

## Model Operating Requirements (MOR) Consultation Draft 7 Feedback

This table responds to the feedback received on Consultation Draft 7 of the MOR published in July 2021

#	Requirement	Stakeholder Feedback	Action	ARNECC Response
<b>MOR 2.1 – Definitions</b>				
1.	General	Many definitions in the MORs refer back to the definitions in the ECNL which industry have not seen. It is considered essential that affected stakeholders are provided a meaningful opportunity to consider the definitions and provide input on the regulatory governance arrangements in concert.	Targeted consultation with key stakeholders	ARNECC is undertaking targeted consultation on the Bill with key stakeholders prior to it being introduced to Parliament.
2.	Business Day	The existing definition for 'Business Day' in the ECNL provides exception for public holidays, special holidays or bank holidays in the place in which any relevant act is to be or may be done, which is workable for Operating Requirements which require action to be taken within a certain period (e.g. within 20 Business Days). However, the definition is also incorporated into the definition of 'Core Hours', which must be capable of consistent application across all jurisdictions, so that the ELNO can produce a single monthly report as contemplated in MOR 18.1. In an interoperable multi-ELNO network, ELNOs must be able to apply a consistent definition for Business Day in respect of Performance Levels. In the context of Core Hours and Performance Levels, Business Days should be: days on which the Land Registry is open for business and accepting Lodgements in the Active Jurisdiction, and on which financial settlement systems [RITS] are available to process transactions.	Future review	Version 7 of the MOR is intended to implement Interoperability. As this feedback does not directly relate to Interoperability, it will be considered as part of a future review of the MOR.
3.	Conveyancing Transaction	Supported subject to reviewing the definition of 'Interoperability'.	None	Feedback noted.
4.	Downstream or Upstream Service	<p>In response to feedback provided in relation to MOR Consultation Draft v6.1, ARNECC identified a lack of sufficient information to further refine the requirements for Downstream or Upstream Service (DUS). Noting the above, the following alternate wording is recommended:</p> <p><i><b>'Downstream or Upstream Service or Lodgement Input Service means a service supplied or offered to a Person (including a Related Entity) who is authorised to access or use an ELN and which directly:</b></i></p> <p><i>(a) accesses or integrates with an ELN; or</i></p> <p><i>(b) provides information to an ELN'</i></p> <p><b>in order to enable the creation or Lodgement of an Electronic Workspace Document, but does not include services supplied or offered through a Back End Infrastructure Connection.'</b></p> <p>The current drafting of the definition for DUS imposes a difficult and costly burden for ELNOs, and Registrars alike, to interpret and analyse its application. Despite being a feature of the MOR for several years, MOR 5.6 needs to be clarified so that it can be meaningfully understood and applied without uncertainty across the eConveyancing network</p>	Future review	Version 7 of the MOR is intended to implement Interoperability. As this feedback does not directly relate to Interoperability, it will be considered as part of a future review of the MOR.

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5.	ELNO Requesting Interoperability	Does not explain what is meant by a 'request'. Issues could arise where there is a dispute around whether a request has been made. Such a dispute can delay negotiations and also delay information sharing between parties.	None	It is intended that the ordinary meaning of the word request applies in this definition. Further information is contained in MOR 5.7.1, which requires each ELNO to publish on its website details of the process for any ELNO Requesting Interoperability to make a request to Interoperate.
6.	ELNO Requesting Interoperability	The request mechanism is supported for new or future ELNOs. However, arrangements to implement interoperability between the two ELNOs currently holding Category Two approval are well advanced and do not need to be initiated. The current ELNOs should be required to interoperate, and therefore should be excluded from the Request regime.	None	All ELNOs are required to comply with the requirement to Interoperate contained in the ECNL. ARNECC does not consider it necessary to exclude existing ELNOs from the request regime.
7.	Independent Expert	The current definition requires, amongst other matters, that the approved not be related to, or associated with, the ELNO or Potential ELNO, or an Officer or Employee of the ELNO or Potential ELNO. To avoid conflicts of interest arising, the definition of Independent Expert should be amended by deleting references to ' <i>the ELNO or Potential ELNO</i> ', and replacing such references with ' <i>an ELNO or Potential ELNO</i> '.	None	Feedback noted but not adopted. The intention of this definition is to exclude an ELNO from appointing an Independent Expert who is related to or associated with that ELNO and thereby unlikely to be truly independent of that ELNO. It is not practical or necessary to exclude an ELNO from appointing an Independent Expert who is related to or associated with another ELNO, where in fact there may be no conflicts of interest or issues of independence.
8.	Interoperability	Concerned that the relationship between interoperable ELNO's will be managed by an Interoperable Agreement. Although the MOR's may specify the matters that such agreements should contain, to ensure such agreements contain all necessary information and are on 'similar terms' would it not be preferable for ARNECC to create a Model Interoperability Contract that ELNO's would enter and that would manage their relationship?	None	Feedback noted but not adopted. ARNECC has specified the matters that it considers must be dealt with in the Interoperability Agreement in Schedule 8 of the MOR. Beyond these matters, ARNECC is of the view that Interoperating ELNOs are in the best position to know the practical realities of the relationship between them. This approach also allows for flexibility depending on the circumstances of each ELNO.  It is anticipated that Interoperability Agreements will contain largely operational matters, or matters that give effect to existing obligations in the MORs or other law.  See also the amendment made to MOR 5.7.2(b) requiring each ELNO to provide information to other ELNOs about the proposed terms on which they are prepared to Interoperate.
9.	Interoperability	This definition being housed in the ECNL, and the proposed drafting approach in the MOR that 'Interoperability has the meaning given to it in the ECNL' is supported. By way of general comment, it is suggested that the ECNL definition should incorporate financial settlement. If the definition is based on the Explanatory Note, the first dot point should be expanded to read 'Subscribers using different ELNs to complete a Conveyancing Transaction ( <i>including financial settlement</i> )'.	Targeted consultation with key stakeholders	Feedback noted. ARNECC is undertaking targeted consultation on the Bill with key stakeholders prior to it being introduced to Parliament.
10.	Interoperability	It is noted that further clarification on the definition of 'interoperability' is to be inserted in the Electronic Conveyancing National Law and may alter the current view that there are no established legislative inconsistencies in the proposed MOR V7 amendments with State Revenue taxation law. The final definition will be considered on release.	None	Feedback noted.

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11.	Interoperability	It is noted that the definition of Interoperability will be set out in the ECNL and incorporated into MOR v7 by reference. Whilst comment will be made on the draft bill when it is made public, the definition of Interoperability must include reference to lodgment of the registry instruments, as well as the completion of Associated Financial Transactions, in order to cover the full scope of Interoperability that is being implemented.	Targeted consultation with key stakeholders	Feedback noted. ARNECC is undertaking targeted consultation on the Bill with key stakeholders prior to it being introduced to Parliament.
12.	Interoperability Conveyancing Transaction	A Conveyancing Transaction may commence in a single ELNO, subsequently become interoperable and subsequently be completed through a single ELNO, due to the addition and withdrawal of parties. The proposed definition uses the term ' <i>conducted by means of interoperability</i> ', which makes it difficult to determine whether ' <i>conducted</i> ' is intended to imply that the transaction is completed via interoperability, or whether this refers to a full process (i.e., inclusive of 'commencement' through to 'completion'). The definition could be amended to clarify that for the period of time that two or more Participating Subscribers act from different ELNO Systems, the transaction is considered an Interoperable Conveyancing Transaction (regardless of how that transaction commences and concludes).	None	No amendment to this definition is necessary. A Conveyancing Transaction is Interoperable for the period of time it is conducted by means of Interoperability.  Note that the term Interoperable Conveyancing Transaction has been removed from the MOR.
13.	Interoperable Electronic Workspace	Supported subject to reviewing the definition of 'Interoperability'.	Targeted consultation with key stakeholders	Feedback noted. ARNECC is undertaking targeted consultation on the Bill with key stakeholders prior to it being introduced to Parliament.
14.	Interoperable Service Fees	Will this cost be passed on to the conveyancing consumer? How will these fees be set? Will they differ from ELNO to ELNO? Will ARNECC approve these fees or will this be a matter for the ELNO to determine? Agree that such fees should be equitable, transparent and published in the same way that ELNO Service Fees are but should not add extra cost to the consumer.	Change to MOR	ARNECC has determined that ELNOs will not be permitted to charge Interoperability Service Fees. See MOR 5.4.7.
15.	Interoperable Service Fees	A definition is appropriate. However, it is suggested that it may be more appropriate to describe the defined term as 'Interoperability Service Fees' rather than 'Interoperable Service Fees'. However, such fees are opposed to in principle.	Change to MOR	The definition has been amended to Interoperability Service Fees.  ARNECC has determined that ELNOs will not be permitted to charge Interoperability Service Fees. See MOR 5.4.7.
16.	Land Information	For the avoidance of doubt and to ensure Land Information clearly applies to information from the register or passing to the registry for the purposes of updating the register, regardless of which ELNO receives the information, the definition of Land Information should be amended as follows:  <i>'Land Information means:</i> <i>a) information provided to the ELNO:</i> <i>i) Directly by the Land Registry; or</i> <i>ii) indirectly via another ELNO, or</i>	None	Feedback noted but not adopted. ARNECC is satisfied that the existing definition of Land Information captures the direct and indirect provision of information. The proposed changes inappropriately restrict the meaning of Land Information to information provided to an ELNO.  Note that MOR 7.4.2 does not relate to Land Information alone, but also to other information exchanged between ELNOs.

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		<p><i>b) used to populate electronic Registry Instruments or other electronic Documents to be Lodged at the Land Registry.'</i></p> <p>This will avoid the need for special treatment as contemplated by MOR 7.4.2 and avoids unintentional capture of information generated by ELNOs and exchanged between them for the purposes of collaborating on an interoperable lodgement case.</p>		
17.	Lodgment Case	Consistency between the MPR and the MOR is supported. Rather than copying across the definition from the MPR, it may be preferable to incorporate the definition by reference, that is, state that Lodgment Case has the meaning given to it in the MPR.	None	Feedback noted but not adopted. ARNECC considers the MOR is easier to read when the definitions are set out in full.
18.	Participating ELNO	Supported, noting that the NECIDS has a more comprehensive list of the role and functions of a Participating ELNO.	None	Feedback noted.
19.	Pricing Table	Noted. It would be more appropriate use the term 'Interoperability Service Fees' rather than 'Interoperable Service Fees', but such fees are opposed to in principle.	Change to MOR	<p>The definition has been amended to Interoperability Service Fees.</p> <p>ARNECC has determined that ELNOs will not be permitted to charge Interoperability Service Fees. See MOR 5.4.7.</p>
20.	Responsible ELNO	Further detail is also needed in order to better understand the scope of any interoperability fee and the potential materiality of the fee on the prospect of competition emerging in the market. For example the revised MORs define a Responsible ELNO as 'the ELNO involved in an Interoperable Conveyancing Transaction that is responsible for Lodgment of the Interoperable Lodgement Case and completion of any Associated Financial Transaction.' In this example the meaning and scope of the transaction are unclear because the definition of an Interoperable Conveyancing Transaction sits in the ECNL (which stakeholders have not seen) and the meaning of Interoperable Services fees is uncertain.	Change to MOR	ARNECC has determined that ELNOs will not be permitted to charge Interoperability Service Fees. See MOR 5.4.7.
21.	Responsible ELNO	<p>It is important that there is transparency and predictability in the way the Responsible ELNO is determined in a transaction, particularly as the Responsible ELNO may need to change during the course of a transaction. While this issue could be addressed by a business rule in the NECIDS, the preferred approach is the addition of a provision to the MOR to facilitate transparency for all stakeholders and participants. The new provision should recognise that the Responsible ELNO may change during the course of a transaction, and include the following elements:</p> <ul style="list-style-type: none"> <li>▪ The Responsible ELNO will be the ELNO that hosts the Responsible Subscriber for the Conveyancing Transaction, subject to capacity to carry out the role.</li> <li>▪ Capacity includes the capability to prepare and lodge all Registry Instruments and to effect all Associated Financial Transactions for the Conveyancing Transaction.</li> </ul>	None	<p>Feedback noted but not adopted. The NECIDS sets out the roles of each ELNO in an Interoperable Electronic Workspace. ELNOs are required to use and comply with the NECIDS under MOR 10.3.2. In the ordinary course of events, whichever ELNO is hosting the Responsible Subscriber will undertake lodgment. However, this may change during the Conveyancing Transaction.</p> <p>ARNECC therefore considers it unnecessary for more detailed information about the role of each ELNO to be set out in the MOR. However, ARNECC will consider providing more information on the roles of the Responsible ELNO and Participating ELNO in the MOR Guidance Notes.</p>

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		<ul style="list-style-type: none"> <li>A Responsible ELNO must conduct a capability check following a change to the transaction or the addition of a financial line item to ensure that it continues to be able to carry out that role.</li> <li>Where the Responsible Subscriber changes and is hosted on a Participating ELN, that ELN will carry out a capability check before requesting to become the Responsible Subscriber.</li> </ul> <p>It is suggested that an appropriate location for such a provision could be in MOR 5.8.</p>		
22.	Responsible ELNO	<p>It is recommended the definition of 'Responsible ELNO' be amended for consistency with the role descriptions specified in the NECIDS, per the following alternate wording:</p> <p><i>'Responsible ELNO means the ELNO involved in an Interoperable Conveyancing Transaction that has been designated as responsible for the coordination of an interoperable conveyancing transaction in accordance with the NECIDS.'</i></p> <p>(See also: feedback provided in relation to MOR 5.8).</p>	None	See response at row 21 above.
23.	Responsible Subscriber	Rather than duplicate the MPR definition, Responsible Subscriber should be defined as having the meaning given to it by the MPR.	None	Feedback noted but not adopted. ARNECC considers the MOR is easier to read when the definitions are set out in full.
24.	Risk Assessment	Given the increase in potential risk exposure for the overall eConveyancing network, it is suggested the definition of Risk Assessment be amended to include reference to assessment of risks in relation to interoperability.	Change to MOR	The definition of Risk Assessment has been amended to include risks in relation to Interoperability.
25.	Scheduled Maintenance	The current definition of 'Scheduled Maintenance' prohibits maintenance to an ELNO's system outside of Core Hours. Innovation in cloud computing allows for certain features of a technology to be suspended for maintenance without affecting service reliability. The definition should be amended to distinguish between maintenance that does and does not have an effect on performance of the ELNO's system.	Future review	Version 7 of the MOR is intended to implement Interoperability. As this feedback does not directly relate to Interoperability, it will be considered as part of a future review of the MOR.
26.	Supplier	The definition of 'Supplier' explicitly excludes Land Registries and Duty Authorities and should be expanded to explicitly exclude interoperable ELNOs. This will address potential confusion for ELNOs seeking to ensure compliance with MOR 7.3.1(g).	Change to MOR	The definition of Supplier has been amended to exclude Interoperating ELNOs.
27.	Suspension Event and Termination Event	Both definitions require the ELNO to have reasonable grounds to suspect or believe the Subscriber should be subjected to suspension or termination. Currently, the ELNO can make these assessments through sufficient access to relevant data. However, under interoperability, an ELNO may need to rely upon notification from another ELNO of a Subscriber's activities to form a view as to whether a Suspension Event or Termination Event has occurred (based on reasonable grounds). Each of these definitions should be amended to clarify that reasonable grounds includes the receipt of a notification received from another ELNO with respect to such matters.	Change to MOR	<p>MORs 14.7(f) and (g) have been added to require ELNOs to notify other ELNOs with which they Interoperate if they have reasonable grounds to suspect a Subscriber has committed a Suspension Event or Termination Event, or where the ELNO terminates or suspends a Subscriber.</p> <p>It is not considered necessary to amend the definitions of Suspension Event and Termination Event to specify what constitutes reasonable grounds.</p>
28.	Transaction Audit Records	The existing definition of 'Transaction Audit Records' does not account for changes made in an Electronic Workspace by another ELNO. It is recommended the drafting at subsection (a) be amended to:	Change to MOR	The definition of Transaction Audit Records has been amended to take into account changes made or actions undertaken by ELNOs in an Electronic Workspace.

