Model Participation Rules (MPR) Consultation Draft 6 Feedback

This table responds to the feedback received on Consultation Draft 6 of the MPR published in December 2019

#	Rule	Stakeholder Feedback	Action Taken	ARNECC Response
MPR 2.1 – Definitions				
1.	New	"Officer" to be defined.	The MPR have been amended	New definition included in the updated consultation draft. Consequential amendments made to delete terms which fall within that new definition i.e. director, partner and officer.
2.	Client Authorisation	Would the deletion of the definition "Client Authorisation – Representative" and the inclusion of new amendments to the Client Authorisation Form (as set out in Schedule 4 of the MPR) require financial institutions to re-execute existing Client Authorisation Forms that are "substantially" in the same form as the Client Authorisation Form as set out in Schedule 4 of the MPR?	None	Participation Rules take effect prospectively, not retrospectively. Additional information will be included in the MPR Guidance Note as follows: Any properly completed Client Authorisation in the form set out in the MPRs at the time of execution is valid, unless revoked earlier, until: ▪ **Specific Authority** - the conveyancing transaction(s) to which it relates are concluded ▪ **Standing Authority** - the expiry date ▪ **Batch Authority** - the conveyancing transaction(s) to which it relates are concluded. The wording 'as amended from time to time' has been included to indicate there will be different versions of the Client Authorisation at different points in time. A Subscriber is required to use the version that is in effect at the time they enter into the Client Authorisation.
3.	Identity Agent	Confirm this definition allows appointment of any person so long as they are appointed in writing and satisfy the criteria, and regardless of qualification. It would be more appropriate that there was some limitation on who may be appointed to maintain the integrity of the process.	None	A Subscriber is best placed to assess whether a person is reputable, competent and insured. The definition provides the most flexibility to Subscribers as to who they appoint as an Identity Agent.
4.	Identity Agent	The amendments proposed as currently drafted are not supported. Clarification is sought if ARNECC's intention is for Financial Institutions to capture Brokers as Identity Agents and the rationale for doing so. It is believed that the mechanism for appointing brokers as Identity Agents should mirror that employed by ADI's where the appointment of brokers to perform AML duties occurs at an aggregator agreement level rather than a written agreement between the Bank and individual brokers. In the absence of any compelling consumer benefit flowing from the proposed changes to the Identity Agent definition, it is submitted that the changes will impose overly onerous obligations on brokers, aggregators and lenders (and potentially consumers) and should be reconsidered. Accordingly, it is submitted that the specific changes proposed to the definition of 'Identity Agents' should be abandoned. If though, it is decided to proceed with the proposed changes it will be substantially more efficient, practical and cost effective if:	None	ARNECC considers it important that there is an appointment in writing for Identity Agents to ensure there is no ambiguity as to what they are being asked to do, i.e. to apply the VOI Standard. MPR obligations are a separate legal requirement to the AML/CTF requirements. Provided arrangements comply with the MPR (e.g. appointment in writing), it is otherwise a matter for a Subscriber to determine how best to appoint any Identity Agents it uses.

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		1. Individual lenders have the ability to appoint aggregators as 'Identity Agents' under a 'master authorisation' structure; and 2. Aggregators have the ability to in turn sub-authorise their own affiliated brokers in relation to each lender that has provided a master authorisation. The above authorisation structure would negate any requirement for a lender to individually authorise each mortgage broker that submits loans to it.		
5.	Identity Agent	It is requested that ARNECC provide a reasonable period of time to conduct, assess and undertake procurement processes in connection with the appointment of an Identity Agent. A competitive tender and procurement process can take between 6 to 12 months to formalise. Clarification is sought regarding if a Panel Law Firm (which has executed a separate Client Authorisation Form with a Subscriber) satisfies the requirement of an appointment as an Identity Agent in writing? A Client Authorisation Form allows a Panel Law Firm to "do anything else necessary to complete the Conveyancing Transaction", which can include acting as Identity Agent to complete verification of identity on behalf of a Subscriber. If these changes are adopted by ARNECC, is a Subscriber required to keep a record of the written appointment and for how long to meet compliance requirements? A distinction should be made between users who have read/write access to an ELN versus those who are consumers of the information without the ability to make changes on the ELN. Users with read only access can therefore be informed of the status of a transaction, which improves the customer experience. Would ARNECC issue a prescribed form of an appointment of an Identity Agent, or would any appointment in writing satisfy this requirement? For example, what if the appointment of an Identity Agent is completed via DocuSign or some other electronic platform?	None	A Subscriber will need to make an assessment and negotiate an appropriate form of appointment for an Identity Agent. Provided arrangements comply with the MPR (e.g. appointment in writing) and law of agency, it is otherwise a matter for a Subscriber to determine how to structure its arrangements with Identity Agents. Clarification is required as to what a read/write User is compared to a read only User.
6.	Identity Agent	It is submitted that the requirement for Identity Agents to be appointed in writing: • should be removed as it creates uncertainty about the legal effectiveness of existing methods for complying with the VOI Standard relying on remotely appointed Identity Agents who are in the same physical location as the person being identified; or • elaborated to make it clear that the appointment in writing may be undertaken by electronic means. It is submitted that the inability for Subscribers/mortgagees to rely on remotely appointed Identity Agents would stifle innovation, result in higher fees for customers and result in significant customer inconvenience, particularly, but not solely, for customers living in regional and outback areas.	None	The amendment does not limit the appointment of remote Identity Agents. Appointment in writing includes by electronic means. It is up to the Subscriber to ensure that any appointment, whether in paper or electronic, is valid.
7.	Insolvency Event	The definition of "Insolvency Event" is too broad.	The MPR have been amended	The definition of Insolvency Event has been amended to exclude temporary postponement of debt.

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8.	Land Registry	There is benefit clarifying the definition of "Land Registry" to provide further details around private operators and clarifying that, in some instances, the relevant delegate may be providing non-statutory services. This can be achieved by expanding the definition of Land Registry. In order to reflect the different operating models that have been used to delegate functions to a private operator (i.e. both statutory and contractual delegations) and to ensure that clients are adequately informed of the existence of private operators, the definition of "Land Registry" be amended to read: **"…Land Registry** means the agency of a State or Territory responsible for maintaining the Jurisdiction's Titles Register ~~or.~~ . This includes: (a) where the Registrar has delegated that responsibility, the delegate; or (b) where the Registrar has otherwise granted a right to a private operator to perform and/or support land titles and registry functions (including non-statutory services) under an operating concession model, the private operator..." *Rationale for the changes:* These changes give visibility to Clients of the different ways (statutory and contractual) in which a State or Territory may delegate authority for land registry functions.	None	Feedback noted but the definition deliberately only encompasses the situation where a Registrar or Land Registry has delegated statutory functions to a private operator.
9.	Land Registry	Drafting amendment	The MPR have been amended	Minor drafting amendments made to clarify definition and accommodate a range of possible delegation arrangements i.e. Land Registry could be an agency of a State or Territory responsible for maintaining the jurisdiction's Titles Register or a delegate or both.
10.	Local Government Officeholder	Drafting amendment	The MPR have been amended	Consequential amendment in light of new definition of Officer.
11.	Public Servant	Drafting amendment	The MPR have been amended	Consequential amendment in light of new definition of Officer.
12.	Publish	Drafting amendment	The MPR have been amended	Minor drafting amendment made to recognise that websites where information is published may not technically be the 'Registrar's website' but may be a departmental website or the website of a private land registry operator. Drafting aligns with the requirements for making the Participation Rules and Operating Requirements publicly available under the ECNL.
13.	Statutory Body Officeholder	Drafting amendment	The MPR have been amended	Consequential amendment in light of new definition of Officer.

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14.	Subscribers' Systems	Application of this new definition is too broad and may capture technology systems that are completely segregated and are not used in any electronic conveyancing transaction. The definition of "Subscriber's Systems" be limited specifically to those technology systems that are used by Authorised Users to conduct an electronic conveyancing transaction in accordance with the Electronic Conveyancing National Law.	None	If any system has a weakness exploited, that could potentially lead to attacks on other systems including an Electronic Lodgment Network.
15.	Unrelated Third Party	Drafting amendment	The MPR have been amended	Consequential amendment in light of new definition of Officer.
16.	User	Confirm the term "employee" includes casual employees such as interns and seasonal clerks. Add the term "casual employee" to the list of Users specified.	None	If a person is legally classified as an employee, then they are captured by the definition.
17.	User	It is unclear why this amendment was made. This definition should also include individuals who are advisors (eg, legal advisors acting for the Subscriber) and who are authorised by the Subscriber to access and use the ELN on behalf of the Subscriber. E.g. a lawyer at a Panel Law Firm is not an employee, agent or contractor. How does this definition work in conjunction with Rule 6.5.1(f) which refers to "Other Users"? Which "Other Users" would not be captured by the definition of "Users"?	None	Panel law firms should be Subscribers in their own right acting as Representatives. MPR 6.5.1(f) has been amended to specify Users who are not Signers or Subscriber Administrators.
18.	User	1. What is intended by the word 'officer' in this definition? – is this intended to apply to employees with seniority and if so, how do these differ from employees more generally (as employee is also part of the definition)? Or is this intended to mean 'officeholders' in a company – though it is noted that directors are already included. 2. The definition now appears to require users to be a member of the Subscriber. ARNECC should consider whether it is ever acceptable for a third party to be a user in a Subscriber profile. It is recommended that "officer" is removed from the definition and ARNECC consider all use cases and modify the definition if considered appropriate.	The MPR have been amended	1. Officer was intended to mean a person with a level of control within a corporation or other entity. New definition included in the updated consultation draft and amendments made to delete terms which fall fully within that new the definition of "officer" in the *Corporations Act 2001* (Cth) i.e. director, partner and officer. 2. The intent of the changes to the definition of User was to clarify that there must be a legal relationship between the Subscriber and the individual User. An additional type of User (a manager of a legal or conveyancing practice) has been added.
MPR 4 – Eligibility Criteria – Character				
19.	4.3	Notwithstanding the inclusion of PR6.15, given the complexities and lack of knowledge about conveyancing, there are continuing serious concerns regarding the inclusion of Local Government Organisations as Subscribers without limiting its ability to – ▪ act as a Representative for a Client that is not an entity related to the Local Government Organisation; or ▪ assist a self-represented party in a transaction. This concern was set out in the formal responses to previous consultation drafts of the MOR or MPR.	None	Subscribers must comply with jurisdictional laws about who can conduct conveyancing transactions. ARNECC repeats that it is not aware of any jurisdictional laws that would allow a Local Government Organisation to represent a Client.

