a set of standard integration terms and conditions and treat any person the ELNO has integrated with on an Equivalent Basis. Guidance on the content of these terms and conditions will be provided in the Model Operating Requirements Guidance Notes. It is considered that this requirement will create transparency without risking unintended consequences.</p>

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14	5.5 Integration	Concerned this has not been subject to an appropriate degree of consultation prior to this draft being documented.	Second round of consultation including an industry engagement event.	ARNECC received a considerable amount of feedback on the consultation draft of Version 5 of the MOR. The feedback has been carefully reviewed and some significant revisions to the Version 5 draft are being made as a result. Given these changes, ARNECC has taken the decision to undertake a second round of consultation. To this end, the MOR will be updated to incorporate these changes and published for further consultation. ARNECC is also considering hosting an industry engagement event to discuss the intent of the MOR changes and provide a forum for open discussion on the Version 5 second consultation draft.
15	5.6 Separation	May be unnecessary if an ELNO and any related entity is unable to provide conveyancing services.	None.	<p>MOR 5.6 has been introduced in response to concerns raised about the absence of controls to prevent an ELNO from operating in a way which could confer an unfair competitive advantage on a business unit of the ELNO or an entity related to the ELNO which supplies a Downstream Service. MOR 5.6 requires an ELNO to operate in a manner, which separates its ELN services from any downstream service and requires the two entities to act independently at arm's length.</p> <p>MOR 5.6 attempts to balance the need for there to be some controls on the ELNO's conduct with the ELNO's need for flexibility in structuring their operations. It would not be reasonable to prohibit a separate business unit or separate legal entity from operating a legal or conveyancing business, particularly where the ECNL acknowledges an ELNO may provide services additional to those provided by the ELN.</p>
16	5.6 Separation	It appears that the separation arrangements that PEXA will be required to implement if it becomes involved in "downstream services" will not be transparent to other stakeholders. Without that transparency, stakeholders can have no confidence that separation arrangements will be effective. Ideally, PEXA should not be permitted to provide downstream services at all until there is effective competition at the ELNO level. Allowing a monopoly to compete with Subscribers, whilst significant functionality and cost issues remain unresolved to the detriment of end users, will only undermine faith in the system.	The MOR have been amended.	<p>A requirement for the ELNO's Separation Plan to be published has been introduced in response to concerns about transparency.</p> <p>MOR 5.6 has been introduced in response to concerns raised about the absence of controls to prevent an ELNO from operating in a way which could confer an unfair competitive advantage on a business unit of the ELNO or an entity related to the ELNO which supplies a Downstream Service. MOR 5.6 requires an ELNO to operate in a manner, which separates its ELN services from any downstream service and requires the two entities to act independently at arm's length.</p> <p>MOR 5.6 attempts to balance the need for there to be some controls on the ELNO's conduct with the ELNO's need for flexibility in structuring their operations. It would not be reasonable to prohibit a separate business unit or separate legal entity from operating a legal or conveyancing business, particularly where the ECNL acknowledges an ELNO may provide services additional to those provided by the ELN.</p>
17	5.6 Separation	Separation provisions do not contemplate a procedure if a conflict is identified. A formula for excising if a conflict is identified should be prescribed.	None.	The existing compliance framework under the MOR will equally apply to MOR 5.6.

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18	5.6 Separation	Draft rules 5.6.1 - 5.6.4 should be deleted in their entirety and replaced with rules prohibiting an ELNO from providing any "Downstream Services".	None.	<p>MOR 5.6 has been introduced in response to concerns raised about the absence of controls to prevent an ELNO from operating in a way which could confer an unfair competitive advantage on a business unit of the ELNO or an entity related to the ELNO which supplies a Downstream Service. MOR 5.6 requires an ELNO to operate in a manner, which separates its ELN services from any downstream service and requires the two entities to act independently at arm's length.</p> <p>MOR 5.6 attempts to balance the need for there to be some controls on the ELNO's conduct with the ELNO's need for flexibility in structuring their operations. It would not be reasonable to prohibit a separate business unit or separate legal entity from operating a legal or conveyancing business, particularly where the ECNL acknowledges an ELNO may provide services additional to those provided by the ELN.</p>
19	5.6 Separation	Concerned this has not been subject to an appropriate degree of consultation prior to this draft being documented.	Second round of consultation including an industry engagement event	ARNECC received a considerable amount of feedback on the consultation draft of Version 5 of the MOR. The feedback has been carefully reviewed and some significant revisions to the Version 5 draft are being made as a result. Given these changes, ARNECC has taken the decision to undertake a second round of consultation. To this end, the MOR will be updated to incorporate these changes and published for further consultation. ARNECC is also considering hosting an industry engagement event to discuss the intent of the MOR changes and provide a forum for open discussion on the Version 5 second consultation draft.
20	5.6 Separation	5.6.2 - queries whether the ELNO is able to consult, advise or enter a joint venture for payment if the downstream service provider is not related.		MOR 5.6 is not intended to regulate the ELNOs commercial interactions with unrelated third parties. The Competition and Consumer Act adequately covers things like cartel conduct and other anti-competitive behaviour between third parties.
21	5.6 Separation	Not clear what issue is being addressed - need to understand the background to be able to comment.	Second round of consultation including an industry engagement event	ARNECC received a considerable amount of feedback on the consultation draft of Version 5 of the MOR. The feedback has been carefully reviewed and some significant revisions to the Version 5 draft are being made as a result. Given these changes, ARNECC has taken the decision to undertake a second round of consultation. To this end, the MOR will be updated to incorporate these changes and published for further consultation. ARNECC is also considering hosting an industry engagement event to discuss the intent of the MOR changes and provide a forum for open discussion on the Version 5 second consultation draft.