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		'changes made in an Electronic Workspace and which Subscriber or other ELNO made which changes to an Electronic Workspace; and...'		
<b>MOR 4 – ELNO Eligibility Criteria - Insurance</b>				
29.	4.7	That no amendment has been made in this version is noted. The foreshadowed review of the insurance requirements in Schedule 1 in light of Interoperability, particularly as the requirements have remained largely unchanged since 2013, is supported.	None	Feedback noted.
30.	4.7.6	<p>MOR 4.7.6 should be extended to require the ELNO to inform any other ELNO where the event is relevant to that other ELNO's interests. This is because:</p> <ul style="list-style-type: none"> <li>▪ It is anticipated that the occurrence of an event which may give rise to a claim under one ELNO's policy of insurance has potential to affect another ELNO in an interoperable environment.</li> <li>▪ Extending MOR 4.7.6 would reduce the potential that other ELNOs are adversely impacted as a result of the systems integration between ELNOs necessary to give effect to interoperability.</li> </ul> <p>It is otherwise noted that insurance remains an unsettled issue that will need to be settled as discussions on liability are progressed, with a view to establishing a baseline requirement for insurance for ELNOs to consistently manage end-to-end transaction risk.</p>	None	<p>It is not considered appropriate that MOR 4.7.6 be extended to require ELNOs to notify other ELNOs of an event that may give rise to an insurance claim. Registrars are not in a position to determine in what circumstances another ELNO's interests may be affected by an event, nor to identify each ELNO's obligations under its insurance agreement.</p> <p>ELNOs may choose to include this obligation in their Interoperability Agreements.</p>
<b>MOR 5 – Operation of an ELN – National system and electronic Registry Instrument and other electronic Document capability</b>				
31.	5.1(c)	<p>Operating Requirement 5.1(c) should be extended to require an ELNO to include in its Business Plan out timings for implementation of Interoperability, to provide ARNECC with visibility of progress prior to 31 December 2022.</p> <p>This could be achieved with the following drafting changes:</p> <p>5.1(c) - As a minimum, the Business Plan must set out the ELNO's timings for the commencement of operations <b>(including without limitation its capability to lodge electronic Registry Instruments and other electronic Documents as part of an Interoperable Lodgement Case, and Interoperability connections with other ELNOs who requested to Interoperate)</b> and the anticipated level of service, including matters such as ease of connection and access for different classes of users.</p> <p>Guidance Notes 5.1 Specific Inclusions – It is expected that your Business Plan will include at least timings for the development of operations and delivery of particular services <b>(including without limitation its capability to lodge electronic Registry Instruments and other electronic Documents as part of an Interoperable Lodgement Case, and Interoperability connections with other ELNOs)</b> and facilities and the anticipated means of servicing different classes of Subscribers.</p>	None	<p>Feedback noted but not adopted. The requirement to Interoperate contained in the ECNL, combined with MOR 5.2.4 which allows ELNOs to reasonably stage the implementation of interoperability in accordance with their Business Plans, is considered sufficient by ARNECC.</p> <p>Business Plans are supplied to Registrars by ELNOs as part of their annual reporting. Business Plans give the Registrars visibility over an ELNO's delivery schedule.</p> <p>ARNECC will consider including further information about Interoperability and the Business Plan in the MOR Guidance Notes.</p>

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32.	5.2	The insertion of 31 December 2022 as the date for which all 5.2.1(b) Registry Instruments and Documents are required to be interoperable is supported. From a drafting perspective, this does create some ambiguity with the insertion of MOR 5.2.4(b), allowing for the roll out of documents to be staged in accordance with a Business Plan. It is requested that the language be clarified, either in MOR v7 or in the relevant guidance notes, that the 31 December 2022 date is subject to MOR 5.2.4.	None	Feedback noted but not adopted. It is ARNECC's intention that the ability for ELNOs to reasonably stage the implementation of Interoperability in accordance with their Business Plans is subject to the date specified in MOR 5.2.2(a). In other words, the priority documents listed in 5.2.1(b) must be implemented by that date, even if their implementation is staged prior.
33.	5.2.1	Moving the qualification to MOR 5.2.4 and the addition of MOR 5.2.2 and MOR 5.2.3 is supported. However, it is queried whether the words 'by 31 December 2022' in MOR 5.2.2(a) should instead apply to MOR 5.2.2 and 5.2.3.	None	It is ARNECC's intention that the date specified in MOR 5.2.2(a) apply to both the priority documents in 5.2.1(b) and the documents in 5.2.1(c).
34.	5.2.2	Supported. The requirement under MOR 5.2.2(b) will be of particular relevance to transactions where a lease is to be registered by the vendor/transferor before the property is transferred to the transferee.	None	Feedback noted.
35.	5.2.2	The current drafting of Operating Requirement 5.2.2 specifies 31 December 2022 as the date on which ELNOs approved at the time of the version 7 amendments, are to have the core Registry Instruments ready for Interoperable Lodgment Cases. This arguably does not extend to the implementation of interoperability and it would be useful that this is clarified to ensure it aligns with the intent. We consider that this could be easily clarified with the inclusion of specific requirements for implementation, such as: 5.2.2 An ELNO that has obtained Approval prior to [MOR Version 7 effective date] must ensure that: (a) by 31 December 2022 ( <b>or earlier date as determined by the Registrar</b> ): (i) all electronic Registry Instruments and other electronic Documents required under Operating Requirement 5.2.1(b) are capable of Lodgment as part of an Interoperable Lodgment Case; and <b>(ii) has implemented Interoperability with ELNOs [that have obtained Approval prior to MOR Version 7 effective date] who have sent a request to Interoperate prior to [31 December 2021].</b>	None	Feedback noted but not adopted. No change is considered necessary. ELNOs may implement Interoperability earlier than the date specified in MOR 5.2.2(a) if they wish to do so.  Proposed 5.2.2(iii) is unnecessary as there is proposed to be a requirement to Interoperate contained in the ECNL.
36.	5.2.2	Sets a 31 December 2022 date for when ELNOs need to have electronic registry instruments and documents that can be lodged. Provision 5.2.4 however outlines that this can be staged. There is a need to improve clarity here to state how this staging interacts with the 31 December 2022 date. It is also queried whether ARNECC will undertake a role in ensuring ELNOs meet certain stages leading up to this date. In addition, a range of stakeholders are engaged in facilitating the entry and capability of ELNOs to compete in the market. It may be that the ELNOs capacity to reach certain milestones is constrained by the capacity of others in industry, including other government agencies to complete key steps of the implementation program.	None	Feedback noted but not adopted. It is ARNECC's intention that the ability for ELNOs to reasonably stage the implementation of Interoperability in accordance with their Business Plans is subject to the date specified in MOR 5.2.2(a). In other words, the priority documents listed in 5.2.1(b) must be implemented by that date, even if their implementation is staged prior.  Business Plans are supplied to Registrars by ELNOs as part of their annual reporting. Business Plans give the Registrars visibility over an ELNO's delivery schedule.

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37.	5.2.2	This requirement may have an impact upon Revenue Offices. It is requested that ARNECC consider amending the requirement such that ELNOs and impacted back end infrastructure connection providers use best endeavours to achieve the prescribed date, with a final compliance date of 31 December 2023.	None	Feedback noted but not adopted. In the event an ELNO is unable to comply with the date in MOR 5.2.2(a) for a reason beyond its control, Registrars will consider issuing a waiver to extend the deadline.
38.	5.2.2(a)	Is 'by 31 December 2022' is this correct. Should it be 2021?	Change to MOR	ARNECC has recently published a Ministerial Direction statement on implementation dates to deliver a secure national interoperability regime and effective competition. This statement is available online at: <a href="#">Ministerial Direction – interoperability regime implementation dates – October 2021</a>
39.	5.2.2(a) and 5.2.3(a)	It is suggested the date of 31 December 2022 is replaced with an obligation to enable interoperable lodgements within a reasonable timeframe. Further, the following amendments (inserted in bold) should be incorporated into MORs 5.2.2(a) and 5.2.3(a): <i>'... all electronic Registry Instruments and other electronic Documents required under Operating Requirement 5.2.1(b) <b>which are enabled for Interoperable lodgment in a jurisdiction</b>, are capable of Lodgment as part of an Interoperable Lodgment Case'</i>	Change to MOR	It is ARNECC's preference to retain a specific date in the MORs for implementation of Interoperability of the priority documents in MOR 5.2.1(b).  MORs 5.2.2 and 5.2.3 have been amended to clarify that the requirements apply to Documents which are capable of Lodgment in the Jurisdiction.
40.	5.2.3	Supported. The requirement under MOR 5.2.3(b) will be of particular relevance to transactions where a lease is to be registered by the vendor/transferor before the property is transferred to the transferee.	None	Feedback noted.
<b>MOR 5 – Operation of an ELN – General Obligations</b>				
41.	5.3	MOR 5.3 should be amended to reflect the increased dependency between ELNOs associated with interoperability, as follows: <ul style="list-style-type: none"> <li>5.3(b) and 5.3(c) should be broadened so the obligation also applies <i>'in relation to systems of other ELNOs'</i>: <i>'The ELNO must:</i> <b>5.3(b): exercise due skill, care and diligence in operating the ELN, including in relation to systems of other ELNOs, and in meeting its obligations under these Operating Requirements;</b> <b>5.3(c): minimise any disruption of or interference to any systems connected to the ELN, including in relation to systems of other ELNOs, for the purpose of conducting Conveyancing Transactions</b></li> <li>5.3(j) should include the obligation to notify 'relevant affected ELNOs': <i>'The ELNO must:</i> <b>5.3(j): Promptly notify the Registrar and any relevant affected ELNOs of all events relating to the ELNO or the ELN'</b></li> </ul>	Change to MOR	The obligations in MORs 5.3(b), (c) and (j) have been expanded to include Interoperating ELNOs.  Instead of including a new MOR 5.3(m) to deal with release management, this proposed obligation has been inserted as new MOR 13.4. ARNECC considers it more appropriate that this subject matter be dealt with in relation to change management, rather than in relation to the general obligations of an ELNO.



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		<p>Recognising that eConveyancing can only be effectively delivered through a network of interconnected systems, and that stability of that network is critical, an additional MOR 5.3(m) should be inserted requiring an ELNO to preserve stability of the eConveyancing network and follow principles for change management and release management. Some high-level drafting is suggested below, noting that if NECDS Co is operational prior to MOR v7 becoming effective, the language of this obligation could be reworded. In any event, there should be some agreed principles which apply across the network and which are agreed by stakeholders and varied only through appropriate consultation.</p> <p><i>'The ELNO must: ...</i>  <b>5.3(m):</b> <i>comply with any reasonable release management principles specified [by NECDS Co / the custodian of release management principles] to preserve the stability of the interconnected eConveyancing network'</i></p>		
<b>MOR 5 – Operation of an ELN – ELNO Service Fees and Interoperable Service Fees</b>				
42.	5.4	<p>Only briefly references the concept or option of an Interoperability Service Fee and states the fee will be 'no greater than the amount specified in the published Pricing Table'. It is not clear whether any further requirements will be set down and where across the regime. In addition, the interaction of any interoperability fees with ELNO Subscriber charges warrants further consideration in the MORs. It will be important for stakeholders to be consulted on this matter given the limited information available to date.</p>	Change to MOR	ARNECC has determined that ELNOs will not be permitted to charge Interoperability Service Fees. See MOR 5.4.7.
43.	5.4	<p>As ARNECC approaches the question of pricing it will be important to consider the interconnectedness of interoperability fee arrangements and competitiveness of the market more broadly. We acknowledge that pricing determinations of this nature are not straightforward, often time-consuming and contested. However absent a clear set of pricing principles or a sound decision making framework ARNECC risks undermining the overall objective of introducing competition into the market.</p> <p>Currently it does appear that smaller ELNOs are unlikely to be able to compete in the market if they routinely incur costs from the incumbent. Consideration of the system rules may alleviate this and/or consideration should be extended to the overall interoperability obligation if parties who invest have limited opportunity to complete settlements. Ultimately on costs ARNECC may decide some of costs should be borne by each ELNO as a condition of their participation in the market.</p>	Change to MOR	See response at row 42 above.
44.	5.4	<p>Pricing determinations can also be time consuming. In many instances the scope of the fee is specifically contested by the regulated parties. This is most likely the case in eConveyancing because of the significant market asymmetry. Under the model proposed the incumbent ELNO will frequently be charging new entrant(s) the interoperability fee. We note in a symmetrical market, different ELNOs could be expected to perform the</p>	Change to MOR	See response at row 42 above.

#	Requirement	Stakeholder Feedback	Action	ARNECC Response
		<p>role of Responsible Subscriber on a more even basis (with transactions generally likely to net out).</p> <p>In this case system rules then further skew the asymmetry in the market. Separately we have observed there may be costs an ELNO may incur while providing certain interoperable transaction that should be recoverable. This is particularly the case if an ELNO has not invested in certain technical capabilities or entered into certain commercial relationships. Inadequate or inappropriate fee arrangements may affect PEXA unfairly, especially where it is providing services more akin to typical or more traditional third party infrastructure access arrangements.</p>		
45.	5.4	<p>Interoperable fees are opposed to in principle as Subscribers, and ultimately their clients, should not incur yet another fee in consequence of a conveyancing transaction. Such a result would not be acceptable, given the concept of interoperability is meant to bring about a seamless transaction notwithstanding Subscribers elect to transact through an ELNO of their choosing. ARNECC should deny ELNOs any opportunity to introduce new fees ultimately payable by the public.</p> <p>What might be envisaged is that ELNOs must agree between themselves the manner in which the electronic platform lodgement fee is to be shared between them. There may be scope to agree that the Responsible ELNO will take a greater share of the fee in recognition of the fact that it is responsible to lodge the documents and payout the funds and the Participating ELNO is not. However, this is misconceived. In any given transaction the incremental cost of performing the role of Responsible ELNO compared to Participating ELNO is negligible. It is to be noted that every Participating ELNO is required to be ready to assume the role of Responsible ELNO at short notice. For this reason all ELNOs have to incur the cost of provisioning for that contingency. From a capital cost point of view all ELNOs therefore incur the same costs regardless of the role they perform in any given transaction. It follows that the cost of such provisioning should be included in the standard fee charged to Subscribers and not be the subject of any supplementary charges. In practical terms, because the Responsible ELNO does not incur any greater costs than a Participating ELNO, there is no logical basis for there to be any Interoperable Service Fees (however described).</p> <p>Careful regulation will be needed to ensure that the charging of Interoperable Service Fees (however described) does not (inadvertently or deliberately) result in an emerging ELNO being financially disadvantaged by incumbent ELNO(s).</p>	Change to MOR.	See response at row 42 above.
46.	5.4	<p>The lack of requirements surrounding the calculation of the Interoperable Service Fees is concerning, however that ARNECC is currently considering its policy around this issue is acknowledged. It is proposed that a partially regulated model of Interoperable Service Fees would be most appropriate. In this model, certain principles would be inserted into MOR v7 as to how the Interoperable Service Fees must be</p>	Change to MOR.	See response at row 42 above.