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20.	4.3.1	A suspension event includes matters between a Subscriber and a particular jurisdiction, such as non-payment of fees in a jurisdiction. This should not give rise to suspension in other jurisdictions. Likewise, a subscriber may need to be suspended or terminated in one jurisdiction if its qualification is ended in one jurisdiction. This should have no bearing on the eligibility for the jurisdiction where the qualification remains in place. Suspension or termination in one jurisdiction should not go to character, which would affect eligibility in all jurisdictions. Remove 4.3.1 (vi) and (vii) from character requirements but include moderate provisions in 9.2 and 9.3 for Registrar to exercise reasonable discretion to direct an ELNO to suspend or terminate a Subscriber in circumstances where another jurisdiction has suspended or terminated. This should be exercised only where the trigger for suspension or termination in the other jurisdiction has direct bearing on the Subscriber's right to transact in the jurisdiction.	The MPR have been amended	MPR 4.3.1 has been amended to be limited to Suspension Events (a)(i) to (v) and Termination Events (a)(i) to (v) and (b) in the updated consultation draft. MPR 4.3.1(a)(iv) has been amended to include 'any **determination of a** disciplinary action…'
	4.3.1 (a) (vii)	Seems too broad when you look at the termination events – 'the Subscriber is not reinstated within a reasonable time'.		
	4.3.1	Suggest amending the wording of 4.3.1(a)(iv) to refer to "any disciplinary action of any government or governmental authority or agency or any regulatory authority of a financial market or a profession **that is not contested by an ADI (in good faith) or is not stayed by the relevant authority**".		
	4.3.1 (a)	The amendments proposed as currently drafted are not supported. Suspension or termination in a jurisdiction can relate to an issue peculiar to that jurisdiction. It is inappropriate that such an issue could lead to suspension or termination in another jurisdiction. It is recommended that the new language drafted be removed, reverting to the language from version 5. If a version of the new language is retained it should be modified to remove any disqualification arising from: ▪ an issue which has subsequently been resolved (e.g. the disciplinary action was discontinued or found to be unjustified) ▪ an issue not relevant to the particular jurisdiction (e.g. an issue arising under the differing requirements of another jurisdiction).		
21.	4.3.1	Regarding Rule 4.3.1(a)(v), (vi) and (vii), it is difficult for a Subscriber to ensure that it is not subject to these matters where there are no central public registers kept by the ELNOs or ARNECC. ARNECC should consider publishing a central public register for these matters. ADIs must ensure they are never subject to the matters listed in Rule 4.3.1(a)(i), (ii) and (iii).	None	A Subscriber should be aware if it has been subject to any of these matters. The Registrars do not have the regulatory power to publish a register of Subscriber status. Additionally, there are privacy implications that would need to be addressed should such a register ever be published. ARNECC is considering preparing an additional MPR Guidance Note specifically related to Eligibility Criteria.

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22.	4.3.1	1. Use of the word 'officer' in 4.3.1 is said to use the Corporations Act meaning for body corporates. What meaning is intended to apply for other entities? This should be clarified. 2. Why is 'electronic lodgment service' used in 4.3.1 – how is this intended to differ an ELN?	The MPR have been amended	1. A definition for 'Officer" has been included in the updated consultation draft. 2. Electronic lodgment service is intended to capture possible other state (or federal or international) based electronic lodgment services and is therefore intended to be broader than an ELN.
23.	4.3.1 (a) 4.3.1 (c)	The amendments proposed by ARNECC without an appropriate register in place to identify individuals subject to a suspension or termination order are not supported. At present, there is no public information available to a Subscriber to conduct searches and checks to satisfy itself that an individual is not subject to the matters listed in Rule 4.3.1(c). There are no public registers available to enable a Subscriber to make relevant enquiries as to whether individuals are subject to the matters listed in Rule 4.3.1(c) in any Jurisdiction. If such a register is not made available by ARNECC, it is recommended that the new language drafted be removed, reverting to the language from version 5. ARNECC should provide a searchable register of individuals and entities who have been subject to the specified disciplinary actions, or otherwise provide guidance as to what would constitute "reasonable steps" under this requirement. Will ARNECC establish a searchable public register to enable subscribers to verify against and in turn, satisfy this requirement? If not, how are subscribers expected to take 'reasonable steps' in this regard? How can a Subscriber determine that a new principal, director, partner, officer or administrator in a firm has not previously been subject to any of the matters listed in this clause? There is no guidance given as to what constitutes "reasonable steps" for the purposes of this clause.	None	The Registrars do not have the regulatory power to publish a register of Subscriber status. Additionally, there are privacy implications that would need to be addressed should such a register ever be published. Refer to deeming provisions specified in MPR 4.3.2. ARNECC is considering preparing an additional MPR Guidance Note specifically related to Eligibility Criteria.
24.	4.3.1 (a) and (c)	Unnecessary added regulatory requirement current either managed effectively under various licensing regimes or covered under Section 181 (1) of the Corporations Act 2001.	None	Feedback noted but not adopted. The aim of these requirements is to prevent phoenix activity.
25.	4.3.1 (a) and (c), 4.5, 7.2.3	Agree with these proposed changes and prioritises the security and safety of data. We view requirements of police clearances, no prior relevant offences for any user of the system and going through standard registration processes as fair. This provides further assurances to clients that their digital data is safe, and there is accountability with the system and its users.	None	Feedback noted. Additional refinements made in response to other stakeholder feedback.

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26.	4.3.1 (b) 4.3.1 (c)	Specify that all character requirements apply only in respect of the specified individuals working within Australia. Otherwise limit these requirements to Users only and not more broadly to all principals, directors, partners and officers of the Subscriber (where the Subscriber is a global firm). The amendments proposed by ARNECC are not supported. recommends ARNECC narrows down the definition to "those directors and officers who have been authorised by a Subscriber to use the ELN". It is also recommended that the exclusion from the scope of the rule individuals who were not holding a relevant role with that other subscriber at the time the issue which lead to the suspension or termination occurred. Seems too broad. For example, an officer may have done nothing wrong and is seeking work for another Subscriber because of the suspension/termination. This would prohibit them from doing so.	The MPR have been amended	The substance of the requested amendments has been adopted.
27.	4.3.1 (c)	Unclear whether the Subscriber should report to ARNECC in the event principals, directors, partners, officers and subscriber administrators have been subject to any of the matters. Furthermore, it is unclear what effect of being subject to any of the matters will have on the Subscriber or their access to the ELNO. Will access be denied by the ELNO or ARNECC.? Can decisions be appealed? And to whom?	None	Eligibility Criteria are reviewed by ELNOs in accordance with MOR 14.1. ARNECC is considering preparing an additional MPR Guidance Note specifically related to Eligibility Criteria.
28.	4.3.1 (c)	1. What constitutes "taking reasonable steps"? 2. What information is available to a Subscriber to satisfy itself that an individual is not subject to the matters listed in Rule 4.3.1(c)? We are not aware of public registers available to make enquiries as to whether individuals are subject to these matters. 3. We suggest limiting the reference to "directors and officers" to only those "directors and officers" authorised by a Subscriber to use the ELN.	The MPR have been amended	1. Refer to Guidance Note #2 – Verification of Identity for guidance on what constitutes taking reasonable steps. 2. The Registrars do not have the regulatory power to publish a register of Subscriber status. Additionally, there are privacy implications that would need to be addressed should such a register ever be published. 3. The substance of the requested amendment has been adopted.
29.	4.3.1 (iv)	Supportive of this inclusion in so far as it does not extend to disciplinary action by the Commissioner for Consumer Affairs that may result in a reprimand, fine or registration conditions. It is requested that ARNECC confirm or provide an undertaking that such actions are precluded from the intent of this clause of the MPR.	None	This wording has remained unchanged. Note the provision is already qualified as it must impact on a Person's conduct of Conveyancing Transactions.
30.	4.3.2	The proposed amendments as currently drafted are not supported. It is requested the wording be modified to address: ▪ Who determines whether there is evidence to the contrary? ▪ Is the onus or burden of proof on a Registrar seeking to terminate a Subscriber? ▪ Should there be a "reasonable steps" defense for Subscribers who have made relevant enquiries on to the matters listed in 4.3.1(a)? and be clear as to how Rule 4.3 is to be tested	The MPR have been amended	The substance of the requested amendments has been adopted. ARNECC is considering preparing an additional MPR Guidance Note specifically related to Eligibility Criteria.

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		Refers to evidence that the Subscriber does not comply. This should be accompanied by an obligation on the Subscriber to supply such evidence to the ELNO.		
31.	4.3.2	A Subscriber that is an ADI is deemed to comply with this rule unless there is evidence to the contrary. However, a wholly owned subsidiary is not an ADI. Would a wholly owned Subsidiary of an ADI be deemed to comply with Rule 4.3.1(a) unless there is evidence to the contrary? Would there be an onus or a burden of proof on a Subscriber to make reasonable enquiries that there is no evidence to the contrary? Would a Subscriber be required to take reasonable steps to make relevant enquiries that it is not subject to the matters listed in Rule 4.3.1(a)? If so, we suggest the wording should read "unless there is evidence that the Subscriber does not comply with Participation Rule 4.3.1(a) after having made reasonable enquiries".	None	A Subscriber should be aware if it has been subject to any of these matters. MPR 4.3.4 has been amended to replace the proviso 'unless there is evidence that the…' with a provision for an ELNO or the Registrar to ask the Subscriber to provide evidence that they have not been subject to any of the matters listed in MPR 4.3.1(a)(i) to (vii) or MPR 4.3.1(b)(i) to (iv) or MPR 4.3.1(c)(i) to (iii) as applicable (see new MPR 4.3.4 and MPR 4.3.5).
32.	4.3.3	Suggest the reference to "director" and "officer" be amended to refer to a "director" or "officer" that has been authorised by a Subscriber to access the ELN. In connection with the changes stating where "there is evidence to the contrary" please refer to our comments above in connection with Rule 4.3.2.	The MPR have been amended	MPR 4.3.3 has been amended.
33.	4.3.3	Drafting amendment	The MPR have been amended	Consequential amendments in light of new definition of Officer.
MPR 4 – Eligibility Criteria – Business Name				
34.	4.5	The proposed amendments as currently drafted are not supported. The use of "Business Unit" is currently permitted by PEXA for complex organisations (such as ADI's) to differentiate between different departments and functions. The use of "Business Unit" should not result in an ADI being required to register the "Business Unit" as a Legal Business Name. The Business Unit name field on the PEXA Subscriber Registration Form is used to allow large organisations to differentiate between departments. Would the proposed Rule 4.5 require an organisation to register multiple Business Unit names currently used in PEXA? It is submitted that this would be overly burdensome.	The MPR have been amended	The purpose of these amendments is to ensure details on the Lodged Registry Instrument or other electronic Document (parties and execution panel) accurately reflect the relevant legal entity. Amendment does not alter ability to use a Business Unit. The NECDS has both options. The Business Name must be registered. Business Unit need not be registered.
35.	4.5	1. Ask that there be a longer time period for implementation of 4.5, at least 6 months, given the change program which will be required for a number of Subscribers. 2. To save protracted discussions with Subscribers, include guidance about what exemptions are contemplated by 4.5 (a), so that an ELNO is not interpreting the law for Subscribers. 3. The Business Name Registration Act 2011 (Cth) (s.18) uses the term 'registered to the entity'. Therefore, the term 'owned by the	The MPR have been amended	1. ELNOs or Subscribers should request a waiver where necessary. 2. A Subscriber should seek its own legal advice as to whether it is exempt by law. 3. MPR 4.5(b) has been amended as suggested. 4. The purpose of these amendments is to ensure details on the Lodged Registry Instrument or other electronic Document (parties and execution panel) accurately reflect the relevant