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22	5.6 Separation	<p>An ELNO providing downstream services will disadvantage software providers. It is therefore not clear if an ELNO is required to provide to their integrator or downstream service associate with a wholesale price for the additional support that these parties will need to be provide.</p> <p>In the original sponsor model only the sponsor received a service fee. This fee should have been offered to others because of the additional support that one needs to provide to clients.</p> <p>Therefore, when one refers to the ELNO fee, what needs to be taken into account is the additional fee for the integrator to make it a viable business proposition.</p>		<p>MOR 5.6 has been introduced in response to concerns raised about the absence of controls to prevent an ELNO from operating in a way which could confer an unfair competitive advantage on a business unit of the ELNO or an entity related to the ELNO which supplies a Downstream Service. MOR 5.6 requires an ELNO to operate in a manner, which separates its ELN services from any downstream service and requires the two entities to act independently at arm's length.</p>
23	5.6 Separation	<p>An intrusive and onerous form of regulation. Even if achieved, it would result in little other than an increase in cost and a decline in user functionality.</p>		<p>MOR 5.6 has been introduced in response to concerns raised about the absence of controls to prevent an ELNO from operating in a way which could confer an unfair competitive advantage on a business unit of the ELNO or an entity related to the ELNO which supplies a Downstream Service.</p> <p>MOR 5.6 attempts to balance the need for there to be some controls on the ELNO's conduct with the ELNO's need for flexibility in structuring their operations. MOR 5.6 permits an ELNO to choose between structural or functional separation and develop a detailed plan about how they will meet MOR 5.6 rather than introducing prescriptive rules.</p>
24	5.6 Separation	<p>While not objecting to the principle underlying proposed OR5.6, the competition laws in the Competition and Consumer Act should be the tool for regulating any anti-competitive conduct. MOR should not seek to prescribe in any further detail how an ELNO should structure its operations.</p>		<p>MOR 5.6 has been introduced in response to concerns raised about the absence of controls to prevent an ELNO from operating in a way which could confer an unfair competitive advantage on a business unit of the ELNO or an entity related to the ELNO which supplies a Downstream Service.</p>
25	5.6.1(b)(i) & 5.6.3 - Separation	<p>Provisions 5.6.1(b)(ii) and 5.6.3 should be deleted in their entirety. An ELNO should not be able to form a business unit to provide downstream services and should only deal with its core business. Separation should be limited to Related Body Corporate or Related Party.</p>		<p>MOR 5.6 has been introduced in response to concerns raised about the absence of controls to prevent an ELNO from operating in a way which could confer an unfair competitive advantage on a business unit of the ELNO or an entity related to the ELNO which supplies a Downstream Service. MOR 5.6 requires an ELNO to operate in a manner, which separates its ELN services from any downstream service and requires the two entities to act independently at arm's length.</p> <p>MOR 5.6 attempts to balance the need for there to be some controls on the ELNO's conduct with the ELNO's need for flexibility in structuring their operations. Requiring an ELNO to create a separate legal entity is considered too onerous in circumstances where an ELNO may be a smaller organisation and where creating separate business units will achieve the same outcomes.</p>

