

Model Operating Requirements (MOR) Consultation Draft 7.01 – Explanatory Notes

This table outlines the key proposed amendments in Consultation Draft 7.01 of the MOR published in September 2024.

IMPORTANT NOTE:

ARNECC has released MOR Consultation Draft 7.01 to obtain stakeholder feedback prior to MOR Version 7.1 taking effect. This Consultation Draft includes proposed amendments relating to Interoperability Fees and compliance with the Electronic Conveyancing Payments Industry Code. ARNECC welcomes stakeholder feedback.

#	Rule	Amendments	Explanatory Notes
MOR 2.1 – Definitions			
1.	Code Operator Member	Added new definition.	This new definition relates to the Electronic Conveyancing Payments Industry Code requirements inserted at Operating Requirement 5.3(m) and Schedule 3 Categories Two and Three. See rows 7 and 15 below.
2.	Default Responsible ELNO Surcharge	Added new definition.	This new definition relates to the Interoperability Fees framework inserted at Operating Requirement 5.9, in line with the NSW Independent Pricing and Regulatory Tribunal review of Interoperability pricing for Electronic Lodgment Network Operators final report 2023 Recommendations 3 and 8c. This proposed definition describes who pays the surcharge and when.
3.	Electronic Conveyancing Payments Industry Code	Added new definition.	See row 1 Explanatory Notes above.
4.	Interoperability Fees	Added new definition.	See row 2 above and row 6 below. This new definition captures both the Default Responsible ELNO Surcharge and the Responsible ELNO Fee.
5.	Interoperability Fees Pricing Table	Added new definition	This new definition is proposed for transparency and in line with the existing ELNO Service Fees Pricing Table.
6.	Responsible ELNO Fee	Added new definition	See row 2 Explanatory Notes above. This new definition describes who pays the fee and when the fee is payable, by attaching the fee to each Subscriber that used the ELN of the Participating ELNO in a Lodged Interoperable Electronic Workspace. This proposed definition provides that the fee attaches to an ‘Interoperable Electronic Workspace’, rather than an ‘Interoperable Lodgment Case’ as there can be more than one Interoperable Lodgment Case in an Interoperable Electronic Workspace, and rather than a ‘Conveyancing Transaction conducted by means of Interoperability’ as there could be a surcharge for each Registry Instrument or other Electronic Document.
MOR 5.3 – General Obligations			

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7.	5.3(m)	Added Operating Requirement 5.3(m) requiring ELNOs to be a member of the Electronic Conveyancing Payments Industry Code prepared and published by Australian Payments Network Limited, as amended from time to time, and comply with that Code.	<p>A new requirement inserted pursuant to section 22(2)(c6) of the Electronic Conveyancing National Law.</p> <p>The Australian Payments Network Limited Board has approved the final Electronic Conveyancing Payments Industry Code. ARNECC understands that it is ready for implementation and notes that the Council of Financial Regulators has called on ELNOs (and banks) to adopt it</p> <p>While Registrars will receive evidence that an ELNO has obtained and is maintaining Code Operator Membership approval (see row 15 below), Australian Payments Network Limited will oversee compliance by an ELNO with the Code.</p>
MOR 5.4 – ELNO Service Fees			
8.	5.4.3	Amended to replace ‘2025’ with ‘2026’.	The intention of MOR 5.4.3 is to restrict ELNO Service Fee increases until there is effective competition in the market.
9.	5.4.4	Added Operating Requirement 5.4.4(d) to allow an ELNO to request the Registrar’s approval (which may not be unreasonably withheld) for proposed changes to its Pricing Table in the event that additional fees, charges or Costs are imposed on the ELNO in order to operate an ELN.	This new requirement is intended to cover incidental fees such as any licence fees charged to an ELNO.
10.	5.4.7	Added new Operating Requirement 5.4.7 that an ELNO must ensure that ELNO Service Fees charged for an Interoperable Electronic Workspace are not greater than the ELNO Services Fees for an Electronic Workspace that is not an Interoperable Electronic Workspace.	This requirement adopts Recommendation 8b in the NSW Independent Pricing and Regulatory Tribunal review of Interoperability pricing for Electronic Lodgment Network Operators final report 2023 .
MOR 5.9 – Interoperability Fees			
11.	5.9.1 to 5.9.4	Added new Operating Requirements 5.9.1 to 5.9.4 outlining restrictions in relation to the Interoperability Fees that an ELNO can charge. Those restrictions include the maximum level of Interoperability Fees that an ELNO can charge, when Interoperability Fees can be charged, arrangements for adjusting Interoperability Fees, and that an ELNO must each Financial Year prepare and publish an Interoperability Fees Pricing Table that must be published with 20 Business Days’ notice before it (or any changes to it) takes effect.	New requirements inserted pursuant to section 22(2)(c4) of the Electronic Conveyancing National Law, in line with the NSW Independent Pricing and Regulatory Tribunal review of Interoperability pricing for Electronic Lodgment Network Operators final report 2023 Recommendations 2, 3, 4, 8c, 8d, 8e, 9 and 11.
MOR 10.3 – Data Standards			
12.	10.3.3 to 10.3.5	Added new Operating Requirement 10.3.3 that whenever the Registrar specifies an ELNO must ensure that the version of the NECDS as specified by the Registrar is used for all Electronic Workspaces generated after the date and time specified by the Registrar.	For Conveyancing Transactions (non-Interoperable), it is possible for different ELNs to be using different NECDS versions in a jurisdiction. However, for Interoperable Conveyancing Transactions, all ELNs must be on the same NECDS version. Solutions and/or processes must be put in place to ensure any issues relating to NECDS version inconsistencies