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		Subscriber' should be replaced by 'registered to the Subscriber', for consistency. 4. System Name is the name 'selected' by the Subscriber to identify it in the ELN. Guidance should clarify whether the Subscriber is entitled to select a name which is neither its name nor its registered business name. Presently the definition implies that the Subscriber may select something else entirely.		legal entity. Amendment does not alter ability to use a Business Unit. The NECDS has both options. The Business Name must be registered. Business Unit need not be registered.
MPR 5.6 – The Role of Subscribers – Subscriber as Attorney (Deleted)				
36.	5.6	The removal of these provisions is understandable.	None	Feedback noted.
37.	5.6, 6.3.2, 6.4 (c), 6.5.1 (f), 6.6 (f), 7.10.2, Schedule 3 – Rule 7	The proposed amendments to remove are not supported. There is a concern that its removal will reduce the ability for financial institutions to change their operating model to insource settlement processing for other entities. Limiting this capability will potentially impact future mergers and/or acquisition from transacting electronically and instead via paper. Deletion of Participation Rule 5.6 is likely to have a significant administrative and cost impact on for a number of our clients. We support the deferral of this proposed deletion to allow any inconvenience and cost implication to be further explored with the affected parties. Opposed to removing Subscriber as Attorney provisions due to the continuing cost and impact to the business. There is a potential "technology light" solution which could involve a 'Principle/Donor" subscription model utilising current provisions and technology that exists for representative subscription which would be supplemented with manual auditing and controls by the ELNO and Subscriber. Do not agree the Subscriber as Attorney provisions be permanently abolished without replacement provisions. Presently the PR framework caters only for principals acting in their own rights, or representatives (only lawyers or conveyancers) acting under CAF and with VOI. With some states approaching 100% digital enablement, it is essential that framework and/or functionality support a number of use cases (whether common or not). A less complex approach should be sought (from a technology perspective) so that bespoke transacting arrangements can be flexibly supported as they arise. It is recommended a consultation group be established to identify the problem to be solved and consider more flexible solutions, so that the framework is able to cater to bespoke arrangements as they arise.	None	Due to the complex technical implementation requirements and priorities for Land Registries the Subscriber as Attorney provisions will be removed. ARNECC would welcome and consider submissions that outline alternative options that comply with each jurisdiction's legislation including its Land Titles Legislation.

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MRP 6 – General Obligations – Client Authorisation				
38.	6.3	Confirm that a Subscriber need only verify the identity of a Client or Client agent at the time a CAF is signed. For institutional Clients, it is common practice for a Subscriber to hold a standing CAF, but to receive instructions on specific matters from various Client employees (some of whom may not hold any formal power of attorney, but who are authorised to do so under to the retainer agreement between the Client and the Subscriber). Further, PR6.3 should make it clear that a CAF need only reflect the requirements at the time it is signed (otherwise standing CAFs would become redundant).	The MPR have been amended	Refer to further amendments made to MPR 6.5.4.
39.	6.3	It is unclear what "substantial compliance" means. It is proposed that no change is made to clause 6.3. It is unclear what 'substantial compliance' is intended to mean in 6.3 (a). Are Subscribers permitted now to amend provisions in the Client Authorisation Form? Please clarify or provide guidance.	None	Refer to MPR Guidance Note #1 – Client Authorisation for guidance on what is meant by substantial compliance.
40.	6.3	It is suggested that the matters set out in the Guidance Note 1 - Client Authorisation be incorporated into PR6.3 as follows: "... For the purpose of this clause 6.3(a), 'substantial compliance' with the form set out in Schedule 4 means that slight variations in the format or style of the Client Authorisation are permitted but there must be no change to the words. Neither the layout of the form nor its terms can be altered from that prescribed. For further guidance on the meaning of 'substantial compliance', please see MPR Guidance Note #1 - Client Authorisation (updated February 2019) ...." *Rationale for the changes:* These changes would ensure that there are no changes to the Privacy Collection Statements and thus recipients of the information and Clients would have clarity of the agreed uses.	None	Refer to clause 11 of Schedule 1 of the ECNL. It is appropriate for this information to be retained in the MPR Guidance Note #1 – Client Authorisation.
41.	6.3 (a)	PR6.3(a) should be modified to make it clear that Client Authorisations substantially in the form specified by the Participation Rules at the time the Client Authorisations were executed remain valid and do not need to be replaced. Would the deletion of the definition "Client Authorisation – Representative" and the inclusion of new amendments to the Client Authorisation Form (as set out in Schedule 4 of the MPR) require financial institutions to re-execute existing Client Authorisation Forms that are "substantially" in the same form as the Client Authorisation Form as set out in Schedule 4 of the MPR? For standing CAFs, the amendment appears to require the Subscriber to obtain a new client authorisation form (CAF) from the	The MPR have been amended	The substance of the requested amendments has been adopted. The amendments were not intended to require Subscribers who are acting under a current valid Client Authorisation to enter into new Client Authorisations which align with the new version.

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		relevant client whenever the form of CAF attached to the Model Participation Rules changes. If this is what is intended, it would reduce the utility of obtaining standing CAFs. If it is not what is intended, please amend the wording so that this is clear. For example, the rule could read: *"use a form in substantial compliance with the form set out in Schedule 4 at the time the Client Authorisation is entered into, ~~as amended from time to time~~ for any Client Authorisation it enters into".*		
42.	6.3 (a)	1. Subscribers should be required to use the Form as it is set out in Schedule 4 of the MPRs, rather than invite variations to this document by allowing Subscribers to use a form in "substantial compliance" with the Form. If the proposed change is intended to allow flexibility around formatting and layout of the Form alone then we don't believe that the words "substantial compliance" make this sufficiently clear. Accordingly, it is submitted that section 6.3(a) of the MPRs be amended to reverse the proposed changes and that the wording from Version 5 be retained: "... use ~~a form in substantial compliance with the form set out in Schedule 4, as amended from time to time~~ the Client Authorisation - Representative for any Client Authorisation it enters into... " 2. The definition for the term Client Authorisation - Representative should be reinstated and amended as follows: "Client Authorisation - Representative means a Client Authorisation between a Client and a Representative in ~~a form in substantial compliance with~~ the form set out in Schedule 4, as amended from time to time.	None	1. Refer clause 11 of Schedule 1 of the Electronic Conveyancing National Law (ECNL). Refer to MPR Guidance Note #1 – Client Authorisation for guidance on what is meant by substantial compliance. 2. Definition removed as there are no longer two types of Client Authorisations to distinguish between.
43.	6.3 (f)	In relation to Caveats, Priority Notices and extensions or withdrawals of Priority Notices that are signed by Clients that are corporations to which the Corporations Act 2001 (Cth) applies, and provided the relevant documents are executed in accordance with the requirements of s.127 of the Act, a Subscriber currently relies on the 'indoor management rule' statutory assumptions available under the Act and does not make further enquiries or take further actions to verify authority. It is requested ARNECC make clear whether Subscribers can continue to rely on the "indoor management rule".	None	A Subscriber should seek its own legal advice as to whether it can rely on the indoor management rule.
MPR 6 – General Obligations – Right to Deal				
44.	6.4	ARNECC should be more prescriptive and provide clearer guidance as to the meaning and requirements around the "Right to Deal".	None	Refer to MPR Guidance Note #4 – Right to Deal. This is a matter of prudent conveyancing practice and depends on the circumstances of an individual case.

#	Rule	Stakeholder Feedback	Action Taken	ARNECC Response
MPR 6 – General Obligations – Verification of Identity				
45.	6.5	Clarity is required around the use of an Identity Verifier and the requirement to VOI the Identity Verifier. If there is an instance where an Identity Verifier is used, what is the expectation to store and later evidence the VOI?	None	An Identity Verifier is the person who conducts a verification of identity in accordance with the Schedule 8 Verification of Identity Standard (e.g. a Subscriber). There is no separate requirement to verify the identity of the Identity Verifier. However, if they are a User (including Signers and Subscriber Administrators) they will need to have had their identity verified in compliance with MPR 6.5.1(d), (e) or (f). If the Identity Verifier is an Identity Agent or other agent, the Subscriber will need to assess whether it is appropriate to verify their identity as part of their due diligence in appointing the Identity Agent or agent. Identity Declarants as defined in the Verification of Identity Standard must have their identity verified at the same face to face interview the Person Being Identified attends.
46.	6.5	The proposed changes require a transferee mortgagee to verify the identity of the mortgagor. The mortgagor would not usually be a party to the transaction between the assignor and the assignee. Whilst securitisation typically relies on equitable rather than legal assignment of mortgage, we are concerned that the change will make debt book sales or other legal assignments of mortgages impossible to implement, and may have unintended consequences in the securitisation market also, which in turn could adversely impact business models of non-bank lenders.	The MPR have been amended	MPR 6.5.1 (b) has been amended. Subscribers must comply with jurisdictional laws.
47.	6.5	Confirm whether a Subscriber who attempts to apply the VOI Standard but fails (eg due to fraudulent documents or lack of familiarity with documents issued outside the Subscriber's jurisdiction) would commit a Suspension Event or a Termination Event.	None	The deeming provisions apply if the VOI Standard has been complied with, including paragraph 10 if further checks are reasonably considered necessary.
48.	6.5	Seeks ARNECCs consideration for the inclusion of properly accredited dVOI solutions as a "safe harbor" alternative to face-to-face VOI.	None	ARNECC has been engaging with, and will continue to engage with, the Commonwealth Digital Transformation Agency. The ARNECC position statement relating to digital verification of identity provides additional information.
49.	6.5	Better confirmation and explanation to lawyers, subscribers and mortgagees of the issue around the validity of VOIs for a 2-year period is required. Existing VOI documentation was provided to a bank, however, they would not accept them as they said the VOI had to have their name on it. What is the point of having the VOIs valid for a two-year period, if banks won't accept them?	None	A Subscriber must undertake verification of identity itself or through its own Identity Agent or other agent. It appears that the bank was being asked to accept a verification of identity undertaken by someone else. Each Subscriber needs to satisfy itself that it has complied with its obligations.