<p>26</p>	<p>5.6 Separation - 5.6.2(c), 5.6.3(f) & 5.6.3 (g)</p>	<p>Supportive of this intention, however, the current provisions of Proposed MOR 5.6 are insufficient in ensuring that there is an appropriate level of separation between an ELNO and its Downstream Service. The requirements under Proposed MORs 5.6.2(c) and 5.6.3(f) could be strengthened by being redrafted as blanket prohibitions, for example:</p> <p>If a Related Body Corporate or Related Party of an ELNO supplies or proposes to supply a Downstream Service, the ELNO must...ensure that the personnel, systems and services involved [with its Related Body Corporate or Related Party // with the ELNO's Downstream Service business unit] are not also involved [with the ELNO // with the ELNO's ELN business unit].</p> <p>At a general level, the requirements in Proposed MORs 5.6.2 and 5.6.3 appear to have been broadly drafted in order to afford ELNO's considerable flexibility in meeting these requirements. However, it is considered that the broadly drafted requirements will not achieve the desired transparency in the relationship between an ELNO and any related Downstream Service providers. We also consider that this is likely to mean that compliance with the requirements is difficult to monitor and enforce. On this basis, it is submitted that ARNECC should adopt a more prescriptive approach in setting the requirements for ELNOs to achieve full functional separation.</p> <p>Proposed MORs 5.6.2(c) and 5.6.3(f) require an ELNO to 'otherwise deal with' its related Downstream Service provider 'on an arm's length basis'. The Proposed MORs can go further in prescribing more detailed requirements for interactions between ELNOs and related Downstream Service providers.</p> <p>The Proposed MORs could more effectively achieve arm's length dealings between ELNOs and its related Downstream Service providers by requiring ELNOs to ensure that:</p> <ul style="list-style-type: none"> (a) its personnel, whose primary duties relate to the ELN business, work only for the ELNO or the ELN business unit (as the case may be) and do not undertake any work at the direction of the related Downstream Service provider; (b) separate financial accounts are kept, and statements prepared, for its related Downstream Service provider and its Downstream Service business unit; (c) the ELN is managed independently from its related Downstream Service provider; and (d) it takes reasonable steps to ensure that its related Downstream Service provider does not participate in the process for the appointment or supervision of the ELNO's executive management. 		<p>MOR 5.6 has been revised to outline blanket requirements for an ELNO to (1) separate either structurally or functionally (2) not give, or operate in a manner which gives, an unfair commercial advantage to the Related Entity or itself and (3) deal with the Related Entity or itself on an arm's length basis.</p> <p>MOR 5.6 then requires the ELNO to prepare a Separation Plan setting out a detailed description of how the ELNO will meet those requirements. It is anticipated that the separation plan will outline how to ELNO will specifically meet those broader requirements. The ELNO will be required to publish the plan and obtain an Independent Certification that the Separation Plan is Fit for Purpose.</p> <p>The examples suggested, and other prescriptive examples, will be considered for inclusion in the Model Operating Requirements Guidance Notes.</p>
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OR 7 – Obligation Regarding System Security and Integrity				
27	7.2 Access to ELN	7.2.2 appears to be misplaced in the MOR and it repeats a new provision being inserted in MPR5. If the change is made in MPR5 then it is automatically required to be monitored by the ELNO with respect to Subscriber compliance.	The MOR have been amended.	New MOR 7.2.2 is required as MOR 7.2.1 requires the ELNO to ensure that only Subscribers (being defined under the ECNL as an individual, body politic or corporate) are able to access and use the ELN. Without MOR 7.2.2 the ELNO would not be able to permit a Subscriber to access and use the ELN by means of process automation or 'application to application technology'. MOR 7.2.2 has been amended for clarity.
28	7.2 Access to ELN	Welcomed addition to the MOR.	None.	Feedback noted. Feedback does not require further amendments.
29	7.2.2 Access to ELN	From a practical perspective, process automation will require the ELNO to allow Subscribers to set up non-human users within their profile. Consider revising paragraph (b) to make it clearer that a Subscriber may use systems to access the ELN and that the requirement that the User be a natural person does not apply in that scenario. Then add an additional paragraph (c) to require signing and admin functions must be carried out by a natural person.	The MOR have been amended.	Feedback noted. MOR 7.2.2 has been amended in the updated consultation draft.
30	7.2.2 Batch Authorities / Digital Signing	<p>Of critical concern is our ability to use Batch Authorities to undertake efficient or batch Digital Signing. In accordance with Schedule 4 of the Model Participation Rules (MPR), we have the ability to be granted authority by our clients to act for the client in a batch of Conveyancing Transactions as set out in the Client Authorisation. When acting for vendor developers and financiers, this means that we are usually granted the authority to sign all transfers or discharges as they relate to that development.</p> <p>However, the inclusion of the proposed new rule 7.2.2 of the Model Operating Requirements (MOR) and new rule 7.2.2 of the MPR severely restricts our ability to use the Batch Authority and the ELN for efficient signing of Conveyancing Transactions.</p> <p>In our view, proposed rule 7.7.2 of the MPR and the MOR should not be included in the MPR and the MOR in its current form. Rather the rules should expressly provide for the use of efficient signing provided that a Batch Authority is held (or alternatively prohibit the use of efficient signing unless a Batch Authority is held).</p>	The MOR have been amended.	<p>MOR 7.2.2 provides an exception to the limitation in MOR 7.2.1 which requires the ELNO to ensure that only Subscribers (being defined under the ECNL as an individual, body politic or corporate) are able to access to and use of the ELN. The amendment is intended to facilitate access to and use of the ELN using 'application to application technology' i.e. for a Subscriber's system, which is integrated with an ELN, to access the ELN and undertake data entry without the input of a human user. It does not introduce additional limitations or otherwise vary the requirements relating to Digital Signing.</p> <p>MOR 7.2.2 has been amended for clarity.</p>
31	7.2.4 Non-discrimination	Any non-discrimination principle must allow for differentiated offerings for different classes of subscribers with different needs. There is no case for a non-discrimination principle that applies to interactions with other categories of service providers.	None.	MOR 7.2.4(b) already allows for differentiation.

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32	7.11 Data Breach Notification	Welcomed addition to the MOR - demonstrates ARNECCs commitment to consumer protection and their data via public accountability.	None.	Feedback noted. Feedback does not require further amendments.
33	7.11 Data Breach Notification	ELNO obligations in 7.11 should also be reflected in the mandatory provisions for the agreement between the ELNO and the Cloud Service Provider set out in in 7.12.2(g) as a means of ensuring those same obligations are imposed on Cloud Service Providers.	None.	Further amendment is not considered necessary in light of the robust obligations imposed on the ELNO to implement procedures to detect Data Breaches and possible Data Breaches and to take the action specified in MOR 7.11.2 where a Data Breach occurs.
34	7.11 Data Breach Notification	Are the new requirements at 7.11.3 and 7.11.4 more appropriately included as a part of the ISMS under Requirement 7.1 and reviewed annually as fit for purpose by an independent expert? If not, consideration should be given to a separate requirement to undertake vulnerability testing in Category 2 of Schedule 3 as a requirement prior to commencing operation, similar to the addition of a specific reference in Category 3 of Schedule 3 as an annual requirement.	The MOR have been amended.	Feedback noted. 7.11.3 and 7.11.4 have been amended in the updated consultation draft.
35	7.11 Data Breach Notification	How is compliance to be established?	None.	Compliance will be established using the existing process outlined under the MOR for compliance with all the ELNOs obligations.
36	7.11 Data Breach Notification	7.11 is appropriate however current drafting is too broad and imposes more onerous obligations than the data breach regime in the Privacy Act 1988 (Cth) (Privacy Act). It is considered appropriate that the data breach regime be limited by type of information and materiality of information and suggests the thresholds and criteria set out in the Privacy Act provide a reasonable guide as to what data breaches should require notification. It is considered the requirement to 'immediately' notify the Registrar-General of a data breach be amended to 30 days. ARNECC should adopt a centralised notification regime and coordinate any investigation and assessment process between Registrar's.	None.	In light of the highly sensitive and confidential nature of some of the information collected and held by an ELNO the obligations as drafted in the MOR are considered appropriate.
37	7.11 Data Breach Notification	Consider providing for an ELNO to consider and adopt 'reasonable' and appropriate mitigation steps given the circumstances to avoid imposing an onerous obligation to implement any measures which may protect against data breaches in the future.	The MOR have been amended.	7.11.2 (b) has been amended to change 'all available' to 'all reasonable'.
38	7.11 Data Breach Notification	The clauses should include a requirement that the ELNO obtain a written report from that security professional in relation to the assessment and testing and the completed rectification work and provide the Registrar and ARNECC with a copy of those reports within 7 days of receipt.	None.	The feedback is noted, however, the requirement to obtain a written report from a security professional and provide a copy to the Registrars / ARNECC would fall within MOR 17.11.2(d) in appropriate circumstances.