#	Requirement	Stakeholder Feedback	Action	ARNECC Response
		<p>arrived at, while leaving the negotiation of the exact fee to the ELNOs. These principles are:</p> <ul style="list-style-type: none"> <li>a) The Interoperable Service Fee is only payable where a RELNO Switch occurs. A RELNO Switch occurs when the ELNO of the Responsible Subscriber does not have the capability to fulfil the role of the Responsible ELNO for a transaction, and a Participating ELNO is required to switch to the role of the Responsible ELNO. It would be inappropriate to require an ELNO to compensate another ELNO for performing their ordinary ELNO functions in an Interoperable Conveyancing Transaction, that they would otherwise be performing in a single- ELN Conveyancing Transaction.</li> <li>b) The Interoperable Service Fee must be set at the incremental cost incurred by the Responsible ELNO where a RELNO Switch occurs. For clarity, this means the extra costs incurred by the Responsible ELNO compared to what they would have ordinarily incurred as the Participating ELNO in that transaction had no RELNO Switch occurred. These costs must have a causal link, so as incremental costs are incurred when the additional activity is undertaken, and costs are switched off when activity ceases.</li> <li>c) Each ELNO must use all reasonable commercial endeavours to minimise the Interoperable Service Fee.</li> </ul> <p>Outside of the Interoperable Service Fee, any Information Fees (and other similar third party fees) should be split depending on the number roles an ELNO has in a transaction, and costs to be recovered by the ELNO that has incurred them.</p> <p>This is consistent with ARNECC's current approach to pricing and other requirements in MOR v7, in that MOR v7 sets out the principles, and then requires the ELNOs to comply with these requirements by developing their own processes and procedures.</p> <p>Additionally, these principles are consistent with existing pricing policy positions set out in Guidance Note 5.3(e) of the Model Operating Requirements, which states that a Pricing Policy should be cost-reflective, ensure regulatory efficiency, and avoiding perverse or unintended outcomes likely to be in conflict with the public interest.</p>		
<b>MOR 5 – Operation of an ELN – Separation</b>				
47.	5.6	<p>The issue of ELNOs providing up- and down-stream services remains a concern to many conveyancers.</p> <p>As explicitly acknowledged in s17 (4) of the ECNL, an ELNO is not restricted from providing additional services other than the ELN itself. In fact, the only protections that conveyancers have from an ELNO becoming a party to a transaction, as opposed to solely the facilitator of it, is MOR 5.6, which forces an ELNO to separate up- or down-stream services from its operations as an ELNO.</p> <p>MOR 5.6 does not provide enough protection for conveyancers and leaves open the possibility that an ELNO could compete directly with businesses like mine, which is unacceptable.</p> <p>To fix this this, the regulations need to explicitly forbid an ELNO, or a related 'separated' entity, from providing conveyancing services, or</p>	None	<p>Feedback noted but not adopted. MOR 14.10 provides that an ELNO must not be a Subscriber to the ELNO's ELN.</p> <p>As the submissions note, the legal framework for electronic conveyancing has never restricted or prevented an ELNO from providing services additional to those provided by the ELN. This is specifically acknowledged in section 17(4) of the ECNL. MOR 5.6 was introduced in Version 5 of the MOR in response to concerns about an ELNO's ability to offer services like conveyancing or legal services. MOR 5.6 is designed to prevent an unfair competitive advantage and requires an ELNO to operate in a manner which separates its ELN services from any downstream or upstream service. MOR 5.6 also requires the two</p>

#	Requirement	Stakeholder Feedback	Action	ARNECC Response
		services that will allow property owners to bypass conveyancers and conduct an entire property transaction online, without professional advice		<p>entities to act independently, at arm's length. The requirements were modelled on ring fencing frameworks in place in other industries.</p> <p>It would not be consistent with the legal framework to absolutely prohibit a separate business unit or separate legal entity from providing any services additional to those provided by the ELN.</p>
48.	5.6	<p>Many adaptations made by the current, and only ELNO, are bordering on given "advice" to clients by way of products such as PEXA key. Although I use PEXA key for my clients to transfer bank details securely, the app itself opens up parameters for direct competition with conveyancers and will slowly erode, what is our role as conveyancers. Given that the current ELNO has more than once, denied any intention to partake in conveyancing work, this will just ensure that such assertions are enforced.</p>	None	See response at row 47 above.
49.	5.6	<p>Sufficient protection from ELNOs (via their Related Entities or ELN business units) being able to provide upstream and downstream services continues to be disregarded. Section 17(5) of the ECNL provides the MOR the ability to restrict ELNOs from providing downstream and upstream services. Even if ARNECC are not competition experts in their own right, ARNECC are nevertheless the authority charged with governing the e-Conveyancing industry in Australia. Accordingly, to the extent that ARNECC do not have internal expertise in anti-competitive issues (which is completely understood), ARNECC needs to seek assistance from the relevant competition experts, such as ACCC federally, or the equivalent bodies from a state perspective.</p> <p>It is hoped that ARNECC is open to including much stronger protections against ELNOs (via their Related Entities or ELN business units) providing downstream and upstream services in MOR version 7.</p>	None	See response at row 47 above.
50.	5.6	<p>It is considered that the emergence of downstream services is the most important issue to be raised and managed as part of the MOR review in conjunction with the IGA Review outcomes. The ECNL or at minimum the MOR should expressly prohibit an ELNO or any entity related to it from providing conveyancing services. It has been suggested that the MOR is not the place to attempt to regulate competition. However, a simple prohibition creates at the very least, a hurdle and a statement of attitude, that ensures that a license to operate as an ELNO should not be granted (and potentially that license may be suspended) where the licensee or a related entity is to offer conveyancing services. These matters are raised again in this submission because they are relevant to the development of the terms and conditions of the MOR's.</p>	None	See response at row 47 above.
51.	5.6	<p>It is again noted that ARNECC has inadequately addressed the issue of downstream services. The absence of appropriate robust regulation in the MOR exposes a situation that could easily be exploited, limits competition and provides for poor consumer outcomes. The potential for an ELNO to broaden its control of the supply channel not only</p>	None	See response at row 47 above.

#	Requirement	Stakeholder Feedback	Action	ARNECC Response
		<p>competes with existing conveyancing agencies but effectively reduces the number of new agencies attempting to enter the marketplace. In much the same way as interoperability between ELNO's is requiring intervention by ARNECC, addressing vertical integration is an issue of high priority that will not be resolved unless immediate action is taken. The following amendment to PR5.6 to include an additional rule would satisfactorily address this matter for conveyancers and consumers:</p> <p><i>5.6.3 If either Operating Requirement 5.6.1 or 5.6.2 applies, the ELNO must:</i></p> <p><b>(d) ensure the Downstream or Upstream Service business unit does not perform any functions associated with providing conveyancing services, including acting as a representative or signing a registry instrument on behalf of a representative or party.</b></p>		
<b>MOR 5 – Operation of an ELN – Interoperability Framework</b>				
52.	5.7.2	<p>If an ELNO is not permitted to offer one Interoperable ELNO more favourable terms than another, then this is a very good argument for having a Model Interoperability Contract with standard terms and conditions that all ELNO's must comply with.</p>	None	<p>Feedback noted but not adopted. ARNECC has specified the matters that it considers must be dealt with in the Interoperability Agreement in Schedule 8 of the MOR. Beyond these matters, ARNECC is of the view that Interoperating ELNOs are in the best position to know the practical realities of the relationship between them. This approach also allows for flexibility depending on the circumstances of each ELNO.</p> <p>It is anticipated that Interoperability Agreements will contain largely operational matters, or matters that give effect to existing obligations in the MORs or other law.</p> <p>See also the amendment made to MOR 5.7.2(b) requiring each ELNO to provide information to other ELNOs about the proposed terms on which they are prepared to Interoperate.</p>
53.	5.7.2	<p>MOR 5.7.2 should be amended to incorporate the following drafting clarifications to create greater certainty with respect to an ELNO's obligations:</p> <ul style="list-style-type: none"> <li>▪ <b>5.7.2(a):</b> delete the word <i>i</i> which means to do immediately, and instead insert the words <i>'without undue delay'</i>. This is to accommodate the reality that the ELNO receiving a request to interoperate will need to, at a minimum, review the request and ensure there are no defects in the request.</li> <li>▪ <b>5.7.2(b):</b> after the words <i>'reasonably necessary'</i> recommend the words <i>'within its control'</i>. ELNOs can only be responsible for what is within their control and this should be expressly clearly in this provision.</li> </ul> <p>As to MOR 5.7.2(c), further clarification is required with regard to what <i>'same basis'</i> means in this context. Future entrant ELNOs may adopt</p>	Change to MOR	<p>The word Promptly will be retained in MOR 5.7.2(a). This is a defined term that means "without delay in light of the facts and circumstances", not "immediately". The suggested amendment has been made to 5.7.2(b) (now 5.7.3(b)) to reflect that an ELNO can only take steps that are within its control.</p> <p>"Same basis" has been substituted for the defined term "Equivalent Basis" to provide more clarity in relation to ARNECC's intention.</p> <p>In this context Equivalent Basis means equivalence by using the same processes and systems in implementing Interoperability, and in relation to the terms and conditions on which Interoperability is implemented.</p>

#	Requirement	Stakeholder Feedback	Action	ARNECC Response
		differing operating models leading to legitimate variations in the operational processes adopted between ELNOs.		
54.	5.7.2	<p>The requirement to “ensure the Interoperability Agreement entered into with each ELNO or Potential ELNO is on the same basis” is supported in principle, however, it is requested that this be amended to be on “substantively the same basis”.</p> <p>It is anticipated that there may need to be minor differences with Interoperability Agreements with future ELNOs, and this minor amendment would facilitate this.</p>	Change to MOR	<p>“Same basis” has been substituted for the defined term “Equivalent Basis” to provide more clarity in relation to ARNECC’s intention.</p> <p>In this context Equivalent Basis means equivalence by using the same processes and systems in implementing Interoperability, and in relation to the terms and conditions on which Interoperability is implemented.</p>
55.	5.7.2	<p>We note that section 5.7.2 (c) states ‘ensure the Interoperability Agreement entered into with each ELNO or Potential ELNO is on the same basis.’ We note that ‘on the same basis’ could be interpreted as the Interoperability Agreement between each ELNO is required to be the same. We understand the provision is likely looking to achieve something similar to a non-discrimination or no hindering clause, which we consider would be more effective.</p>	Change to MOR	See response at row 54 above.
56.	5.7.2	<p>Further guidance should be provided around the scope for vertical integration by the ELNOs into related markets. The impact of price controls in one part of the market may be easily offset by decisions in a related market. Several stakeholders have indicated a concern around the movement of ELNOs into related markets. As technology continues to evolve it will be important to set clear expectations and obligations around the services ELNOs may offer and how they interact with related entities at other parts of the supply chain surrounding and supporting e-conveyancing</p>	None	<p>Feedback noted but not adopted. Version 7 of the MOR is intended to implement Interoperability. As this feedback does not directly relate to Interoperability, it will be considered as part of a future review of the MOR.</p>
57.	5.7.2	<p>Section 5.7.2 notes that an ELNO needs to receive a request to interoperate, which requires consideration of what ‘receives a request’ means. It is important to have clarity around what constitutes a request, and the trigger to move to arbitration from negotiation.</p> <p>The negotiation phase currently sits at section 5.7.2 and requires an ELNO which receives a request to interoperate to ‘promptly enter into good faith negotiations with the ELNO Requesting Interoperability to prepare and execute an Interoperability Agreement’. Section 5.7.2 does not include a good faith obligation on the requesting ELNO. You may like to consider if this obligation should apply to both parties.</p>	Change to MOR	<p>It is intended that the ordinary meaning of the word request applies in this definition. Further information is contained in MOR 5.7.1, which requires each ELNO to publish on its website details of the process for any ELNO Requesting Interoperability to make a request to Interoperate.</p> <p>ARNECC will consider giving guidance in the MOR Guidance Notes.</p> <p>The obligation to negotiate in good faith has been made reciprocal for both ELNOs.</p>
58.	5.7.2	<p>Behavioural expectations on negotiating parties (such as an obligation to negotiate in good faith) and a clear timeframe or a certain pathway to agreement should be set out in the MORs. The second limb of section 5.7.2 deals with what happens after the agreement is formed. It may be appropriate that section 5.7.2 could be refocused on the negotiation phase, and obligations and requirements could be specified more directly. The current subsection 5.7.2(b) which deals with post agreement behaviour may be better dealt with in a different section.</p>	Change to MOR	<p>There is an additional obligation in MOR 5.7.2(b) requiring an ELNO to provide all information reasonably required to understand the basis on which the ELNO is prepared to Interoperate, including any proposed terms.</p> <p>The negotiation and arbitration provisions have also been expanded in MORs 5.7.5 and 5.7.6.</p>

#	Requirement	Stakeholder Feedback	Action	ARNECC Response
59.	5.7.3	Interoperability Agreements in principle are not supported.	None	<p>Feedback noted but not adopted. ARNECC has specified the matters that it considers must be dealt with in the Interoperability Agreement in Schedule 8 of the MOR. Beyond these matters, ARNECC is of the view that Interoperating ELNOs are in the best position to know the practical realities of the relationship between them. This approach also allows for flexibility depending on the circumstances of each ELNO.</p> <p>It is anticipated that Interoperability Agreements will contain largely operational matters, or matters that give effect to existing obligations in the MORs or other law.</p> <p>See also the amendment made to MOR 5.7.2(b) requiring each ELNO to provide information to other ELNOs about the proposed terms on which they are prepared to Interoperate.</p>
60.	5.7.4	<p>Supported if Interoperability Agreements are to be maintained, but query whether referral to mediation is likely to be effective. Additionally, arbitration in these circumstances is not suitable as the arbitrator is constrained to apply existing rules and laws which, almost by definition, will not exist in relation to the subject matter.</p> <p>A further option for an appropriate escalation path where two ELNOs have been unable to reach agreement is for the issue to be referred for expert determination by a determiner with eConveyancing infrastructure knowledge and regulatory experience.</p>	None	<p>Feedback noted but not adopted. ARNECC is of the view that arbitration is the appropriate dispute resolution mechanism in these circumstances.</p>
61.	5.7.4	<p>The existence of a Model Interoperability Contract would overcome disputes regarding the terms of such an agreement.</p> <p>In terms of resolution of disputes between ELNO's, mediation is an appropriate first step in a resolution process. A body such as the Resolution Institute would be an appropriate body to provide mediation services.</p> <p>It may be appropriate that arbitration is the next stage for a dispute that remains unresolved. A decision would need to be made as to whether the arbitration would be conducted by an arbitral tribunal or a private independent arbitrator. A suitable model may be that contained in the Commercial Arbitrations Act that exist in each jurisdiction.</p>	Change to MOR	<p>There is a new proposed arbitration provision at MOR 5.7.6 to address disputes which have not resolved after mediation.</p>
62.	5.7.4	<p>This should include an Arbitration provision if the ELNO or Potential ELNO are unable to agree on the terms of an Interoperability Agreement between them and agree to submit the dispute to arbitration for a binding dispute resolution outcome.</p> <p>In the event the parties agree to arbitration then they shall be taken to have agreed that the arbitration shall be conducted in accordance with a set of Arbitration Rules. Suggest a set Arbitration Rules be made upon similar lines as the Law Society of Conveyancing Arbitration Rules.</p>	Change to MOR	<p>See response at row 61 above.</p>
63.	5.7.4	<p>While ARNECC's proposal to include a mediation process between ELNOs (or an ELNO and a Potential ELNO) in the MOR is sensible, a binding arbitral determination process to resolve disputes in the event mediation is unsuccessful should also be prescribed in the MOR. Given</p>	Change to MOR	<p>See response at row 61 above.</p>