#	Rule	Stakeholder Feedback	Action Taken	ARNECC Response
				The two-year period only applies to verification of identity undertaken by a particular Subscriber within the previous two years.
50.	6.5	6.5.1 (b) - Variation of Mortgage is not currently a residual document type in Victoria. Is this MPR requirement indicative of an intended residual document type? Presently, VOI certification is not required for transfer of mortgage in three jurisdictions.	None	No certification is required as to the verification of the mortgagor's identity as this is covered by the Correctness certification.
51.	6.5	All securitised mortgages need to be capable of transfer at any point in time. With the proposed changes, it appears that VOI would need to be redone when the mortgages are transferred which is not necessarily practical or achievable.	The MPR have been amended	MPR 6.5.1 (b) has been amended. The rule now requires Subscribers to ensure the transferee mortgagee has complied with the requirements under the Land Titles Legislation or any Prescribed Requirements of the jurisdiction in which the land the subject of the Conveyancing Transaction is situated.
52.	6.5 & 7.5	SRO's are required to use an ELNO to lodge and remove government charges and caveats on title. The new requirements for VOI appear to indicate that a retrospective VOI would be required. Does this imply that SRO's must recheck existing staff digital certificate holders?	None	The obligation in relation to verifying the identity of Signers is specified in MPR 6.5.1(d) and has remained unchanged. There is no need to re-verify Signers as they are identified once only, prior to the initial allocation of their Digital Certificate.
53.	6.5.1 (1) (b) (iii) and (iv), 6.5.2 (c) and Schedule 1	With the exception of the special rules for South Australia set out in Schedule 1, the proposed amendments to the MPR do not permit a transferee mortgagee to rely on a VOI conducted by the original mortgagee even where the transferee mortgagee has taken reasonable steps to confirm that the original mortgagee undertook a VOI of the mortgagor. This is unsatisfactory for the following reasons: It is inconsistent with the current position in Victoria and Queensland, which currently permit the transferee mortgagee to satisfy its VOI (and in the case of Victoria, verification of authority (VOA)) obligations by confirming that the original mortgagee took steps consistent with those obligations. ▪ It is impractical for institutions who wish to purchase some or all of another financial institution's mortgage book. They will be unable to do so unless they can locate the mortgagor and persuade them to undergo VOI again. It is unrealistic to expect a transferee mortgagee to compel the mortgagor to re-submit to a VOI check in circumstances in which the original mortgagee decides (without any involvement by the mortgagor) to transfer an existing mortgage. We regularly act for financial institutions who purchase debt and the underlying mortgage security from another financial institutions and the mortgagor is never party to the transaction. ▪ It endangers the Australian securitisation market because the reference to "transfer" in the new rules could be understood to	The MPR have been amended	MPR 6.5.1 (b) has been amended. The rule now requires Subscribers to ensure the transferee mortgagee has complied with the requirements under the Land Titles Legislation or any Prescribed Requirements of the jurisdiction in which the land the subject of the Conveyancing Transaction is situated. Transitional arrangements in relation to mortgages executed prior to verification of identity obligations applying to mortgagees in the relevant jurisdiction are governed by each jurisdiction's legislation. The MPRs only apply to Registry Instruments and other documents lodged electronically for registration, not other arrangements such as equitable transfers.

#	Rule	Stakeholder Feedback	Action Taken	ARNECC Response
		include an equitable or legal assignment. In a securitisation transaction, a pool of mortgages is usually transferred from the original mortgagee to a securitisation special purpose vehicle (SPV) by way of equitable assignment. No notice is given to the mortgagors, who continue to make all payments to, and deal solely with, the original mortgagee/lender. It is unrealistic to expect the transferee mortgagee (which is a SPV) to verify the identity of the mortgagors, who usually do not know that their loan have been sold. In addition, each VOI could constitute the giving of notice under s 12 of the Conveyancing Act 1919 (NSW) and the equivalent acts in other jurisdictions, which would result in a legal assignment of the relevant mortgage. The relevant borrower would then be required to make payments to the SPV, and the SPV would need to be recorded as the mortgagee on the relevant titles register. This would be costly and administratively burdensome. ▪ New rule 6.5.2(c) (see item 2.4 below) does not provide enough certainty for transferee mortgagees as to whether they can rely on the original mortgagee's VOI. ▪ The new rules make no allowance for mortgages that were entered into before mortgagees were required to VOI the mortgagor. We do not believe that the security and integrity of the Australian land title registers would be enhanced by having a blanket rule requiring a transferee mortgagee or its Subscriber representative to conduct VOI on the mortgagor. Accordingly, it is submitted that new rules 6.5(1)(b)(iii) and (iv) should be deleted. If new rules 6.5(1)(b)(iii) and (iv) are not deleted, it is submitted that the proposed position in South Australia should apply to all jurisdictions but be amended to permit the transferee mortgagee (or its Subscriber representative) to conduct VOI itself if it is unable to reasonably satisfy itself that the original mortgagee had done so. This would align with the current position in Victoria and Queensland. In addition, there should be carve outs so that: ▪ the transferee mortgagee is not required to conduct VOI or confirm that the original mortgagee had done so in circumstances where the original mortgage was entered into prior to a VOI obligation applying to mortgagees in the relevant jurisdiction; and ▪ the VOI obligation does not apply to equitable or legal assignments in the context of securitisations. Finally, the transferee mortgagee should have the option to conduct VOI either by applying the VOI Standard or by taking other reasonable steps, as pe7r the proposed new rule 6.5.2(c).		

#	Rule	Stakeholder Feedback	Action Taken	ARNECC Response
54.	6.5.1 (b)	This is an onerous requirement to VOI each mortgagor on an amendment, variation or transfer of a mortgage and will not enhance the security or integrity of the transaction. It is requested that the requirement for VOI to be undertaken for each mortgagor on an amendment, variation or transfer of a mortgage be removed. The proposed amendments to this rule are unworkable and would have a significant impact for subscribers and mortgagees: ▪ A transfer of mortgage in a loan book sale/ securitisation does not involve the mortgagor signing anything nor any communication with that party. ▪ In a distressed debt sale a mortgagee would ordinarily have the ability transfer its mortgage without the consent of the mortgagor (particularly in scenarios where such consent or other assistance from the mortgagor would not be forthcoming). It is submitted that amendments to expand the VOI regime to capture transfer of mortgage transactions needs further consultation with the banking industry.	The MPR have been amended	MPR 6.5.1 (b) has been amended. The rule now requires Subscribers to ensure the transferee mortgagee has complied with the requirements under the Land Titles Legislation or any Prescribed Requirements of the jurisdiction in which the land the subject of the Conveyancing Transaction is situated.
55.	6.5.1 (b) (ii)	We suggest several options to mitigate the adverse consequences. 2) Amend the rules because an Identity Agent is defined as a 'Person'. 'Person' is defined as having the meaning in the ECNL. The ECNL contains no definition of 'Person'. It is important that there is no doubt that the appointment of companies is sufficient to authorise their employees, contractors and representatives to act as Identity Agents.	None	'Person' is defined in Part 3 of Schedule 1 of the ECNL as: 'person includes an individual or body politic or corporate.'
56.	6.5.1 (b) (ii), (iii) and (iv)	Provides that for a transfer of mortgage, VOI must be conducted in respect of each mortgagor on a transfer of mortgage. We oppose this change and support the current regime in South Australia. Implementation would have a major detrimental commercial consequence. Sale of mortgage books would become practically impossible due to the need to VOI mortgagors again. This may have a material adverse effect on securitisation, seriously increasing the cost and reducing the availability of mortgage finance to Australians. If the changes introducing the new VOI Rules are made, they should not apply in respect of either an equitable or legal assignment of mortgages in the context of securitisation and covered bond transactions (including residential and commercial mortgages) if the relevant verification was undertaken by or on behalf of the lender of record at origination. With the exception of the special rules for SA in Schedule 1, the proposed amendments do not permit a transferee mortgagee to rely on a VOI conducted by the original mortgagee even where the transferee mortgagee has taken reasonable steps to confirm that the original mortgagee undertook a VOI of the mortgagor. The word "transfer" is broad and is typically understood to mean an equitable or a legal assignment. The primary method of	The MPR have been amended	MPR 6.5.1 (b) has been amended. The rule now requires Subscribers to ensure the transferee mortgagee has complied with the requirements under the Land Titles Legislation or any Prescribed Requirements of the jurisdiction in which the land the subject of the Conveyancing Transaction is situated. In relation to the query regarding the definition of an amendment or variation of the mortgage, the terminology and definitions will differ in individual jurisdictions.

#	Rule	Stakeholder Feedback	Action Taken	ARNECC Response
		transferring mortgages to a securitisation or covered bond SPV is by way of equitable assignment (as distinct from a legal assignment) which means that no notice is given to the mortgagors. This helps to facilitate efficient bulk transfers of assets such as mortgages and reduces overall costs. It also means that the mortgagor can continue to make all payments to, and have all relevant dealings with, the transferor lender and not have to deal with the SPV. Such transfers may be done on a closed pool basis, for term securitisation transactions, or on a revolving basis where there is a securitisation warehouse or a covered bond transaction. The new VOI Rules, however, are likely to have material adverse consequences for the securitisation and covered bond markets. Critical to investors in securitisations and covered bonds is the ability to perfect title to the mortgages in the event of mortgage lender insolvency (i.e. a title perfection event). The delay that would be imposed by having to comply with the new VOI Rules in the context of effecting a legal assignment where the assignee has no relationship with the underlying mortgagor would be an adverse credit risk for relevant investors. It would therefore not be practically feasible to satisfy the proposed VOI requirements due to significant operational overheads and complexity. If applied to assignment of mortgages in a securitisation or covered bond context, would materially adversely affect the wholesale capital markets funding that banks and other lenders currently access for their mortgage lending activities in Australia. Mortgage backed security are an important source of funding for banks and other lenders. The proposed rules are likely to have material adverse consequences for the securitization market. No commentary or reasons have been provided explaining the differences application in South Australia. PR6.5.1(b)(iii) and 6.5.1(b)(iv) are opposed. If rejected, it is requested that the rules in South Australia reflect the position across Australia. The proposed modifications to require the verification of the identity of mortgagors when mortgages are being transferred is strongly opposed. A transfer of mortgage is a transaction only involving the transferor and transferee; the mortgagor is not a party to the transaction. Complying with this requirement would pose considerable practical Difficulties. We are aware that there are existing requirements to this effect in some jurisdictions, but these requirements should not be extended to all participating jurisdictions. Clarification is sought on the following: ▪ Why does the mortgagor's identity need to be rechecked where the mortgage has already been registered? ▪ Why in the case of a transfer of mortgage (i.e., paragraphs (b)(iii) and (b)(iv)), a Subscriber can either apply the VOI Standard or verify in some other way that constitutes the taking		

#	Rule	Stakeholder Feedback	Action Taken	ARNECC Response
		of reasonable steps? ▪ Why is the option to conduct VOI in "some other way" available for a transfer of mortgage – but not for a mortgage or an amendment or a variation of a mortgage? ▪ What is the definition of an amendment or variation of the mortgage? The proposed modifications to require the verification of the identity of mortgagors when mortgages are being transferred is strongly opposed. It appears ARNECC has not taken into account the effects this rule may have on the Australian securitisation market which is an important source of funding for Australian banks and non-bank lenders. This new identification requirement would make the completion of a bulk transfer extremely difficult. This may in turn require a restructuring of standard securitisation documentation with consequences for the Australian mortgage securitisation market.		
57.	6.5.1 (f)	Unclear why ARNECC are overreaching into the practicalities of how directors and licensees manage their staff and how they operate their agencies. Is the new measure warranted as an added security measure? What is the purpose of this proposed amendment? The definition of "Users" is very broad and would capture all individuals are authorised by a Subscriber to 7.2.1access the ELN. Who are 'Other Users'? It is submitted that this new rule should be deleted. It creates a disproportionate administrative burden, particularly for large organisations with many users, for example large law firms and financial institutions. The rule is unnecessary as Users cannot sign documents themselves. Workspace documents must always be signed by Signers, whom Subscribers already have an obligation to VOI. As Signers are personally responsible for the documents they sign there would be little benefit in VOIing other Users. It is requested that the requirement to conduct safe harbour VOIs on all Users is removed and retained only for DSC holders.	None	The inclusion of all Users was recommended by the independent assessment of cyber security requirements. Amendments made to MPR 6.5.1(f) to clarify 'Other Users'.
58.	6.5.4	Clarification sought that VOI checks on Users are only necessary when on-boarding Users, i.e. not redone every 2 years. Amend to make it clear that the two-year lifespan of VOIs applies only to clients, not VOIs for DSC holders or Users.	The MPR have been amended	There is no requirement to verify the identity of Signers, Subscriber Administrators or Other Users again after they have had the identity verified in accordance with MPR 6.5.1(d), (e) or (f) so that means: i) for a Signer before being given their Digital Certificate ii) for a Subscriber Administrator before being appointed as a Subscriber Administrator iii) for other Users before accessing an ELN.