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39	7.11 Data Breach Notification	Welcomes protocol and the immediate notification of the Registrar and continued participation of the Registrar. Supports minimum criteria of a yearly vulnerability assessment and mandatory corrections.	None.	Feedback is noted. Feedback does not require further amendments.
40	MOR OR 7.11 Data Breach Notification	Definition of Data Breach should be narrowed to capture breaches within the ELN only.	None.	Already limited to the ELN. No change.
41	MOR OR 7.11.2(c)	Delete clause 7.11.2(c), or otherwise limit the Registrar's participation in investigations and mitigation steps to Data Breaches involving Land Information. Amend clause 7.11.2(c) such that an ELNO will be obliged to keep the Registrar reasonably informed of any investigation and mitigation steps taken by the ELNO subject to the ELNO's other confidentiality obligations (contractual or statutory).	None.	Any breach to the ELN places Land Information at risk. No change.
42	MOR OR 7.11.4	An ELNO should not be required to rectify weaknesses or vulnerabilities that are not essential for the operation of the ELN under the MOR and should have the right not to rectify all non-material weaknesses or vulnerabilities.	The MOR have been amended.	Amended to relate to any Essential Recommendations.
43	7.12 Cloud Service	Welcomed addition to the MOR recognising the preference to store information via the cloud.	None.	Feedback is noted. Feedback does not require further amendments.
44	7.12 Cloud Service	Recommends a provision expressly excluding the acquisition by the Cloud Service Provider of any property in or other rights over stored Land Information be added to Requirement 7.12.2(g).	None.	Feedback is noted, however in light of the nature of a Cloud Service Provider's business, it is highly improbable a Cloud Service Provider would acquire property rights over stored Land Information.
45	7.12 Cloud Service	A number of aspects are too broadly drafted resulting in overly restrictive requirements and should be defined narrowly by reference to services critically important to the integrity and fundamental operation of the ELN. 7.12.1 should be narrowly defined in relation to critical computer infrastructure relevant to the delivery of the ELN. 7.12.2 obligations are overly prescriptive and may cause practical implementation issues and a more objective definition of highest security and encryption features available with the Cloud Service' is required. MOR 7.12 should be deleted.	None.	In light of the highly sensitive and confidential nature of some of the information collected and held by an ELNO the obligations as drafted in the MOR are considered appropriate.

#	Rule	Stakeholder feedback	Action Taken	ARNECC response
46	7.12 Cloud Service	Welcomes additional safeguard to protect information. Supports 7.12.1 and in favour of only the ELNO having the encryption key to land data. Separation of land data from other data held by the ELNO is welcomed. Supports requirements for ELNO to enter into a legally binding agreement ensuring the provider will use the best available software and technologies.	None.	Feedback is noted. Feedback does not require further amendments.
47	7.12 Cloud Service	If MOR 7.12 were to apply, it should not only be limited to Cloud Service Providers, but all organisations providing infrastructure and storage solutions to ELNOs.	None.	7.12.2 covers the difference in responsibility of cloud services compared to on-site hosting. 7.5 covers non-cloud hosting.
48	7.12.1	Better addressed by rule 7.5 - delete 7.12.1.	None.	Deleted.
49	7.12.2	The obligation on the ELNO in paragraph (a) to continuously mitigate should apply not only to any risks identified in a Risk Assessment but also any other risks known to the ELNO. The undertaking in paragraph (g)(ii) should apply to any security incident or data breach that affects, or may affect, the ELN.	The MOR have been amended.	Amended as suggested.
50	7.12.2(d)	Amend Rule 7.12.2(d) to require Key management products and techniques employed to be Fit for Purpose and subject to the annual ISMS assessment. The Fit for Purpose standards applying to Key management products and techniques should also be of a standard that is aligned and in line with industry practice.	The MOR have been amended.	Refer to 7.12.1(d) in the updated consultation draft.
51	7.12.2(e)	It is not practical to require Land Information to be stored separately from other data of the ELNO. Delete MOR 7.12.2(e).	The MOR have been amended.	Refer to 7.12.1(d) in the updated consultation draft.
52	7.12.2(f)	The focus on security fails to consider the performance, functionality and usability of the Cloud Service. The level of security implemented should be Fit for Purpose as opposed to highest level of security and the security system in place should be subject to the annual ISMS assessment. This rule could further state that the fit-for-purpose security and encryption features are also of standards that are aligned and in line with leading industry practice.	The MOR have been amended.	Refer to 7.12.1(d) in the updated consultation draft.