#	Requirement	Stakeholder Feedback	Action	ARNECC Response
		<p>the complex and technical nature of issues in the eConveyancing environment across a broad range of expertise, it is considered that a panel of independent arbitrators elected by the parties should be responsible for resolving disputes.</p> <p>The dispute resolution arrangements in MOR 5.7.4 should set out an escalation process for parties to first mediate and then arbitrate disputes relating to issues pertaining to the negotiation of the Interoperability Agreement that parties cannot reach commercial agreement on. It is also suggested there would be efficiency gains in using the same framework to resolve disputes between ELNOs once interoperability is operational (noting that the dispute resolution process in the Interoperability Agreement which the parties provide for pursuant to Schedule 8 of the MOR could supplement this framework). For the purposes of drafting MOR 5.7.4, a more robust mediation process than ARNECC is currently considering may be required. A negotiate-mediate-arbitrate dispute resolution framework for interoperability will be fit-for-purpose as it will afford ELNOs / Potential ELNOs who are sophisticated entities ample opportunity and discretion to reach commercial agreement on issues, while equally providing an incentive for them to reach agreement to avoid the costs involved in arbitration (and certainty with respect to decision making). It is further suggested that independent mediators and arbitrators appointed by the parties are best placed to resolve disputes (rather than a regulator) because:</p> <ul style="list-style-type: none"> <li>▪ Disputes relating to interoperability are likely to involve technical issues across a broad range of disciplines. A process whereby parties are able to select each arbitrator with the requisite expertise to resolve a dispute is to be preferred. In contrast, a regulator is likely to be faced with expertise and resource constraints to adequately address the issues.</li> <li>▪ Binding determinations made by regulators can involve unduly long decision-making processes and include avenues for merits review, appeal to courts or ministerial input. Regulator based determination processes are therefore unlikely to be fit for purpose given disputes relating to interoperability necessitate timely resolution. Further, unduly long decision-making processes are likely to result in inefficient legal and administrative costs.</li> <li>▪ Regulators are established to achieve specific policy objectives, which do not necessarily align with the broad range of relevant issues or considerations that may arise in a dispute between competing ELNOs. It is considered that the broad range of technical expertise that will be required between ELNOs supports the view that independent arbitrators are better placed to resolve interoperability disputes than a regulator.</li> </ul>		
64.	5.7.4	<p>In the event that a dispute arises between ELNOs in negotiating an Interoperability Agreement (or a variation to an Interoperability Agreement), MOR v7 would need to provide a backstop dispute resolution process which allows either ELNO to refer a dispute to an independent commercial arbitrator for arbitration. Additionally, given that there is already a requirement for the ELNOs to negotiate in good</p>	Change to MOR	<p>See response at row 61 above.</p> <p>ARNECC considers mediation a valuable part of the dispute resolution process. It is common for regulatory regimes to provide for mediation prior to arbitration.</p>



#	Requirement	Stakeholder Feedback	Action	ARNECC Response
		<p>faith, it is unlikely that mediation would be an effective mechanism to resolve disputes, if such negotiation between the ELNOs has already failed. It is proposed that the requirement for mediation be removed, to allow to a more efficient and effective path to resolve a dispute through arbitration.</p> <p>Such a backstop mechanism would encourage both parties to a dispute to engage in commercial negotiations to achieve effective outcomes. Arbitration requirements could operate in accordance with the following high-level process, which it is proposed should be added to MOR 5.7.4:</p> <ul style="list-style-type: none"> <li>i) Where a dispute arises between ELNOs negotiating an Interoperability Agreement, or a variation to an Interoperability Agreement, an ELNO (first ELNO) should be able to, by notice in writing to the other party (second ELNO), refer the terms of the agreement to be determined by an independent arbitrator selected by ARNECC.</li> <li>ii) The arbitrator must determine the terms of the Interoperability Agreement and notify the parties of the terms. This may include appointing an expert to determine any technical or similar items for which the arbitrator may not be appropriately qualified.</li> <li>iii) The second ELNO (being the ELNO which did not refer the matter to arbitration) must offer to enter into an Interoperability Agreement with the first ELNO on the terms determined by the arbitrator within 10 Business Days of being notified of the terms.</li> <li>iv) The parties must bear their own costs in participation in the arbitration, and share equally the third party costs of the arbitration, such as the arbitrator.</li> </ul> <p>To promote outcomes which are consistent with the regulatory regime, MOR v7 could require the arbitrator to:</p> <ol style="list-style-type: none"> <li>1. consider certain public policy objectives (for example, the security and integrity of the titling system) or other matters which should be considered in determining the terms on which an Interoperability Agreement is entered; and/or</li> <li>2. have certain skill sets/qualifications regarding the e-Conveyancing system. It would also be open to ARNECC to establish a register of appropriately qualified arbitrators.</li> </ol> <p>The proposed arbitration obligations are similar to those existing in other regulatory contexts.</p> <p>It is separately noted that other stakeholders have discussed the possibility of expert determination being a more appropriate form of dispute resolution if there are not clear principles by which the arbitrator can reference. However, given that there are likely to be more general commercial points that may need to be determined under this process, and subject to principles such as those outlined above being included in MOR v7, arbitration is considered to be the primary method of dispute resolution, with the ability of the arbitrator to call on experts for their input where necessary.</p> <p>The Registrar General/ARNECC would retain ultimate discretion as to whether or not to grant approval to the Interoperability Agreement.</p>		

#	Requirement	Stakeholder Feedback	Action	ARNECC Response
<b>MOR 5 – Operation of an ELN – Interoperability Roles</b>				
65.	5.8	Outlines the interoperability roles of ELNOs is very limited and does not provide a good sense to the Subscribers and end users on what the full extent of roles are on each ELNO when interoperating. The roles which are set out in further detail in the interoperability agreement should be made publicly available.	None	See response at row 21 above.
66.	5.8.1	<p>The Responsible ELNO will have obligations prior to being responsible for lodgement and settlement. Therefore, the proposed drafting for MOR 5.8.1 does not reflect the reality or provide for the obligations a Responsible ELNO will be required to comply with in the stages leading up to the lodgement and settlement events.</p> <p>Separately, the NECIDS contemplates ‘switching’ events, where Responsible Subscribers change throughout a transaction or where the ELNO of the Responsible Subscriber declines to act as Responsible ELNO due to capacity constraints. These matters are also not contemplated by MOR 5.8.1.</p> <p>Given the propensity for the role of the Responsible ELNO to ‘switch’, rules will be required to dictate the specific roles and duties of a Responsible ELNO across the lifecycle of a Conveyancing Transaction and not just in relation to lodgement. It is therefore recommended that MOR 5.8.1 should require ELNOs to comply with the roles for the Responsible ELNO and Participating ELNO as provided for under the NECIDS (noting the NECIDS describes these roles extensively).</p> <p>It is noted this would alleviate the need to review and amend the MOR frequently in response to ongoing technological development.</p> <p>Consistent with the above, the definition of Responsible ELNO should be as follows:</p> <p><i>Responsible ELNO means the ELNO involved in an Interoperable Conveyancing Transaction that has been designated as responsible for the coordination of an interoperable conveyancing transaction in accordance with the NECIDS.</i></p> <p>The following additions (in bold) to MOR 5.8.1 are further suggested:</p> <p><b>‘5.8.1 Participating ELNOs must agree on the designation of one Responsible ELNO at any point in time for every Interoperable Electronic Workspace.</b></p> <p><i>Where the ELNO is the Responsible ELNO, it must <b>comply with the obligations of the Responsible ELNO defined in the NECIDS including where relevant:</b></i></p> <p><i>(a) Promptly send and respond to all messages and calls relating to the Interoperable Lodgment Case or any Associated Financial Transaction; and</i></p> <p><i>(b) Lodge all the electronic Registry Instruments or other electronic Documents in the Interoperable Lodgment Case; and</i></p> <p><i>(c) Promptly notify all other Participating ELNOs of any Incident that affects the Interoperable Lodgment Case, including the details of the Incident.’</i></p>	None	See response at row 21 above.

#	Requirement	Stakeholder Feedback	Action	ARNECC Response
67.	5.8.1	<p>The current role of the Responsible ELNO does not include the completion of Associated Financial Transactions. It is proposed that MOR 5.8.1 be amended as follows:</p> <p><i>Where the ELNO is the Responsible ELNO, it must: (a) Promptly send and respond to all messages and calls relating to the Interoperable Lodgment Case or any Associated Financial Transaction; and (b) Lodge all the electronic Registry Instruments or other electronic Documents in the Interoperable Lodgment Case; (c) <b>Complete any Associated Financial Transaction;</b> and <del>(d)</del> Promptly notify all other Participating ELNOs of any Incident that affects the Interoperable Lodgment Case, including the details of the Incident.</i></p>	None	Feedback noted but not adopted. Associated Financial Transaction is referred to in the definition of Responsible ELNO.
<b>MOR 6 – Testing</b>				
68.	6.1	<p>An ELNO's Test Plan obligation should set out timings for testing with other ELNOs for the purpose of Interoperability. This could be achieved with minimal changes to the Guidance Notes:</p> <p>Guidance Notes 6.1 Specific Inclusions - Your Test Plan is expected to include as a minimum testing of your ELN's connectivity with external systems for exchanging messages, <b>including with other ELNOs for the purpose of Interoperability.</b></p>	None	<p>ARNECC will consider putting more specific information in the MOR Guidance Notes.</p> <p>Note also that testing between ELNOs in relation to Interoperability is a subject matter to be included in the Interoperability Agreement under Schedule 8 of the MORs. This would include timings for that testing.</p>
69.	6.2	<p>The additional obligation for an ELNO to test functionality to implement interoperability between its ELN and another ELNO's ELN is not likely to satisfactorily demonstrate the reliability of interoperability for the ELNO. To ensure interoperability can be safely activated, MOR 6.2 should require end-to-end testing of ELNO capability.</p> <p>It is considered implementation of interoperability in the initial jurisdiction must include full end-to-end regression by all ELNOs with <i>all</i> jurisdictions to which they are integrated, to ensure that existing functionality remains unaffected by the changes to support interoperability.</p> <p>Thereafter, updates to interoperability functionality should require full regression testing with all jurisdictions (whether enabled for interoperability or not) and in certain cases (depending upon the nature of the change) regression of ELNO System functionality.</p> <p>Additionally, ARNECC's proposed amendment to MOR 6.2 should be redrafted to specify interoperability is between an 'ELNO System' and another 'ELNO System', as interoperability is not designed between ELNs. The scope of functionality required for interoperability is broader than the ELN.</p>	Change to MOR	<p>ARNECC does not consider it necessary to include this level of detail in the MORs. The Test Plan must be developed to the satisfaction of the Registrar, and this includes Interoperability testing. ARNECC will consider putting more specific information in the MOR Guidance Notes.</p> <p>The wording of MOR 6.2 has been amended slightly to clarify that the testing requirement applies to Interoperability as a whole, and is not limited to functional testing.</p>
<b>MOR 7 – Obligations regarding System Security and Integrity – ISMS</b>				
70.	7.1	<p>Agree with the requirement for ELNOs to develop and maintain an ISMS. However, it is noted that the Interoperability Agreement Working Group is currently discussing whether specific baseline controls should be required to ensure ISMS obligations remain fit for purpose in an interoperable multi-ELNO ecosystem.</p>	None	Feedback noted. These discussions are ongoing and will likely not be considered until a later version of the MOR.

#	Requirement	Stakeholder Feedback	Action	ARNECC Response
		Accordingly, it is recommended that ARNECC considers and incorporates the outcome of these discussions as part of its consultation on MOR v7 Consultation Draft.		
<b>MOR 7 – Obligations regarding System Security and Integrity – Access to ELN</b>				
71.	7.2.1	<p>At present, an ELNO is only permitted to provide access to its ELN to: (a) its own Subscribers; and (b) persons properly authorised by its own Subscribers and Registrars, if reasonably required.</p> <p>It is suggested it may be necessary to amend MOR 7.2.1 to confirm that in addition to its own Subscribers, the ELNO provides access to other ELNOs in accordance with MOR 5.7, as follows:</p> <p><i>7.2.1: 'Subject to Operating Requirements 7.2.2 and 7.2.3, the ELNO must ensure that only Subscribers it has registered in accordance with these Operating Requirements and the Participation Rules, or Persons properly authorised by Subscribers, or other ELNOs properly authorised in accordance with Operating Requirement 5.7, are able to access the ELN.'</i></p>	Change to MOR	The MOR has been amended to accommodate access to and use of the ELN by other ELNOs with which the ELNO interoperates.
<b>MOR 7 – Obligations regarding System Security and Integrity – Security of ELN</b>				
72.	7.3.1	<p>Greater clarity should be provided in the MOR with respect to the reasonable steps an ELNO must take to ensure security of their own ELN. Specifically with respect to:</p> <ul style="list-style-type: none"> <li>▪ <b>7.3.1(a)-(g)</b> – ARNECC should remove the generic application of these obligations as it creates uncertainty with respect to which ELNO is required to comply with these cyber security compliance obligations. These obligations should apply specifically to an ELNO's own ELN. As such, suggest inserting the word 'it' as follows: '<i>ensure the data it supplied to any system connected to its ELN</i>'. It is noted that this is a global change to this Requirement <b>7.3.1</b>.</li> <li>▪ <b>7.3.1(a), 7.3.1(b)</b> – To account for continuity of security across the interoperable chain, these provisions should also apply to safeguard '<i>other ELNO systems</i>' in addition to the '<i>Land Registry System</i>', i.e.: <p><i>'ensure that data supplied to any system connected to the ELN is free from viruses, corruption and any other condition that may compromise any of those systems or any data stored by, or passing into or out of, the Land Registry System, other ELNO systems, or any other systems connected to the ELN for the purposes of carrying out Conveyancing Transactions; and...'</i></p> </li> <li>▪ <b>7.3.1(d)</b> – ARNECC include the requirement where a security alert is received from the Land Registry System OR '<i>another relevant ELNO that it has implemented interoperability with</i>'.</li> </ul>	Change to MOR	<p>MOR 7.3.1 has been amended to replace the generic "the ELN" with the specific "its ELN", so that the obligations apply to the ELNO's own ELN only.</p> <p>MORs 7.3.1(a) and (b) have been amended to extend the obligation to ELNs with which the ELNO Interoperates. MORs 7.3.1(d) and (f) have been amended to extend the obligation to other ELNOs with which the ELNO Interoperates.</p>

#	Requirement	Stakeholder Feedback	Action	ARNECC Response
		<ul style="list-style-type: none"> <li>▪ <b>7.3.1(e), 7.3.1(f)</b> – the definition of ‘ELN’ in the ECNL does not yet account for a broader network of interoperable ELNO Systems. Given the importance of network stability in eConveyancing, MORs <b>7.3.1(e)</b> and <b>7.3.1(f)</b> should require an ELNO to expressly have regard to the additional consideration of ‘<i>stability of the eConveyancing network</i>’.</li> </ul>		
73.	7.3.2	<p>Consistent with feedback provided in respect MOR 7.1, refer to the ongoing discussions in the Interoperability Agreement Working Group for developing suitable baseline cyber security requirements for ELNOs to comply with.</p> <p>The SOC 2 Type 2 Report is one means for providing assurance of an organisation’s data security controls and a reasonable starting point may be a requirement to produce a SOC 2 Type 2 Report in respect of security and availability of an ELNO’s stored data. However, common feedback received from stakeholders indicates a preference that ELNOs seek to consistently improve their data protection operations in compliance with leading industry Standards.</p> <p>Given the evolution which occurs in this space, it is recommended MOR <b>7.3.2</b> be amended to allow an ELNO, if it is able to deliver against a higher recognised Standard and provide certification, that ELNO should not have to also obtain a SOC 2 Type 2 Report. A suggested change could be:</p> <p><b>7.3.2: ‘The ELNO must</b>  <b>(a) obtain certification from an industry recognised security standard at least once a year; and</b>  <b>(b) Promptly take any action required to ensure the ELNO’s controls and processes are effective and rectify any weaknesses identified in the certification report.’</b></p>	Change to MOR	MOR 7.3.2 has been amended to permit ELNOs to provide a type of report other than a SOC 2 Type 2 report, provided such report has been approved by the Registrar.
<b>MOR 7 – Obligations regarding System Security and Integrity – Data</b>				
74.	7.4	<p>Affirm the importance of enhanced privacy protections in an interoperable environment. However, this should be included in the ECNL.</p> <p>In the text of the MOR 7.4, the word ‘information’ rather than ‘data’ is used. Should MOR 7.4 be maintained in its current form, the Law Council suggests that the word ‘data’ should be used.</p>	None	Feedback noted but not adopted. ARNECC considers that the word “information” is broader than “data”, and as such, no change to MOR 7.4.2 is required.
75.	7.4.2	<p>MOR <b>7.4.2</b> is not fit for purpose and likely unworkable given it will create additional layers of data and privacy regulation for ELNOs that will apply in addition to ELNOs’ data and storage obligations under the MOR and the Privacy Act 1988 (Cth). It is considered this requirement is not necessary and is likely to create unnecessary complexity and confusion. It is submitted that ‘<i>Information that the ELNO receives from another ELNO involved in an Interoperable Electronic Workspace</i>’ would encompass the following:</p> <ul style="list-style-type: none"> <li>▪ <b>Land Information:</b> ELNOs are already required to use and store Land Information in accordance with the MOR (regardless of the</li> </ul>	Change to MOR	<p>ARNECC considers it important that the use of information received in an Interoperable Electronic Workspace is limited in purpose.</p> <p>In order to address the feedback that an ELNO may receive its own information back from another ELNO, MOR 7.4.2 has been amended to exclude information supplied by the ELNO.</p>