#	Rule	Stakeholder Feedback	Action Taken	ARNECC Response
59.	6.5.4	Drafting amendment	The MPR have been amended	Amendment to clarify that a Subscriber is not required to re-verify the identity of their Client (or a Client Agent) every two years where they are acting under a current Client Authorisation and complied with the verification of identity requirements in MPR 6.5.1(a) prior to acting for that Client in the ELN.
60.	6.5.5	Another area of concern is the use of third party settlement agents. As mandating of electronic conveyancing has evolved, these e-settlement Subscribers have emerged and we have received evidence of these people relying on the VOI carried out by the Instructing Subscriber instead of undertaking a separate VOI of the client themselves.	None	Refer to Guidance Query #7 – Guidance to e-settlement subscribers and their instructing practitioners. The instructing practitioner could be appointed as an Identity Agent or other agent of the e-settlement Subscriber.
61.	6.13.1 (b) & (d)	Drafting amendment	The MPR have been amended	Consequential amendments in light of the new requirement in MPR 6.5.1(b)(iii) relating to transfers of mortgages. Amendment requires the transferee mortgagee to hold the 'same terms' mortgage granted by the mortgagor. The transferee mortgagee may be required to produce the 'same terms' mortgage if selected for a Compliance Examination.
MPR 7 – System Security and Integrity - Users				
62.	7.2	Compulsory training in cyber-security awareness is essential and should be included as a component of licensing or continual professional development requirements. However, request clarity around the measures that will be put in place to monitor and audit the compliance with this requirement (if not attached to registration renewal) as well as expectations around how often it is expected conveyancers will undertake this training	None	Feedback noted. An ELNO monitors compliance as part of its Subscriber Review Process. The Registrars review this process and any amendments to it annually.
63.	7.2	1. Remove 7.2.3 (a) as it is unclear why it sets out a requirement to comply with Participation Rules in 6.5.1. The Subscriber must comply with all Participation Rules. 2. Remove "secure use of email". Email is inherently insecure. It is not possible to provide training on secure use of email. ARNECC should clarify its intention and update these provisions accordingly. Is ARNECC concerned with ways to secure an email account or with the use of email to send information? 3. Make requirements relating to Users in 7.2.3 applicable only to those Users who conduct conveyancing transactions and not those with 'read-only' or 'tracking' access. 4. Make the deeming provisions in 7.2.4 applicable to 7.2.3 (c) as well.	The MPR have been amended	1. MPR 7.2.3 (a) has been removed as suggested. 2. The revised MPR recognises that email is inherently insecure and requires specific training covering how to use email securely. 3. No change. Anyone accessing the ELN is a potential security risk. 4. MPR 7.2.3 has been amended to limit the requirement to Signers and Subscriber Administrators and to an upfront requirement without a need to undertake a check every three years.
64.	7.2	It is extremely onerous to undertake police checks for each User every 3 years and will be a cost exercise for firms with a large number of Users. New clause 7.2.3 (c) should not be introduced. However, if it is to remain, it is considered that the deeming provision in clause 7.2.4 should apply to both clauses 7.2.3 (b) and	The MPR have been amended	MPR 7.2.3 has been amended to limit the requirement to Signers and Subscriber Administrators and to an upfront requirement without a need to undertake a check every three years.

#	Rule	Stakeholder Feedback	Action Taken	ARNECC Response
		(c) not only to 7.2.3 (b). Given the standards that must be satisfied for a practicing certificate to be issued, it is considered that clause 7.2.3 (c) should also be included in the deeming clause 7.2.4.		
65.	7.2.1	As this requirement currently stands, onboarding of all new staff would need to be restructured so that almost the first thing they receive is cyber security awareness training. ADI's already conduct multiple cyber-security awareness training modules. Is there an assurance that this is sufficient? Clarity is sought as to what level of cyber security training is required and recommends this requirement be modified to allow reasonable time for new staff to receive training.	The MPR have been amended	No change to MPR 7.2.1 (b) as the requirement relates to when the Person becomes a User. MPR 7.2.1(c) has been amended.
66.	7.2.1	1. We welcome the introduction of 7.2.1. Whilst this imposes on all subscribers and users an additional training cost we believe it is reasonable to protect both the integrity of the conveyancing system but also the conveyancer's own business. 2. However, it is requested ARNECC consider introducing as a requirement in the MOR that each ELNO would have a mandatory training module that all subscribers and users need to complete every 2 years. This would ensure a consistent and uniform approach to the content of such cyber security training as well as a method to ensure compliance with the MPR.	None	1. Feedback noted. 2. Refer to MOR 14.6(b) relating to Subscribers and Users. It is for an ELNO to decide how frequently the training needs to be undertaken.
67.	7.2.1	In paragraph (c), any reference to "directors, officers, employees" would only be relevant to individuals authorised by the Subscriber to access the ELN, not every director or employee.	None	Amendment intended to cover all individuals as specified.
68.	7.2.1 (b) and (c)	The enhanced cyber security and awareness requirements are supported. Clarification as to what the minimum standards needed to be achieved would be beneficial for practitioners, along with guidance as to a "grace period" for implementation. An effective solution would be to appoint the AIC in each jurisdiction, or Law Society, as the approved training body. Provide guidance on what ARNECC would consider adequate training. Are internal cyber security sessions sufficient or more formal external training? Is training at the time of initial User on-boarding sufficient or ongoing periodic training? Unclear why ARNECC are overreaching into the practicalities of how directors and licensees manage their staff and how they operate their agencies. The requirement for ensuing "cyber security awareness training" raises numerous questions: · Does ARNECC approve/accredit the training provider? · Does ARNECC approve/accredit the training material? · How often should training occur? · Will ARNECC require the issuing of a "completion certificate" for audit and compliance purposes? · Will ARNECC deliver the training? · Will ARNECC fund the training for subscribers?	None	The ELNOs are required to make adequate training resources and information available in relation to the use of their ELN with the intention that Subscribers and Users may understand their security obligations.

#	Rule	Stakeholder Feedback	Action Taken	ARNECC Response
		In the absence of explanatory notes, difficult to comprehend the objectives and practicalities of "cyber security awareness training:, however, supportive of the conveyancing profession and Subscribers maintaining training in cyber security awareness.		
69.	7.2.1(c)	Drafting amendment	The MPR have been amended	Consequential amendment in light of new definition of Officer.
70.	7.2.1 (c)	The reference to "directors, officers, employees etc." is too broad. It is recommended this reference be narrowed down to those individuals who are authorised by the Subscriber to have access to the ELN, not every director or employee.	None	Amendment intended to cover all individuals as specified.
71.	7.2.1 (c)	Given the practicalities of how training is to be established and delivered, both concerned and disappointed that ARNECC/ARWG has not undertaken industry consultation prior to the draft of Rule 7.2.1 (c).	None	Feedback was sought during the consultation process relating to the Consultation Drafts for MPR Version 6.
72.	7.2.1 (c)	Enhanced requirements that all users accessing the Subscriber's system must have received cyber security awareness training, is welcomed and acknowledgement by Subscribers that they understand an ELNO's security policy. Also, the introduction of police background checks every 3 years for Users who access the Subscriber's system is a sensible precaution.	None	Feedback noted. However, please note these rules have been further refined in light of Stakeholder Feedback.
73.	7.2.2 (b) and (c), 7.5.5, 7.7	Agree with these proposed changes. Digital certificates play a significant role and form a crucial part of digital infrastructure. As such, the safety and security of digital certificates is paramount. ARNECC is praised for highlighting and focusing on security and data accuracy, and the proposed changes in relation to the security of digital certificates, cyber security training, and accuracy of data is welcomed.	None	Feedback noted.
74.	7.2.3	The definition of "Insolvency Event" is too broad. Either: the reference to "Insolvency Events" should be removed; or the wording should be narrowed to only preclude the employment of undischarged bankrupts. It is requested that ARNECC in a second round of consultation publish the revised draft rules such that it narrows down the definition of insolvency events.	The MPR have been amended	The definition of Insolvency Event has been amended to exclude temporary postponement of debt.
75.	7.2.3	As with other proposed changes, the introduction of this process adds another compliance obligation and cost to the practitioner. It is also not supported by evidence that the current absence of a police check compliance requirement has introduced additional risk to the econveyancing system that would be mitigated by the new process. As with the proposed changes to VOI this change will be a significant compliance burden for all financial institutions in the system. This proposed change is not supported.	The MPR have been amended	MPR 7.2.3 has been amended to limit the requirement to Signers and Subscriber Administrators and to an upfront requirement without a need to undertake a check every three years.

#	Rule	Stakeholder Feedback	Action Taken	ARNECC Response
76.	7.2.3	What constitutes "taking reasonable steps" to check whether a User is subject to any current restrictions to access an ELN (in any Jurisdiction) given that there is no central public register on the ELN or ARNECC? Rule 7.2.3(c) requires conducting a police check for each of its Users (ie, principal, officer, director, employee, agent or contractor that is authorised to access and use the ELN) every three years. Would this apply to all on-shore and off-shore staff authorised to access and use the ELN? Would this apply where a User is a registered Australian Legal Practitioner?	None	ARNECC may include some guidance on reasonable steps in a Guidance Note. However, reasonable steps will depend on the circumstances of an individual case.
77.	7.2.3	The proposed amendments do not clarify what constitutes a police background check, nor what jurisdiction the check should come from. The lack of clarity will make the clause very difficult for Subscribers to comply with.	None	ARNECC may include additional information in a Guidance Note. It will depend on where the User is located, i.e. if in Australia ARNECC would expect a national police check to be undertaken.
78.	7.2.3	Does this requirement apply retrospectively?	None	The MPRs take effect prospectively.
79.	7.2.3 (b)	Unclear why ARNECC are overreaching into the practicalities of how directors and licensees manage their staff and how they operate their agencies. The requirement for taking reasonable steps to ensure that the "User" is not or has not been subject to the various indiscretions under Rule 7.2.3 (b) raises numerous questions: ▪ Are subscribers required to report to ARNECC in the event a "User" has been subject to 7.2.3 (b)? ▪ Can or will ARNECC instruct an ELNO to reject the "User" from progressing to become a subscriber? ▪ What are the penalties to be handed down by ARNECC for a false declaration by a user to a subscriber? ▪ What are the penalties to be handed down by ARNECC for a subscriber permitting a user who has been subject to Rule 7.2.3 (b) progress toward being a subscriber? ▪ Are appeals and objections to be handled by ARNECC or by another authority?	None	To ensure the integrity and security of both the ELN and the Titles Register it is important to have robust good character requirements for all Users. There are no reporting requirements. A material breach of the Participation Rules is a Suspension or Termination Event.
80.	7.2.3 (b) and 7.2.4, (replacing existing rule 7.4)	We have no objection to this change in principle. However, it is unclear whether the requirement would apply retrospectively to existing Users. This should be clarified.	None	The MPRs take effect prospectively.
81.	7.2.3 (c)	The proposed amendments as currently drafted are not supported. The requirement for on-going police checks is too broad and unnecessary in an environment with multiple controls and segregation of duties. It is submitted these checks not be required for ADI's and their subsidiaries where controls and monitoring can be evidenced. Should this requirement however be retained, it is recommended that the scope be narrowed as per existing rules to apply only to PEXA Users that hold a digital certificate. Query the reason for the inclusion of a Police Check every three years. Given the strict requirements that must be provided to the	The MPR have been amended	MPR 7.2.3 has been amended to limit the requirement to Signers and Subscriber Administrators and to an upfront requirement without a need to undertake a check every three years. ARNECC may include additional information in a Guidance Note. It will depend on where the User is located, i.e. if in Australia ARNECC would expect a national police check to be undertaken.