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53	7.12.2(g)	Understanding is that the International Standard on Assurance Engagements 3402 Type II is only applicable provided the audit performed against the standard is a SOC2 audit which focuses on assurance over IT controls. Accordingly, the Cloud Service Provider should perform such an audit and provide the ELNO with a SOC2 audit report on assurance over IT controls.	The MOR have been amended.	Refer to 7.12.1(e) in the updated consultation draft.
OR 14 – Subscribers				
54	14.7 Review of Subscribers and Suspension or Termination	14.7 - how can an ELNO effectively review a Subscriber if it is owned and/or controlled by that Subscriber?	None.	Under MOR 14.10.2 if a Related Body Corporate or a Related Party of the ELNO intends to become a Subscriber or is a Subscriber, the ELNO must use an Independent Expert to assess the Related Body Corporate's or Related Party's application to become a Subscriber and to review the Subscriber's compliance with the Participation Rules.
55	14.7 Review of Subscribers and Suspension or Termination	14.7(b) how often must an ELNO review a Subscriber?	None.	The ELNO's Subscriber Review Process will outline how often the ELNO intends to review a Subscriber. The ELNO will be required to provide its Subscriber Review Process to the Registrars prior to commencing operation of an ELN under Schedule 3, Category Two.
56	14.7 Review of Subscribers and Suspension or Termination	The proposed Subscriber Review Process definition and clause 14.7 result in the ELNO taking on regulatory responsibilities that are part of the Registrar's function. Further consultation is required regarding what is practical for the ELNO to do in this area.	None.	No change.
57	14.7 Review of Subscribers and Suspension or Termination	The failure to respond to any Subscriber Review Process should be included as a Suspension Event under the MPR.	The MPR have been amended.	Amended in MPR.
58	14.10 ELNO must not be a subscriber	14.10.2 should be strengthened, particularly where a Subscriber has a controlling interest in an ELNO. Consideration could also be given to requiring the independent expert's assessment annually.	None.	The new requirement under MOR 14.10.2 for the ELNO to use an Independent Expert to assess a Related Party's application to become a Subscriber and compliance with the Participation Rules is considered adequate to ensure a Subscriber's compliance with the Participation Rules is appropriately assessed and reviewed. Where MOR 14.10.2 applies, the ELNO's Subscriber Review Process will outline how often the ELNO intends to review a Subscriber and accordingly how often the Independent Expert's assessment will be required to be undertaken. The ELNO will be required to provide its Subscriber Review Process to the Registrars prior to commencing operation of an ELN under Schedule 3, Category Two.

#	Rule	Stakeholder feedback	Action Taken	ARNECC response
59	14.10 ELNO must not be a subscriber	What if the ELNO is owned or controlled by a Subscriber?	None.	The definition of Related Body Corporate would equally apply to a scenario where an ELNO is a subsidiary of a Subscriber in accordance with the <i>Corporations Act 2001</i> .
60	14.10 ELNO must not be a subscriber	What about a Subscriber to another ELNO?	The MOR have been amended.	Amended to clarify that an ELNO is permitted to be a Subscriber to an ELNO provided and operated by another ELNO.
61	14.10 ELNO must not be a subscriber	Where a Subscriber owns or controls an ELN, it should be required to provide access to that ELN to all Subscribers on an equal basis. For example, see Requirement 5.5.5.	None.	MOR 7.2.4 requires the ELNO to provide access to the ELN on an Equivalent Basis to Subscribers and Users properly authorised by Subscribers to access and use the ELN.
62	14.10 - ELNO must not be a Subscriber	A reference to a Related Body Corporate and a Related Party (or to a 'Related Entity') should be added to clause 14.10.1. Clause 14.10.2 should be deleted.	None.	Feedback is noted. However, it would not be reasonable to prohibit a separate legal entity from operating a legal or conveyancing business, particularly where the ECNL acknowledges an ELNO may provide services additional to those provided by the ELN. The limitation introduced imposes a sufficient degree of separation between the ELNO and a Subscriber to ensure that a Subscriber's compliance with the Participation Rules is appropriately assessed and reviewed.
63	14.10 - ELNO must not be a Subscriber	Rejected and should be deleted. An ELNO has no reason or expectation to be carrying out the duties and functions of a Subscriber as this would be an attempt to undermine conveyancers and facilitate "Downstream Services". Unclear who is an "Independent Expert" and the role of such.	None.	Feedback is noted. However, it would not be reasonable to prohibit a separate legal entity from operating a legal or conveyancing business, particularly where the ECNL acknowledges an ELNO may provide services additional to those provided by the ELN. The limitation introduced imposes a sufficient degree of separation between the ELNO and a Subscriber to ensure that a Subscriber's compliance with the Participation Rules is appropriately assessed and reviewed. Independent Expert is defined in MOR 2.1.2.
64	14.10 - ELNO must not be a Subscriber	It is presumed this means the prohibition on the same entity being both an ELNO and a Subscriber is on the same entity being a Subscriber to the related ELNO and not to being a Subscriber to an unrelated ELNO. The new section also proposes that if a related body corporate or party of the ELNO wishes to become a Subscriber to that ELNO, the ELNO must use an Independent Expert to review the application and compliance with the Participation Rules. It is presumed this means both compliance of the application and ongoing compliance with the Participation Rules.	None.	Assumptions are correct.

#	Rule	Stakeholder feedback	Action Taken	ARNECC response
65	14.10.1	<p>The presumption that an ELNO may mis-approve itself as a Subscriber may be justified although it must be of low probability with the ELNO's having been verified as being of good character and reputation prior to being approved as an ELNO. But for ELNOs that are also legal practices that are deemed by virtue of their profession to be of good character and reputation as well as adequately insured, the presumption is entirely invalid. We submit that what is proposed is unjustified and unnecessary. However, if it is believed there is a justifiable risk that needs to be mitigated for ELNOs generally, those ELNOs that are legal practices should be exempted from the proposed provision.</p>	None.	A consistent approach applies to all ELNOs regardless of organisational structure.
66	14.10.2	<p>The scope of the timing and obligation to obtain an Independent Expert report is unclear. The obligation to obtain an Independent Expert report should be satisfied by a point in time test for on-boarding and should be a minimal review that is limited to an annual audit of selected files.</p>	The MOR have been amended.	Feedback noted. MOR 14.10.2 has been amended in the updated consultation draft.
67	14.10.2	<p>What is proposed has two significant difficulties that need to be addressed:</p> <ol style="list-style-type: none"> 1. The Independent Expert would need to be verified as being of good character and reputation before being engaged. This is not a current requirement of Independent Experts. To not do so in this situation would carry the risk of the Independent Expert being of lesser integrity than the ELNO and Subscriber being reviewed for compliance with their respective obligations. 2. The use of an Independent Expert to monitor the ongoing compliance of a related party Subscriber would necessitate integrating the Independent Expert into the ELNO's ongoing operations and cause the incurring of significant additional expense by the ELNO. This too is not a current requirement of Independent Experts. <p>In the absence of any substantiated justification for the presumptions underlying the proposal, these consequences are unreasonable and will inevitably cause additional cost to be incurred by the parties to conveyancing transactions, erode the benefits to consumers of ELNO services and negate some of the fundamental rationale for electronic conveyancing. We submit that what is proposed when an ELNO and Subscriber are related parties is unjustified, unnecessary and negates some of the fundamental rationale for electronic conveyancing.</p>	None.	<ol style="list-style-type: none"> 1. In accordance with MOR 16.1, Independent Experts must be approved by the Registrar. 2. Integration of an independent expert into an ELNOs operations is neither implied nor required by the MOR. The decision to do so rests with the individual ELNOs.