#	Requirement	Stakeholder Feedback	Action	ARNECC Response
		<p>source of such information). In this regard, additional data restrictions that apply based on source are unnecessary and will add complexity increasing risk and administrative burden. It is noted that some Land Information is required for use by multiple Representative Subscribers, in the completion of multi counterpart documents, for example, Consideration Amount. In this case, the systems would allow either Subscriber to create and share the information, but both to confirm and digitally sign the completed document. It would not be appropriate to describe the information as information from one ELNO when both must contribute. However, as noted above, there are existing requirements relating to Land Information, regardless of the source.</p> <ul style="list-style-type: none"> <li>▪ <b>Generic data</b> (or metadata): That is required when exchanging data between ELNOs and should not be regulated (e.g. message headers, timestamps).</li> <li>▪ <b>Generic settlement information:</b> That includes field labels 'fund category', settlement dates, but does not require special treatment under the MOR.</li> <li>▪ <b>Special/Sensitive settlement information:</b> That includes financial account details which may require additional restrictions.</li> <li>▪ <b>Personal information:</b> That ELNOs are already required to handle in compliance with privacy laws pursuant to State and Federal legislation and contractual relations, and, where relevant, Land Information requirements already prescribed in the MOR.</li> </ul> <p>Complexity is a driver of both cost and risk and should be introduced only when there are sound and logical grounds for doing so. Therefore, where ARNECC believes that a particular class or type of information should be regulated under MOR <b>7.4.2</b>, it is considered that information should be delineated to avoid unintended consequences.</p> <p>Additionally, there may be instances where an ELNO receives its own information from another ELNO given data may be passed back and forth between ELNOs in a transaction. It is noted that information would maintain the identifier assigned by the first ELNO. Where a set of information from another ELNO will require special treatment, it should be more specifically defined, as "information for which another ELNO has assigned an identifier". The Interoperability Agreement should delineate between treatment of:</p> <ul style="list-style-type: none"> <li>▪ transaction specific data (for which ownership and use requirements will broadly reflect current practice under the MORs and operating agreements with the Registrars); and</li> <li>▪ the data shared between ELNOs to facilitate a transaction, and which is not: Land Information; generic transaction information (e.g. Jurisdiction, dates, timestamps and metadata) and which needs special treatment (which is in effect a new 'interoperability data set').</li> </ul> <p>This framework should address generation, acknowledgment of MOR obligations (e.g. Retention), permissible use and IP (to the extent</p>		

#	Requirement	Stakeholder Feedback	Action	ARNECC Response
		applicable for the interoperability data set). These matters are best left to be resolved in the Interoperability Agreement (rather than the MOR).		
76.	7.4.2	<p>Strongly agree that the use of information received in an Interoperable Electronic Workspace must be restricted. There are likely to be scenarios where data relating to a conveyancing transaction, irrespective of it being a transaction completed in a single ELN environment or an interoperable environment) will be included in a de-identified form or an aggregated form for the purposes of an ELNO's reporting or governance activities. On this basis, it is proposed:</p> <p>i. A definition of De-Identified Data be inserted into MOR v7, as follows:  <i>De-Identified Data means data which has been aggregated and/or masked such that the data does not contain Personal Information or confidential information of the Subscriber, identify the Subscriber or their Client, or identifiable details of real property the subject of a Conveyancing Transaction.</i></p> <p>ii. MOR 7.4.2 be amended as follows:  <i>In an Interoperable Electronic Workspace, information that the ELNO receives from another ELNO involved in the Interoperable Electronic Workspace (excluding De-Identified Data) may only be disclosed, stored or used:</i>  <i>(a) for the purpose of performing any function in the Interoperable Electronic Workspace; or</i>  <i>(b) to comply with these Operating Requirements; or</i>  <i>(c) as required by law.</i></p>	Future review	Version 7 of the MOR is intended to implement Interoperability. As this feedback is broader than Interoperability alone, it will be considered as part of a future review of the MOR.
<b>MOR 7 – Obligations regarding System Security and Integrity – Digital Certificates</b>				
77.	7.6	<p>One matter that has been specifically raised is the issue of Digital Signing Certificates (DSC). It is understood that other submissions have, or are being made, that the DSC issued by the market incumbent, should be able to be used by participants in all other ELNOs to avoid different or multiple DSCs.</p> <p>While the requirement for PEXA DSC to become a “universal” DSC partially addresses that concern, and would be generally supported (though acknowledging the investment that has been made by PEXA in providing the PEXA DSC to PEXA users) significant technological advances in digital signing and certification since the creation of the existing PEXA DSCs are noted. A wider approach to the issue is recommended which would oblige ELNOs to undertake ongoing development (and updating where required) of a single “best practice” interoperable and universal DSC.</p>	None	ELNOs are currently required to permit Subscribers to use open Digital Certificates, subject to any reasonable requirements in the ELNOs’ Subscriber security policies. This requirement enables Subscribers to use a single Digital Certificate across multiple ELNs if they wish to do so. ARNECC does not consider any further regulatory intervention is necessary at this time.
78.	7.6	I paid for a digital certificate which allows me to use the PEXA network. I don't want to be forced to pay for another certificate if and when I choose to join another ELNO, nor do I want the hassle of maintaining two certificates.	None	See response at row 77 above.

#	Requirement	Stakeholder Feedback	Action	ARNECC Response
		<p>I don't want it to be hard or expensive to switch between ELNOs - I would like the ability to reuse my current PEXA digital certificate with any ELNO. That way, I can easily switch between ELNOs if I choose, so that I can always make sure that I'm using the network that provides the best service for my clients.</p> <p>At the moment, my digital certificate is 'closed' – it only works in a particular community of interest, that being PEXA. Rather than having to obtain an additional 'open' certificate from another provider, incurring additional expense in both time and money, the community of interest should be defined to include all ELNOs, which are all part of the eConveyancing community.</p> <p>The changes to the MOR v6 did not go far enough to achieve this. With further changes to require PEXA to allow other ELNOs to use their digital certificates, it would allow for a smoother transition when switching ELNs.</p>		
79.	7.6	<p>I paid for two separate digital certificates which allows me to use the PEXA network. I don't want to be forced to pay for another certificate if and when I choose to join another ELNO, nor do I want the hassle of maintaining more certificates than those which I already possess.</p> <p>I do not want it to be a difficult or expensive exercise to switch between ELNOs as the working life of a licensed conveyancer is already fraught with numerous difficulties in any given week - I would like to be afforded the ability of reusing my current PEXA digital certificates with any ELNO. That way, I can easily switch between ELNO's if I so choose to do – I would therefore be in a position to ensure that I am using the network which provides the best service for my clientele.</p> <p>At the moment, my digital certificates are 'closed' – and thus they only work in a particular community of interest, that being PEXA. Rather than having to obtain an additional 'open' certificate from another provider, incurring additional expense in both time and money, the community of interest should be defined to include all ELNO's, which are all part of the eConveyancing community.</p> <p>The changes to the MOR v6 did not go far enough to achieve this. With further changes to require PEXA to allow other ELNO's to use their digital certificates, it would allow for a smoother transition when switching ELNO's.</p>	None	See response at row 77 above.
80.	7.6	<p>Concerned about the need to pay for another digital certificate to switch between ELNO with changes being made to the 'Conveyancing system. Kindly consider that the same digital certificate to be used in all ELNO Networks</p>	None	See response at row 77 above.
81.	7.6	<p>Currently, PEXA issues a proprietary digital certificate while Sympli issues a universal gatekeeper certificate. A Subscriber should be free to change service providers, or should there be a need to do so, use the services of more than one provider, by means of a single digital signing certificate. Each ELNO should recognise each other ELNO's Subscriber's valid digital signing certificate. This should also be</p>	None	See response at row 77 above.



#	Requirement	Stakeholder Feedback	Action	ARNECC Response
		included in the ECNL and is not something to be left to a bilateral negotiation between two ELNOs.		
82.	7.6	<p>The current requirements in MOR v7 relating to digital certificates do not allow for a truly competitive e-Conveyancing market. Specifically, existing Subscribers want to be able to use their digital certificates on other ELNs:</p> <ol style="list-style-type: none"> <li>1. The requirement for current Subscribers to obtain a new digital certificate to use on another ELN is a financial and administrative burden for Subscribers, and is a disincentive to switch ELNs;</li> <li>2. Subscribers should have the ability to use their existing digital certificate on their ELN of choice. For clarity, this does not mean that all digital certificates need to be "open" - with respect to current digital certificate holders, it would require the closed community of interest for those certificates to be extended to other ELNs; and</li> <li>3. In addition to improving customer experience, the ability to re-use digital certificates reduces switching costs for Subscribers, which is crucial to achieve true competition – this is the ultimate issue that interoperability is addressing.</li> </ol> <p>It is understood that this issue in relation to the exclusivity of the existing digital certificates has arisen as a result of using a third party to run the day-to-day operation of the Certification Authority, and as a result have been deemed to comply with the independence requirement set out in MOR 7.6.1. However, the guidance notes specify that an ELNO cannot be the Certification Authority that issues the digital certificates they accept. If this independent requirement was more clearly defined and strictly enforced, it is unlikely that a Certification Authority would issue digital certificates that could only be used on certain ELNs.</p> <p>It is proposed that a new MOR 7.6.4 be inserted to address this issue:  <i>Without limiting Operating Requirements 7.6.2 and 7.6.3, where the ELNO or a Related Entity acts as the Certification Authority in respect of Digital Certificates used in the ELN, the ELNO must make all Digital Certificates available for use in other ELNs.</i></p>	None	See response at row 77 above.
<b>MOR 7 – Obligations regarding System Security and Integrity – Verifying Digital Signing</b>				
83.	7.7	<p>From a liability perspective, MOR 7.7 as currently drafted is not feasible as an ELNO should only be responsible for what is in within the ambit of its own control. That is, an ELNO should verify that documents signed in its own ELN have been validly signed as described in the existing MOR 7.7. However, the ELNO should not be required to validate that all documents required to be digitally signed have been validly signed. For example, a Responsible ELNO need not verify the validity of a Digital Signature created by a Subscriber of a Participating ELNO.</p> <p>Accordingly, it is recommended that MOR 7.7 be amended as follows:  <i>'The ELNO must ensure that the ELN has an effective means of:  (a) verifying that any electronic Registry Instruments or other electronic Document required to be Digitally Signed in its ELN has been executed using a Valid Digital Certificate of its Subscriber</i></p>	Change to MOR	MOR 7.7 has been amended to clarify that the obligation applies to an ELNO's own ELN only.

#	Requirement	Stakeholder Feedback	Action	ARNECC Response
		<i>authorised to execute the electronic Registry Instruments or other electronic Document; and'</i>		
<b>MOR 7 – Obligations regarding System Security and Integrity – Verifying Digital Signing</b>				
84.	7.8	<p>An ELNO should only be held responsible for what is within the ambit of its control. Since Registry Instruments and other electronic Documents presented to the Registrar are executed in a Subscriber's respective ELNO, and not the Responsible ELNO, the Responsible ELNO only has control over what happens after receipt of the instrument or document from a Participating ELNO.</p> <p>Accordingly, it is recommended that MOR 7.8 be amended as follows:  <i>"...has not been altered in any way since it was: <b>executed in its ELN, or if executed in another ELN, since it was received from a Participating ELNO</b>".</i></p>	Change to MOR	<p>MOR 7.8 has been amended to clarify that the obligation applies to an ELNO's own ELN only.</p> <p>ARNECC has not made the suggested amendment to MOR 7.8 for the following reasons:</p> <ul style="list-style-type: none"> <li>The ELNO is not required to verify that the electronic Document has been signed, merely to enable the Registrar to do so by presenting the electronic Document in accordance with the NECDS and NECIDS.</li> <li>In an Interoperable Electronic Workspace, the Responsible ELNO complies with this obligation by presenting the electronic Document to the Registrar in accordance with the NECDS and NECIDS, even if it has been signed in the ELN of a Participating ELNO.</li> </ul>
<b>MOR 7 – Obligations regarding System Security and Integrity – Data Breach Notification</b>				
85.	7.11	<p>Obligations for responding to a Data Breach should be proportionate to the circumstances. This is reflected in MOR 7.11 to the extent that, in the event of a Data Breach (or suspected Data Breach):</p> <ul style="list-style-type: none"> <li>an ELNO is required to promptly notify the Registrar <i>in the jurisdiction where the Operating Requirement applies</i>; and</li> <li>an ELNO is required to promptly notify its <i>affected</i> Subscribers.</li> </ul> <p>Consistent with this principle, it is unnecessary for an ELNO to notify <i>any</i> ELNO in the event of a Data Breach (or suspected Data Breach), in circumstances where only one (or more) ELNO is affected. Accordingly, the following proposed amendment is submitted (inserted in <b>bold</b>), "<i>...and any ELNOs it Interoperates with</i>" should be replaced with the words "<i>...and any <b>affected</b> ELNOs it Interoperates with</i>".</p>	None	Feedback noted but not adopted. ARNECC considers it appropriate to retain the existing wording and require ELNOs to notify all other ELNOs with which they Interoperate in the event of a data breach.
86.	7.11.2(a)	The concept is supported. However, it is questioned why some notifications (e.g. of Compromised Security Items in clause 7.10(e)) are to occur 'immediately', whereas a Data Breach Notification has the timeframe of 'Promptly'.	None	<p>MOR 7.10(e) requires an immediate notification because in the event of a Compromised Security Item, there is a possibility that proactive action will prevent fraud or other misconduct.</p> <p>Prompt notification is required where, for example, a data breach has already occurred.</p>
87.	7.11.2(a)	Given the broad definition of a Data Breach that is contained in MOR v7, the amendments made to MOR 7.11.2(a) that requires each ELNO to notify all other ELNOs it Interoperates with of a Data Breach is too broad. This requirement to notify should be limited to where a Data Breach occurs in respect of an <b>Interoperable Conveyancing</b>	None	Feedback noted but not adopted. ARNECC considers it appropriate to retain the existing wording and require ELNOs to notify all other ELNOs with which they Interoperate in the event of a data breach. A data breach may have an impact on another ELNO even where it does not occur in respect of an Interoperable Electronic Workspace.