#	Rule	Stakeholder Feedback	Action Taken	ARNECC Response
		Commissioner for Consumer Affairs, the inclusion of a Police Check appears to add cost and complexity to small business owners and employees unnecessarily. It is recommended ARNECC speak with licensing bodies in each jurisdiction to ensure consistency and where required, to strengthen the licensing laws rather than impose an additional requirement under the MPR. The requirement for Subscribers to undertake police checks of Users every 3 years is simply not workable for large organisations. Aside from the lack of clarity in the drafting (how and where does the check need to be conducted?) in many cases, employers will have no right under employment contracts or awards to regularly undertake such checks absent evidence that there is an issue. That requirement should not apply to the classes of users identified in PR7.2.4. No objection to strengthening the eligibility criteria, however, the following would be useful: ▪ Clarity as to the type of Police Check in addition to the nature of what offences constitute not being of good character ▪ Clarity as to the jurisdiction of the Police Check, e.g. conducted in the jurisdiction the individual currently resides or a national police check to capture prior convictions in a prior State of residence ▪ How long these records should be stored. This requirement is particularly onerous and unjustifiable: - legal practitioners cannot be registered if they have been subject to a conviction of fraud or an indictable offence - the costs are substantial and there is a substantial added administrative burden - there are both state and federal police background checks - which would apply, particularly where Users in national Subscribers act across multiple borders? Overseas police background checks can also take substantial time. It is requested that the requirement for police background checks of all Users be removed.		
82.	7.2.3 (c)	The necessity to conduct a police background check for each user (non lawyer or licensed conveyancer) every 3 years is an excessive precaution given users have no signing rights and workspaces are required to be signed off by lawyers or licensed conveyancers. We believe that a police check upon employment engagement and/or when a user is enabled to an ELN would be sufficient. At this point to attend to this every 3 years would be a significant financial burden for practices with 2 or more users. This requirement imposes an unnecessary administrative and costly burden on subscribers, particularly those with 100+ users. Most	The MPR have been amended	MPR 7.2.3 has been amended to limit the requirement to Signers and Subscriber Administrators and to an upfront requirement without a need to undertake a check every three years.

#	Rule	Stakeholder Feedback	Action Taken	ARNECC Response
		users are legal practitioners and already have to confirm solvency/ fraud status annually to their respective law society which is already recognised by the current MPR 'deemed compliance' provisions (rule 4.3.3 and new rule 7.2.4). The scope of the police check is undefined and provides no guidance on how far back the search must go (e.g. 5 / 10 years?), or cover situations where a user has lived overseas in recent years. Overseas searches are very costly and can take a long time (e.g. Japan may take up to 2 years). At a minimum there should be an exception to this rule for Australian Legal Practitioners or Licenced Conveyancers, who cannot hold a practising certificate if they have any kind of conviction for dishonesty. This could be achieved by extending the exception in rule 7.2.4 to rule 7.2.3(c). If Australian Legal Practitioners and Licenced Conveyancers are not excepted from this rule there will be an onerous and unnecessary administrative burden on law firms. This burden will disproportionately affect large law firms with large numbers of PEXA Users.		
83.	7.2.4	This rule creates an exception where a User is a legal practitioner; they are deemed to comply with Rule 7.2.3(b) unless there is evidence to the contrary. Will ARNECC consider expanding these exceptions to Bank Managers (as defined in Schedule 8) and Directors of a Subscriber?	The MPR have been amended	The substance of the requested amendment has been adopted.
84.	7.2.4	There are concerns regarding the practicalities of compliance such as: 1. Are “Users” who have their licence “on hold” deemed to have complied with Rule 7.2.3 (b)? 2. Are “Users” who are licensed in a different jurisdiction deemed to have complied with Rule 7.2.3 (b)? 3. Should subscribers satisfy themselves of the “Users” status and being licensed by undertaking a check with the relevant Regulator responsible for licensing?	None	1. It is not clear how a person with a licence ‘on hold’ can be deemed to comply. 2. The deeming provision relates to the jurisdiction in which the land is situated. 3. Proof should be obtained from the User.
85.	7.2.4(e) and 7.2.4 (f)	Drafting amendment	The MPR have been amended	Consequential amendment in light of new definition of Officer.
MPR 7 – System Security and Integrity – Digital Certificates				
86.	7.5.2	The proposal to maintain at least one Digital Certificate will only be relevant where there is only one ELNO (eg, PEXA). What happens when Sympli becomes a mainstream ELNO, competing with PEXA? An organisation will be required to maintain Digital Certificates in respect of the ELNO that it wishes to use going forward. An organisation should only be required to maintain Digital Certificates to the extent it is required to transact with an ELNO.	None	Refer amended MOR 7.6.3 requiring ELNOs to accept open Digital Certificates. This means only one open Digital Certificate would need to be obtained.
87.	7.5.5	It is recommended that the obligations and rules imposed on Subscriber should be no more onerous that the existing processes	None	Clarification is required as to what is being suggested.

#	Rule	Stakeholder Feedback	Action Taken	ARNECC Response
		and protocols adopted by ADI's. Digital certificates are crucial to ADI's and are therefore handled with considerable care.		
88.	7.5.5	The introduction of 7.5.5 is necessary. Again, our Members have found evidence of Subscribers ignoring the Rules regarding the sharing of Digital Certificates and their security and authorization and the tightening up of this area is overdue.	None	Feedback noted.
89.	7.5.5	It is requested the first line be amended to read: "The Subscriber must ***take reasonable steps*** to ensure that..." so it is consistent with other rules.	The MPR have been amended	MPR 7.5.5 has been amended as suggested.
90.	7.5.5 (a)	If the "disc" supplied for soft certificate installation is retained in safe custody by the firm's record keeping department, does this comply as it is not strictly within the Signers' individual control and possession? The contents of the digital certificate are loaded on the Signer's profile in their H drive, only accessible by the Signer. Does this constitute keeping the soft digital certificate safe and secure in the Signer's control and possession?	The MPR have been amended	MPR 7.5.5(a) has been amended to delete '**and possession**'.
MPR 7 – System Security and Integrity – Notification of Jeopardised Conveyancing Transactions				
91.	7.7.1	▪ Does the ELNO or the Registrar have a Direct Contact Number where Members can immediately report Conveyancing Transactions that has been Jeopardised? ▪ Who is responsible for investigating a suspicious transaction on an ELN? ▪ Are there current obligations on Members to report suspicious transaction on an ELN? ▪ A Subscriber may be under a court order and may not be able to disclose or notify other parties that they are being investigated. The procedures surrounding Jeopardised Conveyancing Transactions need to be set out in greater detail. It is recommended that there needs to be drafting inserted to protect a Subscriber against the risk of tipping off other parties that may be involved in a fraud. It is recommended that the reference to "The Subscriber must immediately notify" be changed to read: "The Subscriber must immediately notify (only to the extent permitted by law and where practicable to do so) the ELNO and the Registrar".	None	A direct phone line is not necessary as emails can be marked high priority and will be received instantaneously. Each Land Registry provides information on email addresses to be used. All parties to the transaction should investigate a suspicious transaction. The obligation to report to the ELNO has always existed. The offence of tipping off relates to AML/CTF, not what is covered by the definition of Jeopardised Conveyancing Transaction. As, under the Torrens title system, indefeasibility is obtained on registration, the requirement to notify a Jeopardised Conveyancing Transaction as soon as possible is all the more important.
92.	7.7.1 (b)	With regards to notifying the "Registrar", will a dedicated number or email be established to facilitate contact?	None	A direct phone line is not necessary as emails can be marked high priority and will be received instantaneously. Each Land Registry provides information on email addresses to be used.

#	Rule	Stakeholder Feedback	Action Taken	ARNECC Response
MPR 9 – Restriction, Suspension and Termination				
93.	9	Rule 9 should be modified to: ▪ limit suspensions to a specified time adequate to permit an investigation as to whether the Subscriber should be terminated or until the issue had been remediated ▪ set out the procedures which should be followed prior to a termination (e.g. natural justice requirements which allow the Subscriber an opportunity to provide evidence and arguments) ▪ set out the applicable appeal mechanisms.	None	Feedback noted but not adopted. Note the Registrar must act reasonably – refer Schedule 7 of the MPR and Section 28 of the ECNL.
94.	9	The current penalties are limited to suspension or termination, either of which would have drastic and possibly excessive consequences for the relevant subscriber and potentially the jurisdiction, which suspends or terminates the lender. It is recommended expanding the options available to Registrar to include warnings and fines for subscribers.	None	Feedback noted. Amendment to the ECNL will be required.
95.	9.1	The proposed amendments as currently drafted are not supported. It is recommended that ARNECC include sufficient protections where restricting any access to the ELN constitutes an offence of "tipping off" under applicable laws. The obligation to comply with any direction of the Registrar must be subject to any applicable law or court order. If restricting any access to the ELN constitutes an offence of "tipping off" under applicable laws, then an organisation must be in a position to assess any direction made by the Registrar. What is ARNECC's views about offences relating to tipping off where restricting access to the ELN may constitute an offence of tipping off?	None	Feedback noted but not adopted. The Registrar needs to be able to limit a particular User's access to the ELN so that they cannot access it or limit their access so that they cannot Digitally Sign Registry Instruments or can only Digitally Sign particular Registry Instrument types.
96.	9.1	To give effect to proposed changes relating to character and suspension, it is necessary to include a provision that Registrars must create a register of all suspensions and revocations (for ELNOs and Subscribers) which is accessible by other Registrars and by ELNOs.	None	Not adopted as it is not considered that the Registrars have the power to create a register of all suspensions/terminations/ revocations (of ELNOs and Subscribers), particularly in view of the privacy implications. Notices of suspension and/or termination are provided to all ELNOs by the Registrar.
MPR Schedule 1 – Additional Participation Rules				
97.	Schedule 1	The Model Participation Rules must be applied for all members on a "uniform national basis" and each State and Territory must not impose their own specific State or Territory requirements. The Electronic Conveyancing National Law (ECNL) calls for a uniform national approach to the electronic conveyancing across Australia and each State and Territory must not impose local State or Territory requirements.	None	Feedback noted. ARNECC strives to maintain nationally applied MPRs. However, it is possible that jurisdictional laws and practices might result in some variation.
98.	Schedule 1	We note that Schedule 1 provides that this rule will not apply in South Australia. It is undesirable for rules to be different between jurisdictions. If the rules are different, the differences should be built	The MPR have been updated	MPR Schedule 1 and MPR 6.5.1 have been amended. ARNECC strives to maintain nationally applied MPRs. However, it is possible that jurisdictional laws and practices might result in some variation.