#	Rule	Stakeholder feedback	Action Taken	ARNECC response
OR 15 – Compliance Monitoring and Reporting				
68	15.4 When to demonstrate compliance	What is the meaning of the exception in 15.4(b)(ii). This exception seems odd when each category separately lists the requirements applying at that time (including matters that were required in a different category). If a matter is required at each annual review, there appears to be no reason to exclude the requirement on reapplying. It could instead be excluded from the annual review and included at the reapplying stage.	None.	The amendments to MOR 15.4 are intended to reflect that an ELNO is not required to re-demonstrate compliance where compliance has already been demonstrated.
Schedule 1 – Insurance				
69	Schedule 1 - Insurance	Levels of insurance may be inadequate in light of mandatory e-conveyancing in the Uniform Law jurisdictions from 2019 and other state such as WA from May 2018. The Council is concerned to ensure that the level of protection for consumers is sufficient and appropriate for the imminent, near national rollout of 100% digital conveyancing.	None.	Feedback is noted. However, altering the insurance requirements in Schedule 1 where the Registrars have not been informed of any events which may give rise to a claim or any claims (MOR 4.7.6) is not considered appropriate at this time. It is anticipated that the insurance requirements will be reviewed if a claim is made.
70	Schedule 1 - Insurance	Schedule 6 of the MPR sets out details in relation to the insurance required for Subscribers. Remarkably, the same amount of cover for Subscribers for Professional Indemnity Insurance and Fidelity Insurance is specified for an ELNO and little detail is provided for an ELNO. Schedule 1 of the MOR should set out similar details and requirements as for a Subscriber by the MPR including – * require any insurer to be approved by ARNECC; * specify a maximum excess; and * indicate that the specified amount for such insurance is per claim and/or the aggregate of claims in any year.	None.	Feedback is noted. However, altering the insurance requirements in Schedule 1 where the Registrars have not been informed of any events which may give rise to a claim or any claims (MOR 4.7.6) is not considered appropriate at this time. It is anticipated that the insurance requirements will be reviewed if a claim is made. Under MOR 4.7.3 an ELNO is required to obtain its insurance policies from an Approved Insurer (a general insurer within the meaning of the <i>Insurance Act 1973</i> (Cth)) and provide a certificate of currency to the Registrars prior to commencing operation of an ELN under Schedule 3, Category Two.
Schedule 2 – Performance Levels				
71	Schedule 2 - Performance Levels	The proposed deletions under Service Availability are not supported. Scheduled maintenance in Core Hours would be considerably less expensive and could be used if costs needed cutting (perhaps to restrain pricing) or create negotiating pressure on ARNECC.	None.	The deletions in Schedule 2, Performance Levels only delete duplicate terms and definitions already defined in MOR 2.1.2. Permitting scheduled maintenance during Core Hours would potentially have significant impacts on Subscribers ability to use the ELN including for example to schedule settlements and is not considered appropriate.
72	Schedule 2 - Performance Levels	The word 'assessed' in the first paragraph under the heading Service Availability should be replaced with the word 'programmed' another word of similar effect.	The MOR have been amended.	Feedback is noted, and amendments have been made for clarity.

#	Rule	Stakeholder feedback	Action Taken	ARNECC response
Schedule 3 – Reporting Requirements				
73	Schedule 3 - Reporting Requirements	The Schedule should indicate that, unlike other requirements, a Separation Plan is conditional and is included only where it is required by Requirement 5.6.4.	The MOR have been amended.	Feedback noted. Schedule 3 has been amended in the updated consultation draft.
74	Schedule 3 Reporting Requirements Category 3, Requirement 7.11	Do not agree that the self-certification should confirm all Essential Recommendations are implemented. Requirement to be amended so that the ELNO is only required to confirm that Essential Recommendation remediation activities are in plan with dates aligned to each activity.	The MOR have been amended.	Feedback noted. Schedule 3 has been amended in the updated consultation draft.
Schedule 8 – ELNO Service Fees				
75	Schedule 8 - ELNO Service Fees	Supports measures to ensure increases in fees are justified and transparent. Supports ELNOs ability to increase prices due to external factors.	None.	Feedback is noted. Feedback does not require further amendments.
76	Schedule 8 - ELNO Service Fees	Note that the apparent cross subsidisation of mortgage fees by service fees applicable to practitioners is one of the most often queried aspects of the PEXA fees structure. Has ARNECC considered whether this is an area that should be regulated?	None.	The requirement for an ELNO to determine any ELNO Service Fees, according to a publicly available, <u>equitable</u> and transparent pricing policy in MOR 5.3 (e) is retained. Further regulation is not considered appropriate at this time.
77	Schedule 8 - ELNO Service Fees	Concerned this has not been subject to an appropriate degree of consultation prior to this draft being documented.	Second round of consultation including an industry engagement event.	ARNECC received a considerable amount of feedback on the consultation draft of Version 5 of the MOR. The feedback has been carefully reviewed and some significant revisions to the Version 5 draft are being made as a result. Given these changes, ARNECC has taken the decision to undertake a second round of consultation. To this end, the MOR will be updated to incorporate these changes and published for further consultation. ARNECC is also considering hosting an industry engagement event to discuss the intent of the MOR changes and provide a forum for open discussion on the Version 5 second consultation draft.