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		<p>Added new Operating Requirement 10.3.4 that allows an ELNO to upgrade the NECDS version earlier than the date and time specified under Operating Requirement 10.3.3 with the agreement of all ELNOs with which it Interoperates and the approval of the Registrar which may not be unreasonably withheld.</p> <p>Added new Operating requirement 10.3.5 that requires an ELNO to ensure an existing Electronic Workspace continues to use the NECDS version on which it was generated and outlines three exceptions.</p>	<p>between ELNs are avoided. The drafting at Operating Requirements 10.3.3 to 10.3.5 introduces those necessary processes.</p>
MOR 15 – Compliance monitoring and reporting			
13.	15.4 – When to demonstrate compliance	Amended Operating Requirement 15.4 to remove at (a), (b) and (c) reference to “at the time the ELNO applies for renewal of Approval...” and to add new compliance requirement (e) “Category Five in Schedule 3, at the time the ELNO applies for renewal of Approval”.	These amendments accompany new reporting requirement Category Five in Schedule 3 for renewal of an ELNO’s Approval to operate an ELN. See row 16 below.
SCHEDULE 3 – Reporting requirements			
14.	Schedule 3, Category One	Amended to remove reference in the heading to “and on renewal of Approval”.	See row 13 immediately above.
15.	Schedule 3, Categories Two and Three	<p>Amended to remove reference in the heading to “and on renewal of Approval”.</p> <p>At Category Two, for Operating Requirement 5.3(m) and the Electronic Conveyancing Payments Industry Code, added under “Document to be produced” the words “Code Operator member approval” and added under “Self-Certification to be produced” the words “Compliance with the requirements”.</p> <p>At Category Three, for Operating Requirement 5.3(m) and the Electronic Conveyancing Payments Industry Code, added under “Self-Certification to be produced” the words “No Change Certification or updated Document and Self-Certification as required under Category Two”.</p> <p>At Categories Two and Three, added Operating Requirement 10.1(a) Functionality and under “Self-Certification to be produced” the words “Compliance with the requirements”.</p>	<p>See row 13 above.</p> <p>See rows 1 and 3 above. Amendment pursuant to section 22(2)(c6) of the Electronic Conveyancing National Law.</p> <p>A Potential ELNO will be required to obtain Code Operator Member approval, issued by the Australian Payments Network Limited Board under the Electronic Conveyancing Industry Code, before commencing operation of the ELN. An existing ELNO will be required to confirm that approval status via a Self-Certification as part of the Annual Report.</p> <p>A new item for Operating Requirement 10.1(a) at Categories Two and Three has been added due to the importance of a Potential ELNO demonstrating compliance with those functionality requirements before commencing operation of an ELN and of an existing ELNO demonstrating compliance with those functionality requirements annually.</p>
16.	Schedule 3, Category Five	Added new Category Five which sets out the minimum compliance documents that an ELNO must produce to the Registrar, at renewal of that ELNO’s Approval to operate an ELN.	New Category Five is based on Category Three and is designed to clarify the relevant compliance documents that an ELNO must provide to Registrars for a renewal of Approval application.

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SCHEDULE 8 – Interoperability Agreement Matters			
17.	Topic – Interoperability Fees	Added ‘Interoperability Fees’ to the table. ELNOs must ensure that any necessary process for the timely and effective payment of Interoperability Fees is included in an Interoperability Agreement.	<p>This requirement adopts Recommendation 8f in the NSW Independent Pricing and Regulatory Tribunal review of Interoperability pricing for Electronic Lodgment Network Operators final report 2023.</p> <p>Any such necessary process could include the practical arrangements, including the frequency and method, for payment of Interoperability Fees.</p>