#	Requirement	Stakeholder Feedback	Action	ARNECC Response
		<b>Transaction, or where the Data Breach is relevant to Interoperability.</b>		
<b>MOR 7 – Obligations regarding System Security and Integrity – Cloud Service</b>				
88.	7.12.1(e)	The clarification provided is welcome.	None	Feedback noted.
<b>MOR 7 – Obligations regarding System Security and Integrity – Vulnerability Assessment and Penetration Testing</b>				
89.	7.13	It is recommended that MOR 7.13(a) include vulnerability assessment and penetration testing of interoperability web services. This is because integration between interoperable ELNOs introduces additional complexities in the eConveyancing network that could be exploited.	Change to MOR	MOR 7.13 has been expanded to encompass Interoperability by requiring testing of any interfaces that communicate Land Information.
<b>MOR 9 – Risk Management – Mitigate Risk</b>				
90.	9.1	Although an ELNO's risk assessment of its operation of the ELN would likely extend to include interoperability, it is recommended MOR 9.1 be amended to remove doubt and provide integrated ELNOs with assurance of respective obligations, by the following:  <i>(a) 'establish, implement, operate, monitor, review, maintain and keep current a documented Risk Management Framework that is Fit for Purpose to enable the identification, mitigation and management of risks in its operation of the ELN <b>and interoperable services</b>; and...'</i>	Change to MOR	MOR 9.1 has been expanded to extend the Risk Management Framework to Interoperability interfaces.
<b>MOR 9 – Risk Management – No Increased Risk of Fraud or Error</b>				
91.	9.2(b)	Extending the existing obligation is supported. The words 'Interoperable Conveyancing Transactions' should replace 'Interoperable Lodgment Cases' to maintain consistency with 9.2(a) and the later reference in (b).	None	Feedback noted but not adopted. The term Interoperable Lodgment Case has been used instead of Interoperable Conveyancing Transaction in order to encompass the situation where two single party documents executed on different ELNs together form an Interoperable Lodgment Case, but taken in isolation would not be Interoperable. For example, a refinance in which a discharge/release of mortgage is undertaken on one ELN and a mortgage on another ELN.  The term Interoperable Conveyancing Transaction has been removed from the MOR.
92.	9.2(b)	It is recommended that references to 'ELN' be replaced with ' <b>ELNO System</b> '. This is because interoperability will be between ELNO Systems and not between ELNs (as prescribed in the NECIDS). Noting that interoperability will be implemented across an ELNO System, it is proposed:  <b>9.1: 'Without limiting any other obligation under these Operating Requirements, the ELNO must:</b> <i>(b) use reasonable endeavours to ensure that the design and implementation of Interoperability between its <b>ELNO System</b> and another <b>ELNO System</b> does not result in a greater risk of fraud or error for Interoperable Lodgment Cases and</i>	Change to MOR	The words "between its ELN and another ELN" have been deleted as the definition of Interoperability contained in the ECNL will specify the nature of the connection.  ARNECC is undertaking targeted consultation on the Bill with key stakeholders prior to it being introduced to Parliament.

#	Requirement	Stakeholder Feedback	Action	ARNECC Response
		<p><i>associated financial transactions compared to the risk of fraud or error for comparable Conveyancing Transactions conducted:</i></p> <p><i>(i) solely on its own <b>ELNO System</b>; or</i></p> <p><i>(ii) lodged in a paper medium.'</i></p>		
<b>MOR 10 – Minimum System Requirements – Data Standards</b>				
93.	10.3.2	It is recommended that references to 'ELN' be replaced with the words ' <b>ELNO System</b> '. This is because the NECIDS provides for connection between ELNO Systems, which is a broader concept than the term ELN.	None	Feedback noted but not adopted.
94.	10.3.2	Supports the requirement for each ELNO to comply with the NECIDS. However, query the note that has been inserted in relation to Associated Financial Transactions. Clarity that ARNECC would be responsible for enforcing a breach of the NECIDS relating to Associated Financial Transactions is requested.	None	Feedback noted but not adopted. Registrars have the discretion to take action in respect of an ELNO's breaches of the MOR under MOR 20. This would include a breach of MOR 10.3.2.
<b>MOR 10 – Minimum System Requirements – Services to Enable Assessment of Integrity</b>				
95.	10.5	<p>Under interoperability, an ELNO's capacity to make available to its Subscribers the services specified will depend on the Interoperability Role it fulfils (i.e. it will depend on whether it is the Responsible ELNO or the Participating ELNO).</p> <p>If an ELNO is not the Responsible ELNO for an interoperable conveyancing transaction, the services they make available to its Subscribers, as specified in MOR <b>10.5</b>, may not be able to be used. As currently drafted, the Participating ELNO would be reliant on the Responsible ELNO for making services available to enable assessment of integrity available to the Subscribers of both ELNOs. However, if the Responsible ELNO's system was to cause a delay, the Participating ELNO's compliance with MOR <b>10.5</b> might be impacted. It is recommended the MOR be amended to clarify the following distinction:</p> <p><b>10.5: 'The ELNO must make available, directly or through another ELNO in accordance with the requirements in the NECIDS, as applicable, to its Subscribers services which assist Subscribers to assess each Conveyancing Transaction's integrity...'</b></p>	Change to MOR	New MOR 10.5.2 has been added to outline the requirements for the provision of services in each scenario – in a single ELNO transaction, where the ELNO is the Responsible ELNO, and where the ELNO is a Participating ELNO.
<b>MOR 10 – Minimum System Requirements – Registry Instrument or other Document Templates</b>				
96.	10.7	<p>The capacity of an ELNO to comply with MOR <b>10.7</b> for interoperable transactions will depend upon their Role. It is suggested that the requirement for an ELNO to 'ensure' be applicable for non-interoperable transactions only, or where the ELNO is acting as Responsible ELNO. Alternatively, suggest MOR <b>10.7</b> be amended as follows:</p> <p><b>10.7: 'Except when acting as Participating ELNO, the ELNO must ensure that the correct Registry Instrument or other Document template supplied and determined by the Registrar is used by Subscribers.'</b></p>	Change to MOR	The wording suggested in this submission has been adopted in the MOR.

#	Requirement	Stakeholder Feedback	Action	ARNECC Response
<b>MOR 10 – Minimum System Requirements – Land Registry Fees</b>				
97.	10.10(a)	<p>The responsibility for ensuring that Lodgment Fees are paid should be borne by the Responsible ELNO (which in some cases may not be the ELNO hosting the Responsible Subscriber). As Lodgment Fees must be paid at lodgment, ensuring that they are paid can only be accomplished by the Responsible ELNO. Where a Participating ELNO that represents the Responsible Subscriber is not the Responsible ELNO, it is not in a position to pay the fees separately to the lodgment of the case. MOR 10.10(b) may need to be revised depending on how Information Fees ('LSS fees') are to be charged, i.e. to the Responsible ELNO or to the ELNO that first acquires the LSS package.</p> <p>It may be clearer to rework MOR 10.10 to differentiate between the Responsible ELNO and any Participating ELNO(s), and LSS Fees and Lodgement Fees.</p>	None	Feedback noted but not adopted. The Responsible Subscriber is, following Lodgment, liable for the Lodgment Fees incurred for a Lodgment Case (see definition of Responsible Subscriber in the MPR). The existing wording accounts for this obligation.
<b>MOR 11 – Minimum Performance Levels</b>				
98.	11.1	<p>Implementation of interoperability will introduce additional dependencies across the overall eConveyancing network. MOR v7 Consultation Draft and Sympli's draft Interoperability Agreement Proposal do not currently contemplate the inclusion of specific service levels in the context of the Interoperability Agreement. Compliance with existing "single ELNO" Performance Levels will need to be considered from an interoperability context to ensure overall performance outcomes of the network are maintained.</p> <p>While additional SLAs or Performance Levels may not be necessary, ARNECC could consider updating <i>Schedule 2</i> to distinguish between the Performance Levels ELNOs must comply with and information to be included in an ELNO's Monthly Report for the purposes of MOR 18.1.</p> <p>While unavailability of third-party systems will not detract from an ELNO's satisfaction of Performance Levels, information about third party system issues and periods of unavailability will be increasingly important for the industry to have access to clear and transparent reporting. Specific areas for consideration include:</p> <p><b>Service Availability:</b> This Performance Level considers the amount of time an ELNO System is available, excluding Scheduled Maintenance. However:</p> <ul style="list-style-type: none"> <li>▪ unavailability due to unplanned system outages do not detract from the availability metric. The capacity for confusion arising from this inconsistent language (which is only resolved with regard to the guidance notes) could be resolved by renaming this Performance Level.</li> <li>▪ ELNOs can undertake Scheduled Maintenance during non-Core Hours without the ELNO System being 'offline'. The Performance Level should be clarified to confirm whether the intention is to refer to Scheduled Maintenance <i>involving an outage</i>.</li> </ul>	Change to MOR	ARNECC has not updated Schedule 2 in accordance with the suggestion in this submission, but has instead added a new subject matter to Schedule 8 to enable ELNOs to negotiate and agree upon a set of service levels related to Interoperability.

#	Requirement	Stakeholder Feedback	Action	ARNECC Response
		<p><b>System Reliability:</b> The ELNO must report on periods when its own system is unavailable. However:</p> <ul style="list-style-type: none"> <li>▪ Consideration should be given to whether an additional report should be produced to identify periods where services are interrupted due to service disruptions caused by external communications and systems. It is not necessarily intended that the specific external party or system be identified, but that clear and transparent reporting is available to demonstrate whether there were service disruptions.</li> </ul>		
<b>MOR 13 – Change Management – Change Management Framework</b>				
99.	13.1	<p>A consequence of the introduction of interoperability and a transition to an interoperable multi-ELNO network is that the existing requirement for an ELNO to establish and maintain a Change Management Framework is no-longer workable. This is because:</p> <ul style="list-style-type: none"> <li>▪ the existing requirement does not contemplate the growing interdependency between integrated systems associated with the introduction of interoperability; and</li> <li>▪ the transfer of responsibility for NECDS, along with the NECIDS, to NECDS Co will necessitate a change in the governance required for change management above the level of the existing framework prescribed in the MOR. That is, NECDS Co must take an active role in the change management framework moving forward, including with respect to developing and curating data standards, coordinating upgrades to the NECDS and subsequently the NECIDS.</li> </ul> <p>The introduction of interoperability and transfer of responsibility for NECDS to NECDS Co necessitates a change in the governance required for change management above the level of the existing framework prescribed in the MOR. A new overarching obligation is proposed at MOR 5.3 (m) which could be incorporated by reference in MOR 13.1.</p>	Future review	<p>ARNECC will consider reviewing the Change Management Framework requirements once the entity established to curate the data standards is operational.</p> <p>In the meantime, Schedule 8 provides that ELNOs must address change management in their bilateral Interoperability Agreements.</p>
<b>MOR 13 – Change Management – No changes other than in accordance with Change Management Framework</b>				
100.	13.2	Notwithstanding that MOR 13.2 will need to be updated for the same reasons noted above in relation to MOR 13.1, views with respect to MOR 13.2 are also contingent on any changes made to MOR 13.1.	Future review	See response at row 99 above.
<b>MOR 13 – Change Management – Implementation Plan</b>				
101.	13.3	<p>The purpose of MOR 13.3 is to ensure the ELNO progressively develops a fully functional ELN, which eventually facilitates the Lodgement of all electronic Registry Instruments and other electronic Documents. The requirement accounts for development of the ELN and Back-End Infrastructure Connections. Interoperability will require releases in the ELNO System, beyond the development of the initial connections between ELNOs.</p> <p>Accordingly, the following amendments are proposed to the operating requirement (inserted in <b>bold</b>):</p>	Change to MOR	<p>MOR 13.3.1(a) has been expanded to refer to proposed releases relating to Interoperability.</p> <p>A new MOR 13.4 has also been added to require ELNOs to comply with any reasonable release management requirements. This goes towards addressing the submission that implementation planning is not an activity that an ELNO can undertake on a unilateral basis.</p>

#	Requirement	Stakeholder Feedback	Action	ARNECC Response
		<p><b>13.3.1</b> 'The ELNO must provide the Registrar with an implementation plan covering, as a minimum, a two year period and setting out:</p> <p>(a) proposed future releases of the ELN, including to expand its functionality, improve its performance or introduce new electronic Registry Instruments or other electronic Documents;</p> <p>(b) <b>proposed future releases for interoperability, including to expand scope of interoperable lodgement cases and</b></p> <p>(c) details of when Back End Infrastructure Connections are scheduled'</p> <p>It is reiterated that implementation planning is not an activity that an ELNO can undertake on a unilateral basis, and any such implementation necessitates the joint planning and involvement of the other ELNO and very likely the other network participants. Further consideration should be given to how this coordination can be achieved, and who is best placed to facilitate the process.</p>		
<b>MOR 14 – Subscribers - Participation Agreement and Participation Rules</b>				
102.	14.5	<p>Notwithstanding the remedies under law for addressing liability, ELNO's currently have no regulatory responsibility to Subscribers or end users to investigate or rectify issues such as instances where funds are misdirected either by fault or by good intentions. Investigating and resolving issues is entirely up to an ELNO to voluntarily adopt as part of their Participation Agreement and Participation Rules with Subscribers. The lack of appropriate mandated Participation Agreement and Participation Rules specific to issue resolution has the potential to undermine consumer confidence in the electronic conveyancing process.</p> <p>We would like to see an immediate and concerted effort by ARNECC to introduce appropriate amendments to MOR 14.5 Participation Agreement and Participation Rules to bring about requirements for ELNO's to investigate and coordinate efforts to rectify issues.</p>	None	Feedback noted but not adopted. In accordance with Schedule 8, ELNOs must agree upon a process for the timely and equitable management of claims relating to Interoperability, requiring them to promptly and cooperatively investigate and resolve claims. This process would form part of the Interoperability Agreement.
<b>MOR 14 – Subscribers - Training</b>				
103.	14.6	<p>The Participating ELNO's capacity to comply with this requirement may be affected if the User must be directed to the Responsible ELNO for practical support.</p> <p>This is because under interoperability, ELNOs will implement their own unique Business Rules that will determine the User's experience of the ELN. NA Subscriber or User of a Participating ELNO, in an Interoperable Conveyancing Transaction, might be subject to the Business Rules of a Responsible ELNO they are not familiar with. For example, a User of a Participating ELNO may contact their ELNO's support service for clarification or resolution of a matter that is a feature of the Responsible ELNO.</p> <p>The capacity for ELNOs to make available adequate training resources could be supported by an obligation for ELNOs to publish their service</p>	Change to MOR	To address this submission ARNECC has added a new item in Schedule 8 which requires ELNOs to agree upon a process to provide any necessary training resources and information to Subscribers in an Interoperable Electronic Workspace where the service offering, business rules and user experience may differ.

#	Requirement	Stakeholder Feedback	Action	ARNECC Response
		descriptions applicable to interoperability, and supporting training material, for visibility for users who do not have a contractual relationship with the ELNO, to ensure users are made aware of the experience they should expect when their ELNO is not the Responsible ELNO.		
<b>MOR 16 – Independent Certification – Assistance</b>				
104.	16.2	ELNOs are currently required to direct third parties, with whom they have a contractual relationship, to make available all relevant information to the Independent Expert at their request. Contractual relationships between interoperable ELNOs may give rise to intrusive directions being made under this requirement. It is recommended that ARNECC clarifies the scope and application of MOR 16.2 by specifying the nature of information required to be shared or excluding competitor ELNOs from the definition of third-party.	Change to MOR	ELNOs with which the ELNO Interoperates have been excluded from the requirement to provide reasonable assistance in MOR 16.2. The obligation to provide reasonable assistance to other ELNOs is instead addressed in Schedule 8 of the MOR.
<b>MOR Schedule 3 – Reporting Requirements</b>				
105.		Does not include any documents to be produced in relation to Operating Requirement 5.7. The only revision to include 5.7 is in Category Three. The final or agreed upon interoperability access agreements between ELNOs should be public documents to the fullest extent possible (noting the need to restrict commercially sensitive material to the parties and ARNECC). Compliance issues could arise without such transparency. Maintaining visibility over agreements is an effective means by which to promote compliance and dispel any uncertainty around ELNO obligations to other ELNOs and their Subscribers.	Change to MOR	ARNECC has determined that redacted copies of Interoperability Agreements should be published on each ELNO's website.
106.		Potential new entrants will benefit from understanding the regime as they prepare for entry, which will be made difficult if interoperability agreements are not made transparent. While 5.7.2 and 5.7.5 (a) have been included in the framework with the intention of ensuring that agreements are entered into 'on the same basis' and that ELNOs must interoperate with all ELNOs 'on the same basis', these requirements will not be sufficient for new entrants without transparency of the agreements with other ELNOs ahead of negotiations.	Change to MOR	In order to aid transparency, there is an additional obligation in MOR 5.7.2(b) requiring an ELNO to provide all information reasonably required to understand the basis on which the ELNO is prepared to Interoperate, including any proposed terms.
107.		It is critical ARNECC has access to the agreement reached by the ELNOs and this obligation is captured in the regulatory framework. ARNECC should also be updated by way of reporting obligations on the ELNOs interactions with one another, and industry more broadly. These types of transparency and reporting provisions are also important for when ARNECC considers the appropriateness of future new entrants and reviews the effectiveness of the regime.	Change to MOR	ARNECC has determined that redacted copies of Interoperability Agreements should be published on each ELNO's website.
108.		While the MOR currently prescribes minimum standards for gaining approval to operate an ELNO, it is considered that unforeseen risk and liability can be significantly avoided by requiring ELNOs to satisfy clear minimum competence and capability at two further development junctures in an ELNO's progression: <ul style="list-style-type: none"> <li>▪ Prior to commencing interoperability as a Participating ELNO; and</li> </ul>	None	Feedback noted but not adopted. The MORs are already structured around protecting users of the system and the integrity of the Titles Register by requiring compliance with Category Two in Schedule 3 prior to the provisions in MOR 5.7 relating to Interoperability becoming applicable.