#	Rule	Stakeholder Feedback	Action Taken	ARNECC Response
		into the relevant rule or a note should be inserted near the affected rule referring readers to the Schedule setting out the differences. As currently drafted, readers may miss that clause 6.5.1(b)(iii) does not apply in South Australia. The South Australian position reflects the current law in Queensland, Victoria and South Australia, if this new rule is made (which we oppose), the legislation and requirements in those jurisdictions should be amended.		
99.	Schedule 1	Drafting amendment.	The MPR have been updated	Amendment to specify that MPR 6.5.1(c) does not apply in the Australian Capital Territory, Queensland and South Australia. These jurisdictions no longer have (duplicate/ paper) certificates of title.
MPR Schedule 2 – Amendment to Participation Rules Procedure				
100.	Schedule 2	Significant changes require longer implementation periods, particularly when system changes are needed. 20 Business Days' notice is insufficient time to implement the far-reaching changes as proposed in the MPR. It is recommended Schedule 2 be amended to require consultation with subscribers and their associations on the time reasonably required to implement any proposed changes. Based on the currently proposed changes, ADI's will need to update their forms, procedures and systems. This significant change is estimated to take at least 12 months to adequately build and test these changes with the appropriate controls.	None	ELNOs or Subscribers should request a waiver where necessary. Amendments to the MPRs to date have been conducted under Clause 1 of Schedule 2 following extensive consultation.
MPR Schedule 3 – Certification Rules				
101.	Schedule 3	The lack of discretion in relation to the conduct of VOI under the Certification Rules restricts the ability to protect the interests of vulnerable people within the community. It is proposed to amend the Certification Rules in relation to a Caveat where the Certifier: (a) has reasonable cause to believe that the Caveator has a legal or equitable estate or interest in land under the provisions of the Real Property Act 1900 (NSW) (and equivalent laws in other jurisdictions); and (b) is satisfied that a delay in registering the Caveat may result in the Caveator being denied the injunctive protection offered by the registration of the Caveat, the Certifier may proceed to register a Caveat without having complied with the Certification Rule set out above (clause 1 of Schedule 3 of the MPRs).	None	Feedback noted but not adopted. Covered by the ability to undertake reasonable steps.
102.	Schedule 3	Query the intention behind change from 'legislation' to 'law' in certification 4 and whether there is a material reason for making this change which will justify the change effort? We note this will require a consequential change to all documents in all jurisdictions. This change will of course need to be scheduled and rolled out for all jurisdictions in appropriate releases.	None	The term 'law' includes the common law as well as legislation.

<table>
<tr><th>#</th><th>Rule</th><th>Stakeholder Feedback</th><th>Action Taken</th><th>ARNECC Response</th></tr>
<tr><td colspan="5">MPR Schedule 4 – Client Authorisation</td></tr>
<tr><td>103.</td><td>Schedule 4</td><td>Support the proposed amendments.</td><td>None</td><td>Feedback noted.</td></tr>
<tr><td>104.</td><td>Schedule 4</td><td>We hope the proposed changes to Schedule 4 would not require an organisation to re-execute existing Client Authorisation Forms already in place since 2016 and substantially in the same form.</td><td>None</td><td>There is no need to sign a new Client Authorisation if the existing Client Authorisation is still valid.

New and/or amended MPRs take effect prospectively. Further refinements have been made to MPR 6.3(a) to clarify the intent of the amendments.</td></tr>
<tr><td>105.</td><td>Schedule 4</td><td>The existing CAF template PDF and webform are inconsistent:<table><tr><td>CAF Template</td><td>CAF Webform</td></tr><tr><td>Provision for 2 applicants</td><td>Provision for 1 applicant</td></tr><tr><td>Where 2 applicants, provision for certification by either 1x Representative or 1x Representative Agent but not 2 of the same</td><td>Provision for certification by either 1x Representative or 1x Representative Agent</td></tr><tr><td>Number printed pages 1 (excluding terms)</td><td>Number of printed pages 2 (excluding terms</td></tr></table>The current CAF template is only ideal for two applicants if both applicants have their VOI performed together. The preference is provision for only one applicant per CAF – bringing the format into line with the webform. One applicant per CAF also avoids the potential for challenges in passing the CAF from one applicant to another.</td><td>None</td><td>The Client Authorisation Flatform provides for the most common scenario of two clients, and the Client Authorisation Smartform allows up to 5 clients to be added.

Whichever format is used, an Identity Agent can witness the signing of the Client Authorisation by different Clients separately.</td></tr>
<tr><td>106.</td><td>Schedule 4</td><td>A deficient collection statement in the Client Authorisation Form is exacerbated by the proposed changes to the Model Participation Rules. To ensure industry is adopting best practice in respect to privacy laws, there would be benefit in:
clarifying in the Client Authorisation Form how personal information is collected, handled, used and disclosed which reflects the broad role each currently named entity performs within industry; and
being transparent to the public as to who is an ELNO, Land Registry or Registrar and how they can contact those entities and read and understand their privacy policy.
It is proposed that the “Privacy Collection Statement” of the Client Authorisation Form is amended as follows:
Privacy Collection Statement: The information in this form is collected under statutory authority and used for the purpose of maintaining publicly searchable registers and indexes and for other purposes described in this form.</td><td>The MPR have been amended</td><td>The substance of the proposed amendment has been adopted.</td></tr>
<tr><td>107.</td><td>Schedule 4</td><td>To ensure that there is a simple means of identifying a party who may have access to Personal Information and locating their privacy</td><td>The MPR have been amended</td><td>For clarity, clause 4.3 of the Client Authorisation has been amended to refer to the list of parties in clause 4.1(a) to (g).</td></tr>
</table>

#	Rule	Stakeholder Feedback	Action Taken	ARNECC Response
		policy, it is proposed that contact details for each of the Land Registries be included in the Client Authorisation Form (both website and phone contact details). For example, the Client Authorisation Form could also include: The Land Registry and Registrar varies between Australian States and Territories. The name and contact details for privacy enquiries for each Land Registrar and Registrar is set out below, along with a link to their privacy collection statement. Alternatively, this could reference the ARNECC website "Contact Us" page which includes this relevant information.		However, it would not be beneficial to have a long list of possible contact details in the form, especially as contact details could get out of date.
108.	Schedule 4	Given that the purpose for the collection of personal information is fully set out in clause 4.1, it is submitted that for consistency the Privacy Collection Statement at the beginning of the Form be amended to refer to the purposes set out in clause 4 of the Form: "The information in this form is collected under statutory authority and used for the purpose of maintaining publicly searchable registers and indexes and for the purpose set out in clause 4 of this form."	The MPR have been amended	The Client Authorisation has been amended as suggested.
109.	Schedule 4	The amendments proposed by ARNECC to the privacy provisions in the Client Authorisation form provide transparency around the use of information for the purposes of completing the Conveyancing Transaction (as defined by the ECNL) but does not cover the many other uses of Client information which occur after the Conveyancing Transaction is complete.	None	A Client Authorisation is not intended to cover uses after the conveyancing transaction is complete, with the exception of compliance examinations.
110.	Schedule 4, Clause 4	It is suggested that the Privacy Collection Statement at the top of Schedule 4 be amended to read: **Privacy Collection Statement:** The information in this form is collected under statutory authority and may be used for the purposes set out in this form or otherwise identified in the privacy policies of the persons identified at clause 4.1 of this form ~~of maintaining publicly searchable registers and indexes~~. *Rationale for the changes:* This will direct the Client's attention to the purpose of the statement and to the persons who could receive and use their information. Amend clause 4 of the Client Authorisation Form as follows: 4.1 … including the Client's Personal Information, may be collected, handled and used by, and disclosed to and used by: … … for the purpose of completing and processing the Conveyancing Transaction (including for the purpose of a Compliance Examination) and for other purposes described in the recipient's privacy collection statement or privacy policy on their website, as otherwise permitted or required by law or approved by the Registrar or other statutory decision maker who is duly authorised to grant such an approval. 4.2 The Client consents to the collection, handling, disclosure and	None	The Client Authorisation is a mandated form and ARNECC does not consider it appropriate to broaden the use of Personal Information to anything beyond completing the relevant conveyancing transaction(s) and any subsequent compliance examination.

#	Rule	Stakeholder Feedback	Action Taken	ARNECC Response
		use of the Client's Personal Information in accordance with clause 4.1. It is arguable that the definition "Conveyancing Transaction" is not broad enough to cover the information services currently provided by a Land Registry Service Provider and may restrict the ability to provide the current existing information services and limit any future value-added services. It is submitted that clause 4.1 of the Form be amended as follows: "... involved in the completion or processing of the Conveyancing Transaction(s), for the purpose of completing and processing the Conveyancing Transaction(s), ~~or~~ as required by law, including for the purpose of a Compliance Examination, or as approved by the Registrar, the Minister with oversight of the relevant Land Registry or other statutory decision maker who is duly authorised to grant such approval."		
111.	Schedule 4	We obtain a specific Client Authorisation (VOA) (unless we have a standing or batch authority) for each conveyancing transaction and apply 4.4 of the Registrar-General's (SA) VOI Requirements. To link the VOA with evidence to support the client's right to deal with a particular conveyancing transaction, we would like to see provision on the VOA form to list the supporting evidence for that transaction and provision to support the date of the VOI.	None	ARNECC has sought to keep the Client Authorisation as short as possible. Supporting evidence of right to deal and verification of identity should be retained separately.
112.	Schedule 4, Clause 4	To ensure that Clients are adequately informed of uses to which the information they are providing may be put, clause 4 be amended to read: 4.2 The Client acknowledges that information relating to the Client that is required to complete or process the Conveyancing Transaction(s), including the Client's Personal Information, may be collected and used by, stored, accessed, processed, transferred or~~and~~ disclosed to, and used by: (a) the Duty Authority; (b) the ELNO; (c) the Land Registry; (d) the Registrar; (e) the Representative; (f) Subscribers; and (g) third parties~~(who may be located overseas)~~, involved in the completion or processing of the Conveyancing Transaction(s) , for the purpose of completing and processing the Conveyancing Transaction(s) (including for the purpose of a Compliance Examination), for the utilisation of data (including in de-identified form) to assist persons and	The MPR have been amended	Clause 4.1 and 4.2 have been amended to include "stored". Clause 4.2 cross-references purposes under Clause 4.1. No further amendment is required – the Client Authorisation, including Personal Information, is a mandated form and ARNECC does not consider it appropriate to broaden the use of Personal Information to anything beyond completing the relevant conveyancing transaction(s) and any subsequent compliance examination.

