

Model Participation Rules (MPR) Consultation Draft 7 Feedback

This table responds to the feedback received on Consultation Draft 7 of the MPR published in August 2021.

#	Rule	Stakeholder Feedback	Action	ARNECC Response
MPR 2.1 – Definitions				
1.	Associated Financial Transaction	It is recommended that a definition along the following lines be added: <i>'Associated Financial Transaction has the meaning given to it in the ECNL.'</i> This would support the recommendation at row 12 below (suggested extension of MPR 7.5.1), that Associated Financial Transactions should be digitally signed, to support the extension of section 12 in the Electronic Conveyancing National Law (ECNL).	None	Feedback noted but noted adopted. See response for row 12 below.
2.	Conveyancing Transaction	Support amending the definition to mirror the definition in the ECNL. Agree there should be consistency between the Model Operating Requirements and MPR.	None	Feedback noted. ARNECC no longer proposes amending the definition.
3.	Electronic Workspace	Agree there should be consistency between the Model Operating Requirements and MPR.	N/A	Feedback noted.
4.	Information Fees	Agree there should be consistency between the Model Operating Requirements and MPR.	N/A	Feedback noted.
5.	Interoperability	It is recommended that the definition in the ECNL incorporates financial settlement.	None	Feedback noted. ARNECC acknowledges the importance of the financial settlement component of a Conveyancing Transaction but reconfirms that financial settlement is not part of the Registrars' remit, and never has been. Regulation of financial settlement is the remit of the Commonwealth Government, its Departments and agencies.
6.	Interoperability	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.		
7.	Interoperable Conveyancing Transaction	Support the addition of this definition, subject to reviewing the definition of Interoperability (see row 5 above).	Amended	Feedback noted. ARNECC no longer proposes including this definition in the MPR or MOR as it is narrow in the sense that it could be seen as limited to a single document (refer to the definition of Conveyancing Transaction in the ECNL). This limitation means that the term Interoperable Conveyancing Transaction would not capture a scenario in which there are two single party documents executed on different ELNs which together form an Interoperable Lodgment Case – for example, a refinance in which a discharge/release of mortgage is undertaken on one ELN and a mortgage on another ELN (see MOR Consultation Draft V7.1 Feedback Table).
8.	Interoperable Electronic Workspace	It is queried whether the word 'shared' is required. Otherwise, this definition is supported subject to reviewing the definition of Interoperability.	Amended	Feedback noted and the proposed amendment adopted.
9.	Interoperable Lodgment Case	Largely support amending the definition as proposed, but it is recommended that the underlined words be added: <i>'Interoperable Lodgment Case means an electronic Registry Instrument or other electronic Document or related electronic Registry Instruments or other electronic Documents, at least one of which is for or connected to an Interoperable Conveyancing Transaction, which <u>are</u> <u>is</u> or will be presented for Lodgment at the same time, together with the relevant Lodgment instructions.'</i> Agree there should be consistency between the Model Operating Requirements and MPR.	None	Feedback noted but not adopted. For consistency with the MOR (see this definition in MOR Consultation Drafts 7.1 and 7.2 , which ARNECC considers adequate), this definition has been updated as underlined: <i>'Interoperable Lodgment Case means an electronic Registry Instrument or other electronic Document or related electronic Registry Instruments or other electronic Documents, <u>conducted by means of Interoperability</u>, which are or will be presented for Lodgment at the same time, together with the relevant Lodgment Instructions.'</i>
MPR 7.1 – Obligations regarding system security and integrity – Protection measures				
10.	7.1(a)	It is queried whether MPR 7.1(a) should be amended to provide that the Subscriber must take reasonable steps to comply with the security policy of: <i>'each ELNO with which it has a current Participation Agreement.'</i>	Amended	Feedback noted and adopted.
11.	7.1(c)			
MPR 7.3 – Obligations regarding system security and integrity – User access				
12.	7.3.2	It is recommended that MPR 7.3.1 be amended as underlined below: <i>'The Subscriber must keep up to date <u>within each ELNO with which it has a current Participation Agreement</u>.'</i>	Amended	Feedback noted and adopted with slight adjustment.
MPR 7.5 – Obligations regarding system security and integrity – Digital Certificates				

#	Rule	Stakeholder Feedback	Action	ARNECC Response
13.	7.5.1	<p>It is recommended that MPR 7.5.1 be expanded, as underlined below:</p> <p><i><u>'Electronic Registry Instruments and other electronic Documents to be Lodged through an ELN, and any electronic Documents to effect an Associated Financial Transaction, must be Digitally Signed, where the electronic Registry Instrument or other electronic Document requires a Digital Signature, using a Private Key to create the Subscriber's Digital Signature.'</u></i></p> <p>Section 12 of the ECNL regards 'Reliance on, and repudiation of, digital signatures'. It provides that, in certain circumstances, specified parties can rely on the digital signature and it is binding on the parties. However, the current arrangement where the Financial Settlement Statement (FSS) line items are digitally signed is not a regulatory requirement, but merely a practical arrangement that has been voluntarily adopted. It is recommended that this current arrangement of digitally signing FSS line items must be elevated to a regulatory requirement, to complement the proposed changes to section 12 of the ECNL. Without this additional change, the proposed extension of section 12 to solve issues of reliance by the financial institutions on a Subscriber's instructions for financial settlement may not be achieved.</p> <p>It is also recommended that this change is necessary to support trust account authorisation and reliance.</p>	None	<p>Feedback noted but not adopted.</p> <p>Financial Settlement Statement line items are already digitally signed in practice.</p> <p>'Associated Financial Transactions' is defined broadly in the ECNL and, if referenced here, could inadvertently include electronic Documents outside of ELNO Systems.</p>
MPR 7.9 – Obligations regarding system security and integrity – Compromised Security Items				
14.	7.9.1(a)	<p>It is recommended that the definition of 'Compromised' be updated to incorporate a definition for the word 'Compromise', which is now used in both MPR 7.9.1(a) and (b)(iii).</p>	None	<p>Feedback noted but not adopted as MPR 2.2.6 applies to the use of 'Compromise'.</p>
15.	7.9.1(b)(iii)			
Schedule 4 – Client Authorisation				
16.	Client Authorisation Form	<p>It is recommended that that an additional express authorisation in the Client Authorisation Form (CAF) be added, along the following lines:</p> <p><i>'to effect lodgment, and where applicable, settlement of the Conveyancing Transaction through Interoperability between two or more ELNs'.</i></p> <p>The CAF is one of the main points of interaction between a Subscriber and a Client and the fact that a transaction may be completed via interoperability, depending on the choice ELNO of other parties in the transaction, should be express in the authority given to the Subscriber.</p>	None	<p>Feedback noted but not adopted. This amendment is not required given the statement in the Client Authorisation 'When this form is signed, the Representative is authorised to act for the Client in a Conveyancing Transaction(s)'. Conveyancing Transaction has the meaning given to it in the ECNL and may be conducted using Interoperability (which also has the meaning given to it in the ECNL).</p>
Additional comments				
17.	Changes to support interoperability	<p>The MPR Version 7 imposes a number of requirements for Subscribers to notify and restrict access across ELNs where there has been a potential security compromise or other restriction of access to a particular ELN.</p>	None	<p>Feedback noted.</p>
18.	Digital Certificates	<p>While requirements around digital certificates are primarily contained within the Operating Requirements, it is noted that many practitioners and financial institutions have commented that their customer experience would be improved with the ability to use one Digital Certificate across multiple ELNs, and when switching between ELNs.</p>	None	<p>Feedback noted. 'Open' digital signing certificates can be used in different ELNs.</p>