#	Requirement	Stakeholder Feedback	Action	ARNECC Response
		<ul style="list-style-type: none"> <li>▪ Prior to taking on the ability to act as a Responsible ELNO.</li> </ul> <p>From a consumer welfare perspective and to avoid unforeseen residual risk, these are critical standards which an ELNO should be required to meet at each of these junctures in their respective development:</p> <ul style="list-style-type: none"> <li>▪ Firstly, before an ELNO is capable of requiring interoperability with other ELNOs, it should have met the requirements in the MOR and signed up to applicable industry codes.</li> <li>▪ Secondly, before an ELNO can perform the role of Responsible ELNO, it should have met requirements to facilitate completion of end-to-end lodgement and associated financial transactions, including ability to engage with revenue offices and trust account providers. Future entrant ELNOs may elect to adopt operating models where they will not support financial settlement as contemplated in the NECIDS and would not be precluded from participating as a Participating ELNO.</li> </ul> <p>Prescribing such standards in the MOR will ensure that ELNOs are capable of successfully performing their role within an interoperable multi-ELNO environment.</p>		It is considered that this requirement is sufficient to ensure an ELNO is ready to commence operating on an Interoperable basis.
<b>MOR Schedule 7 – Subscriber Identity Verification Standard</b>				
109.	7 and 8	Both provisions refer to '[registered] power of attorney'. Some clarification of what is meant by '[registered]' would be appreciated.	None	The word registered is in square brackets to indicate that some jurisdictions require powers of attorney to be registered and others do not.
<b>MOR Schedule 8 – Interoperability Agreement Matters</b>				
110.	General	It is reiterated that a Model Interoperability Agreement would resolve the issue regarding the contents of such an agreement.	None	<p>Feedback noted but not adopted. ARNECC has specified the matters that it considers must be dealt with in the Interoperability Agreement in Schedule 8 of the MOR. Beyond these matters, ARNECC is of the view that Interoperating ELNOs are in the best position to know the practical realities of the relationship between them. This approach also allows for flexibility depending on the circumstances of each ELNO.</p> <p>It is anticipated that Interoperability Agreements will contain largely operational matters, or matters that give effect to existing obligations in the MORs or other law.</p> <p>See also the amendment made to MOR 5.7.3(b) requiring each ELNO to provide information to other ELNOs about the proposed terms on which they are prepared to Interoperate.</p>
111.	General	The scope of the interoperability agreements is too broad. It is likely that many issues need to be included in some way across each pillar of the regulatory framework. Stakeholder feedback has emphasised the need to ensure matters are not siloed between documents and segments of the market. Even if the current approach to scope of the	None	See response at row 110 above.

#	Requirement	Stakeholder Feedback	Action	ARNECC Response
		agreements is retained, it is critical that at least some elements are included as standard terms rather than a matter for negotiation. One clear example of this is privacy.		
112.	General	When considering the rules around negotiation, it will also be important to determine how to treat subsequent amendments to an interoperability agreement and whether an agreement should be for a defined term. For example, it will have to be decided whether and when parties should have the opportunity to raise future amendments. Given the proposed Phased ESB approach will result in the market continuing to evolve over the short to medium term, the length of any agreement between the parties (and any risks around creating new barriers to entry for future ELNOs) should be carefully considered. Given the likelihood of ongoing technological change it will also be important to ensure the agreements retain their currency. Accordingly, thought may have to be given to whether ARNECC should be able to impose additional obligations on parties and how this might be achieved	None	Feedback noted.
113.	General	<p>As a general principle, it is considered preferable to minimise the content of the Interoperability Agreement and wherever possible locate provisions in the ECNL or, at the very least, the MORs, providing transparency and confidence for all stakeholders. There are numerous public interest aspects to the mandated content items that make it self-evident that they should be imposed by law.</p> <p>Reviewing the draft MORs raised concern that a number of important aspects of the interoperability framework will be located in the Interoperability Agreement, with the MORs providing little detail on prescribed minimum requirements. These include key issues for practitioners and clients such as privacy, claims management and liability.</p> <p>If key elements such as privacy, claims management and liability are left to be matters for commercial negotiation between the Electronic Lodgment Network Operators (ELNOs), any agreed arrangement may not sufficiently protect consumers and Subscribers and will only focus on rights as between ELNOs. Private ELNOs cannot be left to negotiate the extent to which the public interest is to be protected. For example, the proposed mandatory provision on privacy contemplates the ELNOs will protect their Subscribers' information and not seek to use each other's Subscriber information. That cannot be left to negotiation between private companies. Underlying public policy elements need to be embedded in statutorily binding terms. In relation to privacy, for example, the ECNL could mandate compliance with the Privacy Act 1988 (Cth) for ELNOs, whether or not they are over the turnover threshold in the Privacy Act itself.</p>	None	See response at row 110 above.
114.	General	While the draft ECNL amendments have not yet been released, the approach adopted by the revised MOR v7 Consultation Draft in relation to identifying only the essential matters to be included within the Interoperability Agreement is welcomed. This approach provides for the efficient and effective implementation of interoperability, without	None	Feedback noted.

#	Requirement	Stakeholder Feedback	Action	ARNECC Response
		specifying mandatory terms, and provides for the appropriate level of flexibility and adaptability for ELNOs for interoperability in the current electronic conveyancing environment.		
115.	General	<p>It is acknowledged that it is important for MOR v7 to be prescriptive about matters to be covered in the Interoperability Agreement. The Interoperability Agreement should be largely an operational document that sets out specific processes between the ELNOs (aligning to industry developed processes where applicable), with substantive obligations and requirements and principles to be covered in the ECNL, MOR v7 and the NECIDS. The Interoperability Agreement will need to contemplate the inclusion of agreed industry processes as interoperability is rolled out.</p> <p>In determining where certain requirements are best located among the ECNL, MOR v7, the NECIDS and the Interoperability Agreement, it is considered that these artefacts should conform with the following characteristics:</p> <ul style="list-style-type: none"> <li>i. ECNL – the foundational legislation that provides the statutory basis for Interoperability;</li> <li>ii. MOR v7 – the regulatory requirements that sets out substantive obligations and principles relating to interoperability that each ELNO has to comply with;</li> <li>iii. NECIDS – the technical requirements for the interoperability API and business rules that each ELNO needs to comply with to ensure that Interoperability is successful from a technical perspective; and</li> <li>iv. Interoperability Agreement – the specific operational processes agreed on a bilateral basis between ELNOs, that are necessary to establish a working relationship between ELNOs.</li> </ul>	None	Feedback noted.
116.	Assistance	Broadly supported. However, it is suggested that 'reasonable assistance' should be replaced with 'all necessary assistance'.	None	Feedback noted but not adopted. ARNECC considers the word reasonable is appropriate in this MOR.
117.	Assistance	It is ambiguous what ' <i>reasonable assistance</i> ' means in this context. The MOR should make clear that ' <i>reasonable assistance</i> ' for the purpose of this topic means what is within the ambit of an ELNO's control and responsibilities having regard to the fact ELNOs are independent commercial entities that are in competition with one another. It is suggested there should be express provision for prudent information controls to manage the exchange of commercially sensitive information with a view to mitigating IP and competition risk. The Interoperability Agreement should build out these necessary information controls.	None	<p>ARNECC considers that the word reasonable implies that the assistance would be within the control of the ELNO.</p> <p>ELNOs may choose to negotiate information controls in their Interoperability Agreements.</p>
118.	Assistance	Generally support this obligation and note that an initial list of matters for which assistance may be required should be agreed in the Interoperability Agreement, with changes to this list facilitated through the governance forums.	None	Feedback noted.
119.	Dispute Resolution	The inclusion of a dispute resolution mechanism is supported. However, if mediation is unsuccessful, it is doubtful that arbitration would provide a better mechanism for resolving the issue than the	None	Feedback noted but not adopted. ARNECC is of the view that arbitration is the appropriate dispute resolution mechanism in

#	Requirement	Stakeholder Feedback	Action	ARNECC Response
		<p>courts. It is also noted that it is important that there is no disruption to the operation of the ELNOs whilst a dispute is resolved.</p> <p>The proposal that a failure to reach an agreement be referred to mediation is unlikely to be effective. Additionally, arbitration in these circumstances is not suitable as the arbitrator is constrained to apply existing rules and laws which, almost by definition, will not exist in relation to the subject matter. Therefore, it is recommended that the appropriate escalation path where two ELNOs have been unable to reach agreement is for the issue to be referred for expert determination by a determiner with eConveyancing infrastructure knowledge and regulatory experience.</p>		<p>light of the anticipated content of the Interoperability Agreements.</p>
120.	Dispute Resolution	<p>Suggest that the definition of "Dispute Resolution" in Schedule 8 should include the following:</p> <p><i>A dispute resolution process for the timely and equitable resolution of disputes arising under the Interoperability Agreement, including a process for mediation and <b>arbitration</b>.</i></p>	Change to MOR	Arbitration has been added to the dispute resolution requirement in Schedule 8.
121.	Dispute Resolution	<p>Agree with the inclusion of dispute resolution as a matter to be addressed in the Interoperability Agreement. In addition to a process for mediation, it is considered the Interoperability Agreement should also provide for an arbitration process in the event mediation is not successful. Therefore, after the words 'process for mediation' the words '<b>and arbitration</b>' should be inserted.</p> <p>However, it is also recommended that the description of Dispute Resolution under Schedule 8 of the MOR should be amended to clarify which aspects of the resolution of disputes must be '<i>equitable</i>'. The description should make it clear that it is the dispute resolution process that must be timely and equitable, not the outcome. The current drafting suggests that outcomes of the dispute resolution must be '<i>equitable</i>' which may create legal uncertainty for arbitrators in determining disputes between ELNOs.</p>	Change to MOR	<p>Arbitration has been added to the dispute resolution requirement in Schedule 8.</p> <p>The word equitable has been removed to avoid uncertainty.</p>
122.	Dispute Resolution	<p>Similarly to item 4(b):</p> <ol style="list-style-type: none"> <li data-bbox="465 1066 1205 1145">i. arbitration is required as a backstop to provide the industry with certainty that disputes will be resolved in an efficient manner; and</li> <li data-bbox="465 1150 1205 1283">ii. mediation should not be mandated to be included in the Interoperability Agreement. There are likely to be other mechanisms for negotiated dispute resolution such as governance forums and escalations to senior representatives of ELNOs to attempt to resolve any disputes prior to arbitration.</li> </ol> <p>It is proposed that the requirement for a dispute resolution clause in Schedule 8 specify that an arbitration process is included and the requirement for a mediation process is removed, and if no dispute resolution process can be agreed between the parties, the process set out in MOR 5.7 should be adopted.</p>	Change to MOR	<p>Arbitration has been added to the dispute resolution requirement in Schedule 8.</p> <p>ARNECC considers mediation is also a valuable part of the dispute resolution process.</p> <p>ELNOs may also include other dispute resolution mechanisms in their Interoperability Agreements in addition to what is required in Schedule 8.</p>
123.	Dispute Resolution	<p>A negotiate/arbitrate regime will usually include a mandatory list of factors which the arbitrator must have regard to in making a</p>	Change to MOR	<p>The new proposed arbitration provision at MOR 5.7.5 provides:</p> <ul style="list-style-type: none"> <li data-bbox="1496 1469 2123 1525">• a timeframe for escalation to arbitration (20 Business Days);</li> </ul>

#	Requirement	Stakeholder Feedback	Action	ARNECC Response
		<p>determination. The factors that the arbitrator can consider and the discretion given to them is determined by the regime adopted. Industry is best placed to determine the kind of arbitrator (or institute of arbitrators from which an arbitrator should be selected) that would be most suited to arbitrating e-conveyancing disputes.[We] consider it appropriate and important that the arbiter be independent and that the outcomes of any arbitration are shared with ARNECC.</p> <p>It may also be appropriate to include rules for assigning or apportioning costs associated with involvement in the process of negotiating access. The design of a negotiate/arbitrate framework should also ensure that costs of participating in a dispute will not act as a distinctive for parties to raise disputes or potentially deter entry. This is crucial to ensure the threat of arbitration remains credible during negotiations</p>		<ul style="list-style-type: none"> <li>parties to either agree upon an arbitrator, or either party request a nomination from the chair of the Resolution Institute;</li> <li>a set of factors that the arbitrator must take into account in determining a dispute; and</li> <li>arbitration to take place in accordance with, and subject to, Resolution Institute Arbitration Rules.</li> </ul> <p>The dispute resolution item in Schedule 8 allows ELNOs to develop a clause appropriate to the circumstances, covering both mediation and arbitration.</p>
124.	Claims Management	<p>This does not appear to encompass the swift compensation of end consumers envisaged by the Nicholls Review, in that the provisions merely flag the ELNOs obligations to investigate co-operatively and share information. It would be helpful if the procedures that follow that investigation could be articulated, including how redress is provided to the end consumer.</p> <p>Please also see comments in relation to concerns regarding locating provisions regarding claims management in the Interoperability Agreement. Appropriately, the provisions for claims management specifically relate to claims made by 'Subscribers, Clients and third parties arising in relation to Interoperability'. The provisions must be located in the MORs, not in a bilateral agreement between the ELNOs.</p>	None	Feedback noted but not adopted. There is no existing provision in the MORs to provide compensation for end users of the system in a single ELNO transaction. A compensation claim made either before or after the implementation of Interoperability would be dealt with under the general law.
125.	Claims Management	It is noted that claims management is a key operational and risk issue that will need to be managed as between ELNOs and various network participants. Agree that ELNOs should provide for this process pursuant to a bilateral Interoperability Agreement given they will be responsible for handling third party claims.	None	Feedback noted.
126.	Claims Management	<p>The Interoperability Agreement should primarily cover process and operational specifics. As such, there should be an obligation in the body of MOR v7 which requires the ELNOs to:</p> <ol style="list-style-type: none"> <li>promptly and cooperatively investigate and resolve claims; and</li> <li>share information where reasonably required,</li> </ol> <p>where a claim arises in relation to an Interoperable Conveyancing Transaction. These obligations could be inserted into MOR 11, relating to Minimum Performance Levels.</p> <p>The requirement to include these obligations in the Interoperability Agreement should be removed.</p>	None	Feedback noted but not adopted. ARNECC considers that Schedule 8 achieves what is sought in this submission.
127.	Change Management	Agrees with the MOR v7 Consultation Draft in identifying change management as a matter for the Interoperability Agreement. However, under interoperability, and consistent with feedback in relation to MOR 13.1 above, the existing change management framework (as prescribed in the MOR) will not be workable at an ELNO-to-ELNO level alone.	None	<p>ARNECC will consider reviewing the Change Management Framework requirements once the entity established to curate the data standards is operational.</p> <p>In the meantime, ARNECC considers the requirement in Schedule 8 that ELNOs must address change management in their bilateral Interoperability Agreements is sufficient.</p>