#	Rule	Stakeholder feedback	Action Taken	ARNECC response
78	Schedule 8 - ELNO Service Fees	<p>The regime needs to be simpler. An ELNO should be able to increase its ELNO Service Fees annually from 1 July 2018 by no more than the CPI (as defined in clause 2.1.2). However, ARNECC may approve upon a reasonable request from an ELNO a percentage increase greater than CPI in any year. These changes are easily accommodated by amendments to the proposed clause 2. The proposed clause 3 should be deleted and the proposed clause 4 (renumbered as clause 3) should be retained.</p> <p>After 2023, it is contemplated that PEXA prices will be set by reference to allowable revenues that are calculated using a conventional “building block” approach. At first glance, that approach appears to be in keeping with the regulation of critical infrastructure in other sectors. However, the provisions are too high level to be useful. In particular, the provisions merely mention the relevant building blocks without further elaboration and guidance (eg “return on capital”, “return of capital (depreciation)” and “forecast operating expenditure” – all of which are often highly contentious concepts and prone to dispute). The building block approach also requires a highly sophisticated, well-resourced regulator that is in a position to provide effective legal and economic oversight (such as the ACCC). It is highly unlikely that ARNECC will be in a position to provide that oversight.</p> <p>Does not believe price regulation is necessary in a competitive market and inappropriate to introduce comprehensive price regulation where competition is emerging.</p> <p>It is unclear what powers ARNECC has to set or regulate fees and whether this accords with the national competition framework. Clarification of this would be appreciated.</p> <p>Should be removed in its entirety as it runs the risk of undermining investment and innovation for electronic lodgement.</p> <p>The proposed price cap methodology is not appropriate and does not provide ELNOs sufficient flexibility to determine and compete on price.</p>	The MOR have been amended.	ARNECC received a considerable amount of feedback on the proposed regulation of ELNO Service Fees included in MOR 5.4 and Schedule 8 of the consultation draft. Amongst other technical matters, the feedback identified that the consultation draft of Version 5 of the MOR had been prepared when there was a single ELNO and no potential for natural regulation of price through competition. Since the initial consultation period for Version 5 closed, two additional potential ELNOs have been assessed as meeting the Schedule 3, Category 1 requirements of the Model Operating Requirements (MOR v4) and can now commence negotiations for approval to provide and operate an ELN with each State and Territory Registrar. In light of the feedback, a decision has been made to restrict the regulation of ELNO Service Fees in Version 5 of the MOR to limiting price increases to CPI for a three year period. After the three year period it is intended that a review be conducted to determine whether ELNO Service Fees require further regulation. It is considered that the CPI cap will be sufficient in the interim to prevent unfettered increases in ELNO Service Fees.
79	Schedule 8 - ELNO Service Fees 2 - ELNO service fees 1 July 2018 to 30 June 2023	Unclear whether the ability to increase fees in accordance with CPI will be calculated on the basis of the maximum fee as set out in the pricing table or the actual fee charged by a particular ELNO.	None.	The ELNO will be permitted to increase its ELNO Service Fees as recorded in its Pricing Table by CPI.
80	Schedule 8 - ELNO Service Fees Clause 2.1	Welcomed. ARNECC are to be commended on taking this approach.	None.	Feedback is noted. Feedback does not require further amendments

#	Rule	Stakeholder feedback	Action Taken	ARNECC response
81	Schedule 8 - ELNO Service Fees Clauses 3.1 - 4.2	<p>Particularly confusing:</p> <ul style="list-style-type: none"> * Unclear who determines what a reasonable "Return on Assets" is * What penalties or remedies exist for breaching what is determined as being unreasonable * Is it an unrealistic expectation on ELNOs to potentially set about creating pricing differential between jurisdictions * Are the Registrar/ARNECC sufficiently skilled and resourced to undertake pricing reviews <p>AICWA supports provisions ensuring the sustainability of an ELNO but the practical application post 2023 lacks detail. Clauses 3.2 - 4.2 outline the requirements by which an ELNO must satisfy the Registrar of its price increases but provides little information on how - what resources, penalties or remedie s will be used to manage this process.</p>	The MOR have been amended.	ARNECC received a considerable amount of feedback on the proposed regulation of ELNO Service Fees included in MOR 5.4 and Schedule 8 of the consultation draft. Amongst other technical matters, the feedback identified that the consultation draft of Version 5 of the MOR had been prepared when there was a single ELNO and no potential for natural regulation of price through competition. Since the initial consultation period for Version 5 closed, two additional potential ELNOs have been assessed as meeting the Schedule 3, Category 1 requirements of the Model Operating Requirements (MOR v4) and can now commence negotiations for approval to provide and operate an ELN with each State and Territory Registrar. In light of the feedback, a decision has been made to restrict the regulation of ELNO Service Fees in Version 5 of the MOR to limiting price increases to CPI for a three year period. After the three year period it is intended that a review be conducted to determine whether ELNO Service Fees require further regulation. It is considered that the CPI cap will be sufficient in the interim to prevent unfettered increases in ELNO Service Fees.
82	Schedule 8 - ELNO Service Fees 3 - ELNO Service Fees from 1 July 2023	<p>Regulating the prices of ELNOs after 1 July 2023 is neither desirable or necessary in a competitive market. Preferable approach would be to assess the evolution of competition in the market. Suggest the regulated pricing methodology in OR 3 of Schedule 8 be removed. If a building block methodology were to be implemented there are a number of practical issues that would need to be considered.</p> <p>What does a 'reasonable rate' in clause 3.1(b) of Schedule 8 mean.3.2 does not appear to take into account any capital investment in continuing improvement in the platform and services.</p>	The MOR have been amended.	ARNECC received a considerable amount of feedback on the proposed regulation of ELNO Service Fees included in MOR 5.4 and Schedule 8 of the consultation draft. Amongst other technical matters, the feedback identified that the consultation draft of Version 5 of the MOR had been prepared when there was a single ELNO and no potential for natural regulation of price through competition. Since the initial consultation period for Version 5 closed, two additional potential ELNOs have been assessed as meeting the Schedule 3, Category 1 requirements of the Model Operating Requirements (MOR v4) and can now commence negotiations for approval to provide and operate an ELN with each State and Territory Registrar. In light of the feedback, a decision has been made to restrict the regulation of ELNO Service Fees in Version 5 of the MOR to limiting price increases to CPI for a three year period. After the three year period it is intended that a review be conducted to determine whether ELNO Service Fees require further regulation. It is considered that the CPI cap will be sufficient in the interim to prevent unfettered increases in ELNO Service Fees.
83	Schedule 8 - ELNO Service Fees 3 - ELNO Service Fees from 1 July 2023	3.7 – what is the reason for adjusting based on differences in the March quarter only?	None.	The calculation of CPI increases based on the March quarter is consistent with usual practice.