#	Rule	Stakeholder Feedback	Action Taken	ARNECC Response
		entities in relation to property transactions, assessing property values, understanding trends or changes in the property market, or as required or permitted by law, including for the purpose of a Compliance Examination approved by the Registrar or other statutory decision maker who is duly authorised to grant such an approval or specified in the privacy policies of the persons listed in clauses 4.1 *(a)* to (g). The provision of such information to such persons may result in the Client's information (including Personal Information) being transferred to overseas locations or recipients and this may affect the Client's position under privacy legislation. 4.3 The Client consents to the collection, disclosure and use of that information relating to the Client that is required to complete the Conveyancing Transaction(s), matters set out in clause 4.1, including the provision of Client's Personal Information by or to any of the persons listed in clause 4.1 (a) to (g), including those who are overseas. 4.4 For further information about the collection and disclosure of your Personal Information, refer to the relevant party's privacy policy. The privacy policies of the persons listed in clause 4.1 *(a)* to (g) may set out further uses of the Client's information (including Client's Personal Information) and the Client should carefully review those disclosed uses. *Rationale for the changes:* The CA form is the point at which a Client's information is collected. Under the various Australian privacy laws, it is necessary to inform a Client at (or close to) this point of collection how the information they are providing in the form will be used. In order to cover all current uses of that information and to allow for future uses, suggest: • the first sentence of clause 4.1 be expanded to include reference to the Client information being "stored, accessed, processed and transferred" to reflect the terminology and actions included in the privacy laws; • clause 4.1 be expanded to include additional information about how the Client's information is currently being used including describing in broad terms possible uses such as: *"to assist persons and entities in relation to property transactions"* which could include utilisation of data to provide products such as title searches (not related to		

#	Rule	Stakeholder Feedback	Action Taken	ARNECC Response
		a conveyancing), sales history reports, dealing enquiries; *"assessing property* value" which could include real estate agents using property sales data to satisfy their statutory obligations to support their price guides with comparable sales data or the Valuer General's office using property sales data to determine property values for the purpose of setting Council rates; *"understanding trends or changes in the property market'* which could include government agencies or others using data to support planning functions or market analysis. *"approved by the Registrar or other statutory decision maker who is duly authorised to grant such an approval'* which identifies the process by which the various Registrars may authorise particular uses of the Client data by ELNOs, Information Brokers or private operators; and *"specified in the privacy policies of the persons listed in clauses 4.1 (a) to (g)"* which provides greater transparency of the need for Clients to be aware of what is included in the privacy policies of the persons listed in clause 4.1(a) to (g) than is perhaps the case in the current drafting of clause 4.3. • clause 4.1 also be amended so that the reference to overseas transfers of information is aligned to the terminology used in the privacy laws. That terminology focusses on the transfer of data overseas not just the location of persons who may receive data. This is reflected in the additional paragraph we added at the end of clause 4.1. The words *"or as required by* law" which are used in the MPR Consultation Draft are not broad enough to cover some of the current uses, including the provision of products such as Sales History Reports, Land Index Searches and Dealings Inquiries which are non-statutory products and therefore are not ".. . *required by law".* If the proposed drafting was implemented without considering the matters set out above, it may have an unintended adverse effect on the legitimacy of the provision of such current and potentially future services and products. As those products have been designed to assist the community, industry and ultimately Clients this would appear to be an undesirable outcome.		

#	Rule	Stakeholder Feedback	Action Taken	ARNECC Response
113.	Schedule 4, Clause 4.1	The Personal Information provided by a Subscriber to a Panel Law Firm must NOT be used for any other purpose, including a Compliance Examination to be conducted by ARNECC of the relevant Panel Law Firm. If ARNECC requires any Personal Information from a Subscriber, the request should come directly to a Subscriber, not via a Third-Party Service Provider. It is recommended that the reference to "for the purpose of a Compliance Examination" must be removed.	None	"For the purposes of a Compliance Examination" must remain. The Subscriber who certified the Registry Instrument may be the subject of the Compliance Examination. Further clarification of the issue is requested.
114.	Schedule 4, Clause 4.2	It is requested that ARNECC in a second round of consultation to publish the revised draft rules such that it is clear to industry what Personal Information is required. It is recommended that Rule 4.2 include an exception relating to any Staff that work with an ELN; their Personal Information is not relevant for the purposes of completing a Conveyancing Transaction. The reference to Client should be limited to Customers or Mortgagors.	None	The Privacy Statement only relates to the Client's information that the Client authorises can be used for the conveyancing transaction. If a financial institution is the Client of a conveyancing or legal practice, it will need to provide a Client Authorisation.
115.	Schedule 4, Clause 4.2	It is submitted that clause 4.2 of the Form be amended so that it is clear the consent provided by the Client is given for use of personal information for the purposes set out in clause 4.1. We believe this will limit confusion as to the ambit of the consent: "The Client consents to the collection, disclosure and use of the Client's Personal Information in accordance with clause 4.1~~that information relating to the Client that is required to complete the Conveyancing Transaction(s), including the Client's Personal Information, by or to any of the persons listed in clause 4.1 (a) to (g) , including those who are overseas~~.	The MPR have been amended	The substance of the requested amendment has been adopted.
116.	Schedule 4, Clause 6 – definition of Land Registry	Drafting amendment	The MPR have been amended	Amendment to align with changes made to definition of Land Registry in MPR 2.1.2.
MPR Schedule 8 – Verification of Identity Standard				
117.	Schedule 8	It is difficult to detect fraudulent ID over video technology and video technology can be altered. Clear guidance whether Practitioners can or cannot use video technology to conduct VOI would be beneficial. To have to attend a face to face interview for a VOI does not allow for electronic conveyancing or digital innovation. This process will add a lot of additional work and time for a conveyancer/property lawyer if clients are a distance away. Matching the photo of the person to VOI documents can be a difficult process to achieve via face to face and can be carried out easily via a WEB VOI process. Facial recognition scoring uses electronic means which allows for the matching of the face to the documents in its process. It is submitted that the MPR still allows the use of WEB VOIs to be carried out together with the option of face to face interviews.	None	It is up to a Subscriber to assess whether video technology is appropriate when undertaking reasonable steps. Currently video technology is not permitted if the VOI Standard is being applied. ARNECC has been engaging with, and will continue to engage with, the Commonwealth Digital Transformation Agency. The ARNECC position statement relating to digital verification of identity provides additional information.

#	Rule	Stakeholder Feedback	Action Taken	ARNECC Response
118.	Schedule 8, Paragraph 1, definition of Officer	Drafting amendment	The MPR have been amended	Amendment to align with changes made to definition of Officer in MPR 2.1.2.
119.	Schedule 8, Paragraph 1, definition of Police Officer	Drafting amendment	The MPR have been amended	Consequential amendment in light of new definition of Officer.
120.	Schedule 8, Paragraph 4.4 (b)	It is impossible for the Identity Verifier to have known a declarant for a minimum of 1 year as new clients are coming to conveyancers/property lawyers all the time. It is submitted that the MPR allows the verification of identity via a specific document (similar to under the Oaths Act 1900).	None	An Identity Verifier is different to an Identity Declarant. Each cannot fulfil the other's roles. An Identity Verifier is the person carrying out the verification of identity. An Identity Declarant is a person providing an Identity Declaration under Category 5 of the Verification of Identity Standard. It is the Identity Declarant who must have known the Person Being Identified for more than a year, not the Identity Verifier.
121.	Schedule 8, Paragraph 3	The amendments proposed by ARNECC are not supported. Under the Banking Code of Practice, banks are obliged to help Indigenous customers meet identity requirements. Banks are accepting community cards which are on the register of the indigenous corporation's website. These cards should be added to the minimum document requirement list without the need for additional documentation.	None	Feedback noted but not adopted in Version 6. ARNECC will consult relevant stakeholders about the use of community cards. The Subscriber has the option to verify the identity of a Person in some other way that constitutes the taking of reasonable steps.
Additional Comments				
122.	Education	It is highly recommended that extensive education is provided to conveyancers, legal practitioners and other professionals affected by the amendments to ensure they understand and meet their obligations. Supportive in progressing many of the draft amendments and hopes that communications along with adequate training by ARNECC to all subscribers will be forthcoming.	None	ARNECC provides MPR Guidance Notes. ARNECC does not provide training, however, some Land Registries, jurisdictional practitioner regulators, insurers and peak bodies provide this training.
123.	General	ARNECC is strongly urged to take into account all feedback and commit to a second round of consultation on a revised draft in due course. It would be helpful to industry participants for this further round of consultation to include an ARNECC consultation paper detailing reasons for proposed changes, as well as proposed amendments to the rules. The Subscriber backlash to the new proposed VOI Rules is symptomatic of a process that is managed with little or no open consultation. The ARWG and ARNECC must take greater responsibility in their consultation process when identifying and then drafting Rules that have significant impacts to subscribers.	None	Feedback noted. ARNECC carefully reviews and considers all feedback that is received both during and independent of the consultation process. A second round of consultation will be undertaken prior to MPR Version 6 being published and consideration will be given to providing explanatory notes on substantive changes in the future.
124.	General	Will the draft MPRs apply retrospectively? It should be made clear new requirements apply prospectively only.	None	New and/or amended requirements take effect prospectively.

#	Rule	Stakeholder Feedback	Action Taken	ARNECC Response
125.	General	Concerned about the broad trend of constantly shifting cost and bureaucracy onto lawyers within the e-conveyancing system.	None	Feedback noted. However, ARNECC does not consider that the MPRs go beyond prudent conveyancing practice.
126.	Mortgages signed digitally by mortgagors	It is becoming increasingly accepted that mortgages can be digitally signed by mortgagors without witnessing in New South Wales, Victoria, South Australia, and (so long as registration is via an ELN) probably in Queensland. Queensland and Western Australia have a requirement for the mortgage document signed by mortgagor to be 'on the same terms' as the relevant National Mortgage Form (NMF). Because the NMF in Queensland and Western Australia provides for a witness, a mortgagor signed mortgage without a witness may not be on the same terms. It would be good if this impediment to digital signing could be removed because there is a significant demand from consumers and industry alike with decreased use of postage and the dubious value of a signature being witnessed.	None	Feedback noted, however, this does not impact the MPRs. Jurisdictions are considering whether further guidance or amendment to the Information Sheets relating to the National Mortgage Form is necessary.
127.	Proposed effective date of MPR version 6	The proposed effective date of the version 6 rules is 3 August 2020 being approximately 1 month after publication of the final version. A much longer lead in time is required to ensure internal law firm ELNO policies and procedures have been updated / are in place and there is sufficient time to educate and disseminate the information to all users.	None	Amendments to the MPRs to date have been under Clause 1 of MPR Schedule 2 following extensive consultation.
128.	Security Review	As recommendations from this review were the catalyst for the changes, we request a copy of that independent review. Although we understand ARNECC believes there is sensitive information regarding systems vulnerability, we respectfully suggest that those areas may be redacted. We believe, as Subscribers, we have a legitimate interest in knowing the basis for the multiple changes to the MPRs, especially given their onerous nature.	None	For security reasons, the report will not be made public. The ARNECC Notice to Subscribers 2019-NS1 provides additional information.