#	Requirement	Stakeholder Feedback	Action	ARNECC Response
		<p>In this respect, ARNECC must have further regard to governance issues at the network level, including with regard to the role of NECDS Co in curating and coordinating change management in an interoperable and interdependent eConveyancing network. Network governance should be handled at the MOR level (or above). The Interoperability Agreement can then set out the working process between the ELNOs, including interactions and processes required between the ELNOs and the regulator, the roles of each party in those interactions, and any meeting and reporting obligations.</p> <p>This is because interoperability has significant implications to market participants beyond ELNOs at the network level, which will require centralised network coordination of change management issues (which we reiterate extends beyond mere inter-ELNO coordination). This requirement should be amended to fit the outcome of any amendments to the Change Management Framework.</p>		
128.	Change Management	<p>It is understood that changes relating to Interoperability will be governed by the NECIDS Curation Process. On this basis, it is proposed that there should be minimal contractual requirements relating to change management, and that instead this should be captured by the requirement to comply with the NECIDS.</p>	None	<p>Feedback noted but not adopted. The role of the entity established to curate the data standards is limited to management of the data standards only. Items outside this scope will be managed by the ELNOs.</p>
129.	Root Cause Analysis	<p>Supported. However, providing for the root cause analysis does not go far enough unless it is coupled with further mechanisms providing redress for the end user.</p> <p>Please also see the comments which outline concerns regarding locating important matters in the Interoperability Agreement when they should more appropriately be located in the MORs.</p>	None	<p>There is no existing provision in the MORs to provide compensation for end users of the system in a single ELNO transaction. A compensation claim made either before or after the implementation of Interoperability would be dealt with under the general law.</p>
130.	Root Cause Analysis	<p>Agree with the inclusion of root cause analysis as an issue to be addressed in the Interoperability Agreement. Root cause analysis procedures should include root cause analysis responsibility identification that will inform rectification obligations and ultimately liability allocation. However:</p> <ul style="list-style-type: none"> <li>▪ Firstly, the term <i>'fault'</i> can be subjectively interpreted and should be removed. The remaining reference to <i>'issue or failure'</i> is sufficient and an objective descriptor.</li> <li>▪ Secondly, use of the term <i>'ELNs'</i> should be replaced with <i>'ELNO Systems'</i> due to the broader scope of interoperability services which could be impacted.</li> <li>▪ Thirdly, it is recommended the description be amended to include a primary objective, for mitigating systemic risks to the eConveyancing network, above the requirement to minimise disruption to Subscribers and ELNO Systems.</li> </ul>	Change to MOR	<p>The reference to fault in Schedule 8 is a reference to technical faults, and is not about assigning blame.</p> <p>The MOR has been amended to add the mitigation of systemic risks as another goal of the root cause analysis.</p>
131.	Root Cause Analysis	<p>The requirement for ELNOs to conduct root cause analysis so as to minimise disruption to Subscribers and ELNs should not be dealt with under the Interoperability Agreement, but instead should be a requirement for the ELNOs to comply with that is included in Schedule 2 of MOR v7. Additionally, this requirement should be limited to where an</p>	None	<p>Feedback noted but not adopted. ARNECC considers that root cause analysis is most appropriately dealt with in the Interoperability Agreement.</p> <p>An independent expert may be asked to step in where the ELNOs are unable to determine the root cause of the issue</p>

#	Requirement	Stakeholder Feedback	Action	ARNECC Response
		<p>Incident occurs with respect to an Interoperable Conveyancing Transaction.</p> <p>In relation to the appointment of an independent expert, it is considered that it is unlikely that an independent expert would be able to provide much value in a timely manner in determining the root cause of a fault, issue or failure. Given the complexities of the ELNs, the ELNOs would be better placed to undertake and conclude any root cause analysis, particularly given the requirements to address incidents within certain time frames in MOR v7.</p> <p>The specific process for undertaking root cause analysis between the ELNOs should be set out in the Interoperability Agreement. If the ELNOs disagree as to the root cause of a fault, issue or failure, then the dispute resolution procedures of the Interoperability Agreement can be utilised, which will include the ability to refer issues to subject matter experts where required.</p>		<p>themselves. An independent expert is suitable where technical investigation is required.</p>
132.	Testing	<p>The obligation to notify other ELNOs of system enhancements must be limited to information that is absolutely essential and in compliance with competition and IP risk mitigation protocols. ELNOs are head to head competitors and therefore there should be no general obligation to keep each other informed of innovations or service or product enhancements.</p>	None	<p>Feedback noted but not adopted. The MOR is already limited to system changes that may impact Interoperability. ARNECC considers this limitation is sufficiently narrow.</p>
133.	Testing	<p>It is understood that there will be some testing processes that will need to be agreed between the ELNOs, for the purpose of Interoperability the testing and change requirements will be set out in the NECIDS Curation Process. As such, it is proposed that the requirement to include testing provisions in the Interoperability Agreement be removed, and that MOR 6 relating to Testing be expanded to include the following obligations for ELNOs to:</p> <ul style="list-style-type: none"> <li>i. cooperate and provide reasonable assistance to enable each ELNO to comply with its testing obligations; and</li> <li>ii. notify the other Interoperating ELNO of changes or enhancements to its systems that may impact Interoperability.</li> </ul>	None	<p>Feedback noted but not adopted. ARNECC considers that testing is most appropriately dealt with in the Interoperability Agreement.</p>
134.	Security	<p>Agree that security is a critical joint undertaking between ELNOs and should be included as a mandatory topic in the Interoperability Agreement.</p> <p>It is recommended this description include reference to a requirement for ELNOs to agree on a process for suspending interoperable communications where an emergency situation exists. Ongoing discussions at the Interoperability Agreement Working Group for determining adequate cybersecurity baseline controls under interoperability are noted and it is recommended ARNECC amends this Requirement to reflect the outcome of those discussions.</p>	None	<p>Feedback noted. These discussions are ongoing and will likely not be considered until a later version of the MOR.</p>
135.	Security	<p>It is noted that a number of security requirements will be mandated in the NECIDS, and that there remains an existing requirement for ELNOs to have appropriate security controls as set out in MOR v7. Whilst there will likely be some operational items that will need to be dealt with between ELNOs, such as reporting of Incidents, ELNOs should not be required to set out further obligations in the Interoperability Agreement</p>	None	<p>Feedback noted but not adopted. The role of the entity established to curate the data standards is limited to management of the data standards only. Items outside this scope will be managed by the ELNOs. ARNECC considers that security is most appropriately dealt with in the Interoperability Agreement.</p>

#	Requirement	Stakeholder Feedback	Action	ARNECC Response
		that deal with security items that are otherwise covered in the NECIDS and MOR v7. It is proposed that MOR v7 be amended to remove items (a) and (b) from this item.		
136.	Privacy	Affirm the importance of enhanced privacy protections in an interoperable environment. However, this should be included in the ECNL.	None	Feedback noted but not adopted. There is an existing obligation in MOR 5.3(g) for ELNOs to comply with all applicable Privacy Laws and laws relating to Document and information collection, storage and retention. ARNECC does not consider it necessary that any further obligation be included in the ECNL.
137.	Privacy	The MOR should avoid duplicating or adding regulatory layers above the existing privacy and data regulations an ELNO is already required to comply with, including pursuant to an ELNO's contractual obligations with various stakeholders. As interoperability introduces additional distance between the ELNO and potential end-user contractually, the ELNO's capacity to maintain compliance with Privacy Laws in relation to any Personal Information sent or received in relation to Interoperable Electronic Workspaces will be affected.	Change to MOR	ELNOs must maintain compliance with Privacy Laws for both Conveyancing Transactions conducted on a single ELN and via Interoperability in any event. A requirement to cooperate in the investigation and resolution of any privacy complaints relating to Interoperability has been added to the MOR.
138.	Privacy	No objection to this item being included in the Interoperability Agreement, however, it is noted that this requirement is covered in new MOR 7.4.2, and the drafting in MOR 7.4.2 should be updated to also require compliance with Privacy Laws.	None	Feedback noted but not adopted. ELNOs must maintain compliance with Privacy Laws for both Conveyancing Transactions conducted on a single ELN and via Interoperability in any event.
139.	Fee Sharing	Support the establishment of a framework regulating the sharing of Information Fees but suggest that it is unclear as to what 'sharing' of Lodgment Fees would entail. Lodgment Fees attach to dealings and should be allocated to the Responsible Subscriber.	Change to MOR	This MOR has been amended to remove the reference to sharing and allocation, instead providing for a process by which Land Registry Fees must be paid in a timely and effective manner.
140.	Fee Sharing	Query why the MOR would prescribe a framework for managing the allocation and sharing of Lodgement Fees in an Interoperability Agreement between ELNOs, given the MPR provides that the Responsible Subscriber is the person responsible for Lodgement Fees incurred. Any <b>adjustment of the Lodgement Fees will be at the discretion of the transacting parties, not the ELNOs</b> . Separately, it is noted the solution for managing the allocation and sharing of Information Fees is currently being developed at the Interoperability Operations Committee. The MOR must provide flexibility for ELNOs to accommodate innovative solutions. It is suggested this provision be amended to: <b><i>'A framework for managing the allocation and sharing of Information Fees between ELNOs in an Interoperable Electronic Workspace.'</i></b>	Change to MOR	See response at row 139 above.



#	Requirement	Stakeholder Feedback	Action	ARNECC Response
141.	Fee Sharing	Support that the operational side of the fee sharing arrangement should be covered in the Interoperability Agreement, noting comments on the regulation of fees set out earlier.	None	Feedback noted.
<b>Additional Comments</b>				
142.		It is important that the voice of the conveyancer, the actual user of the eConveyancing system, is heard in this process, so it would be appreciated ARNECC taking the concerns of conveyancers seriously in this consultation round.	None	Feedback noted. All stakeholder feedback is taken seriously and considered in detail by ARNECC.
143.		Given there are various workstreams to facilitate interoperability that remain unsettled, including with regard to potential changes to the Electronic Conveyancing National Law (ECNL), liability and risk allocation, insurance, cyber security and governance (including change management and network level governance issues), further consultation with industry will be required prior to implementation of version 7 of the MOR. A further opportunity to provide additional feedback on a subsequent consultation draft of version 7 of the MOR would be welcomed.	None	Feedback noted.
144.		At a high level, and subject to specific comments, it is considered ARNECC's proposed revisions as contained in MOR v7 Consultation Draft are consistent with our view of a best practice regulatory approach to facilitating interoperability.	None	Feedback noted.
145.		It is recognised that there are a range of requirements under the MOR that remain subject to ongoing consideration. For instance, it is noted minimum insurance requirements, interoperable service fee requirements, capability standard requirements, and liability and dispute resolution requirements are all unsettled issues that remain subject to ongoing regulatory consideration. Accordingly, feedback provided is constrained to some extent by ongoing discussions across committees and working groups relating to the development and implementation of interoperability. It is noted that several key definitions are yet to be defined in the ECNL, which currently creates uncertainty under the draft MOR where proposed amendments will turn on those ECNL definitions. We look forward to better understanding these changes and providing further feedback on draft MOR version 7 following a review of proposed changes to the ECNL	None	Feedback noted.
146.	Anti-Competitive Behaviour	In 2018, when the mandate was imminent, ACCC were alerted to anti-competitive behaviour by PEXA. I believe this is still under investigation. ARNECC has a responsibility to consumers and Conveyancers to ensure that competition is available and that the MOR's do not inhibit other ELNO's being afforded the opportunity to develop and grow their product. I sincerely hope that ARNECC takes into consideration these concerns and act on such concerns accordingly.	None	ARNECC is not aware of any ongoing ACCC investigation. The MORs are designed to facilitate competition in the market.
147.	Integration of other online systems with	It is noted that there a small number of online systems related to property transactions which are not integrated into the eConveyancing	None	This feedback has been referred to Land Use Victoria.

#	Requirement	Stakeholder Feedback	Action	ARNECC Response
	the interoperable eConveyancing environment	environment. As an example, it is noted that the issue of Not in Common Ownership (NICO) and the use of the Surveying and Planning through Electronic Applications and Referrals (SPEAR) online system. In Victoria subdivision changes boundaries not ownership. A boundary change can mean that the resultant lots can be owned by multiple parties as part owners (i.e. NICO). To fix NICO issues, further transfers are required. These transfers should be able to be done on an ELNO platform. However, currently in Victoria a plan of subdivision can be lodged either through SPEAR or as a residual paper transaction. It is understood that it is envisaged that at some time all subdivision applications will go through SPEAR, making NICO more difficult. Further consideration is required regarding how to address this issue and incorporate such systems so that they can be undertaken on ELNO platforms.		
148.	Reliance Regime	A reliance regime cannot necessarily be dealt with by cursory amendment to section 12 of the ECNL. This regime should be included in a new substantive part of the ECNL. Additionally, consideration of the new financial settlement models being explored by the banks does not need to delay codifying the current PEXA/Sympli interoperability arrangements. It is vital that stakeholders be consulted before the draft changes to the ECNL are adopted by participating jurisdictions. If this is not done the practical affect is to preclude stakeholder input because of the low likelihood of suggested changes being the subject of reconsideration by each participating jurisdiction (or the relevant Ministerial Council). It is strongly recommended that the proposed reliance regime be the subject of consultation immediately – before instructions are provided to the drafting jurisdiction and committed to by other jurisdictions.	Targeted consultation with key stakeholders	ARNECC is undertaking targeted consultation on the Bill with key stakeholders prior to it being introduced to Parliament.
149.	Review of Changes to the ECNL	It is understood that stakeholders will not be provided an opportunity to comment on the proposed changes to the Electronic Conveyancing National Law (ECNL) before they are approved by all participating jurisdictions in Q3 2021. This is a critical component of the ongoing work to implement interoperability effectively and it is strongly recommended that the proposed changes or, at the least, the drafting instructions, be the subject of consultation in time for our input to be taken into account before the proposed changes are committed. The proposed changes to the MORs to support interoperability are broadly supported. However, it is noted that stakeholders are yet to receive detail on key matters referred to in the revised MORs, such as the definition of 'Interoperability'. Comments on these matters are reserved until there is opportunity to review the proposed reforms to the ECNL.	Targeted consultation with key stakeholders	See response at row 148 above.

#	Requirement	Stakeholder Feedback	Action	ARNECC Response
150.	Timeline	<p>It is noted the that the target date for interoperability across all documents and jurisdictions that support electronic conveyancing is now 31 December 2022 (as opposed to the previous target of 31 December 2021).</p> <p>Agree that this period of additional time is necessary for certain aspects of the regime. For example, jurisdictions which are yet to mandate eConveyancing, may require additional time. However, it is believed that much of the system (in particular, those transactions already being conducted in high volume in at least the Eastern states) could be operational at an earlier date (preferably by 31 March 2022).</p>	Change to MOR	<p>ARNECC has recently published a Ministerial Direction statement on implementation dates to deliver a secure national interoperability regime and effective competition. This statement is available online at:</p> <p><a href="#">Ministerial Direction – interoperability regime implementation dates – October 2021</a></p>
151.		<p>The extent to which ELNO performance is measured may warrant further consideration as the collection of this type of information may inform future policy decisions concerning the market. Maintaining an awareness of the experiences of and costs incurred by Subscribers may assist future regulatory decisions ARNECC may need to make. Various industries have moved to regulatory models that provide for greater user group engagement and/or information provision.</p> <p>The value of information about the market (and the crucial role it can play in being able to monitor the market) should not be underestimated. With this in mind it may be useful to consult specifically with practitioners about the type of information they would like to see reported on (e.g. information relevant to decisions about switching ELNOs, whether to enter into negotiations with the ELNOs on their Subscriber fee schedule).</p> <p>In the absence of appropriate reporting obligations ARNECC may also have limited access to the data it would need to carry out compliance activities and undertake other industry analysis as required.</p>	None	<p>Feedback noted but not adopted. ARNECC considers that the existing reporting obligations are sufficient for the time being.</p>