#	Rule	Stakeholder feedback	Action Taken	ARNECC response
84	Schedule 8 - ELNO Service Fees 4 - Pricing Tables	<p>Should other changes should be included in clause 4.1(b), for example land registry system/software changes or changes to update/replace underlying system software at the ELNO.</p> <p>What is the meaning of the phrase 'to reflect the increase or decrease' in clause 4.2 and does it adequately account for the fact that PEXA, for example, averages the fees across jurisdictions. If only one jurisdiction increases fees, can the ELNO still average the fees, or is it required to have a fee structure that reflects the change?</p>	The MOR have been amended.	ARNECC received a considerable amount of feedback on the proposed regulation of ELNO Service Fees included in MOR 5.4 and Schedule 8 of the consultation draft. Amongst other technical matters, the feedback identified that the consultation draft of Version 5 of the MOR had been prepared when there was a single ELNO and no potential for natural regulation of price through competition. Since the initial consultation period for Version 5 closed, two additional potential ELNOs have been assessed as meeting the Schedule 3, Category 1 requirements of the Model Operating Requirements (MOR v4) and can now commence negotiations for approval to provide and operate an ELN with each State and Territory Registrar. In light of the feedback, a decision has been made to restrict the regulation of ELNO Service Fees in Version 5 of the MOR to limiting price increases to CPI for a three year period. After the three year period it is intended that a review be conducted to determine whether ELNO Service Fees require further regulation. It is considered that the CPI cap will be sufficient in the interim to prevent unfettered increases in ELNO Service Fees.
General Comments				
85	MOR General	<p>It is submitted that the Proposed MORs should put in place conditions which support the development of a competitive market structure for ELN services and that a competitive market is maintained for the function of electronic settlements (provided by the ELNO) and all aspects which underpin that service.</p> <p>Proposed MOR does not seek to facilitate the establishment and maintenance of a competitive marketplace.</p> <p>Does not address the implications of multiple ELNOs and the consequences for users of the system.</p> <p>MOR should be redrafted to reflect the priority that multiple ELNOs must be able to operate in an efficient market in which they are constrained by competitive restraints and competition laws. Of the two potential models for a competitive marketplace, horizontal interoperability provides the most optionality over 'subscriber picks'.</p>	None.	MOR 5.5 has been redrafted and does not preclude integration between ELNOs.
86	MOR General	Concerned with the prospect of a second ELNO being admitted by ARNECC to operate in the current operating environment of the e-conveyancing market.	None.	Section 15 (4) of the Electronic Conveyancing National Law specifically provides for more than one ELNO to be approved to provide and operate an ELN.

#	Rule	Stakeholder feedback	Action Taken	ARNECC response
87	MOR General	<p>An effective date 20 business days from publication of MOR 5 is insufficient. Consideration must be given to staged implementation as well as the time of year of release.</p>	<p>Second round of consultation.</p>	<p>ARNECC received a considerable amount of feedback on the consultation draft of Version 5 of the MOR. The feedback has been carefully reviewed and some significant revisions to the Version 5 draft are being made as a result. Given these changes, ARNECC has taken the decision to undertake a second round of consultation. As a result no changes to the MOR will be in force prior to 1 July 2018.</p>
88	MOR General	<p>The issues raise such fundamental concerns that these consultation documents should be withdrawn and reconsidered in light of meaningful and proper industry consultation.</p> <p>Concerned there has been no comprehensive explanation as to why changes are being proposed. Request that a face to face meeting is called to be attended by ARNECC, ECG Members, AIC and its Divisions and PEXA to address the issues. I believe that no amendments to the MORs and MPRs should be contemplated at this stage.</p> <p>Recommend an ARNECC stakeholder briefing which could communicate the reasoning and rationale behind the approach taken and would helpfully inform all stakeholders as to the regulatory progress and route being considered.</p> <p>Difficult to provide detailed feedback on many of the proposed amendments given that the changes were not accompanied with any statement, guidance or explanatory note detailing the reasoning behind the changes, any cost benefit analysis or any description of the intended impact of the changes.</p> <p>Recommend an ARNECC briefing which could communicate the reasoning and rationale behind the approach taken and would helpfully inform all stakeholders as to the regulatory progress and route being considered.</p>	<p>Second round of consultation including an industry engagement event.</p>	<p>ARNECC received a considerable amount of feedback on the consultation draft of Version 5 of the MOR. The feedback has been carefully reviewed and some significant revisions to the Version 5 draft are being made as a result. Given these changes, ARNECC has taken the decision to undertake a second round of consultation. To this end, the MOR will be updated to incorporate these changes and published for further consultation. ARNECC is also considering hosting an industry engagement event to discuss the intent of the MOR changes and provide a forum for open discussion on the Version 5 second consultation draft.</p>