Australian Banking Association

02 March 2020

Ms Jean Villani
Chair
Australian Registrars National Electronic Conveyancing Council
PO Box 2222
MIDLAND WA 6936
By email: chair@arnecc.gov.au

Dear Ms Villani

Model Participation Rules – Consultation Draft Version 6

The ABA takes the opportunity to contribute to the ARNECC Consultation on Draft Version 6 of the Model Participation Rules (MPR) issued in December 2019.

The proposed amendments to the MPR are significant and the ABA is strongly opposed to Draft Version 6 of the MPR in their current form.

ARNECC has not provided reasoning, analysis or a business case to justify the need for such significant changes. ARNECC has not explained the problems or risks that the changes seek to address or mitigate. The ABA is not aware of any instance of identity fraud in the electronic e-conveyancing system that would warrant such significant and costly changes.

The ABA strongly urges ARNECC to take into account all feedback and commit to a second round of consultation on a revised draft in due course. It would be helpful to industry participants for this further round of consultation to include an ARNECC consultation paper detailing reasons for proposed changes, as well as proposed amendments to the rules. The consultation paper should adhere to State Government guidelines on policy formation and include both a robust cost/benefit analysis and detailed regulatory impact analysis of proposed changes.

This ABA submission includes the attached table setting out the ABA's concerns and the negative impacts ARNECC's proposed changes will have on consumers and the property industry.

The ABA's key concerns are:

- A regressive use of the verification of identity (VOI) standard.
- Onerous and unnecessary face-to-face identity verification obligations – and the impact on consumers and competition.
- Changes to the appointment of identity agents – including individual appointment in writing.
- The mandating of unnecessary additional police background checks for users.
- A 20-day implementation timeframe for such significant and far reaching changes.
- Technology – the amendments are technology neutral and will hinder competition and innovation.

Verification of Identity

Applying the VOI standard as per clause 6.5.2 of the MPR is a substantial departure from the reasonable steps approach in operation today. ARNECC has not explained why such a significant change to industry practice is warranted.

The ABA is not aware of any data that demonstrates widespread instances of identity fraud in the electronic e-conveyancing system that would warrant such material changes. The ABA considers the

application of this VOI standard to be unduly onerous and costly, both for consumers and financial institutions, and, the ABA holds, disproportionate to the risks involved with the potential consequences of fraudulent transactions. The ABA does not support this change and strongly recommends retaining the existing approach of the reasonable steps approach.

Face-to-Face regime (Clause 2, Schedule 8)

The face-to-face identity verification obligation is a step backwards for competition and innovation in financial services in Australia and effectively negates technology-driven business models of emerging, neo bank, digital non-bank lender and Fintech challenger businesses that seek to compete. This is a poor outcome for robust competition and consumers.

Most importantly, indigenous, remote and vulnerable Australians will be particularly impacted by the mandatory requirement for Face-to-Face identity verification. The proposed identity verification rules that will apply to indigenous and remote communities are narrower than what is available to indigenous Australians in the AUSTRAC Self Identification Guidance and the ABA Banking Code of Practice. It is illogical for the ARNECC rules to deviate from standard industry practice without justification.

The proposed changes are also not aligned with the Financial Services Royal Commission final report and recommendations of Commissioner Hayne regarding access to appropriate and accessible financial services for remote and indigenous communities. The proposed ARNECC rules will have a disproportionate impact on those communities.

Following recent bushfires and floods, Australian Banks are supporting customers who have lost their house, car and identity documents. Many who have lost their homes are receiving an insurance payout and are working with lenders to discharge existing mortgages and purchase a new home or rebuild. Face-to-Face verification of identity is likely to place an additional stress on a vulnerable customer with no traditional method of verifying who they are.

The ABA strongly recommends that ARNECC consults with Federal Government agencies and with relevant regulators including Treasury, PM&C, ACCC, RBA, ASIC and APRA. The ABA also strongly recommends to make consumer advocate groups (particularly indigenous advocates) aware of the proposed change to verification of identity so that ARNECC can understand and take into account any detriment the changes may cause to disadvantaged sections of the community.

The ABA is strongly of the view that ARNECC must facilitate the use of emerging technology to conduct VOI. The ABA supports the development of a nationally consistent e-conveyancing environment in Australia to achieve the best outcomes for customers and industry.

Identity Agents

The definition of identity agent has changed to include a person “appointed in writing… to act as the Subscriber or mortgagee’s agent” (clause 2.1.2).

This proposed change will require each individual broker who conducts VOI on behalf of a financial institution to be appointed in writing. This is impractical in relation to aggregator networks.

The ABA believes that the mechanism for appointing brokers as Identity Agents should mirror that employed by ADI’s where the appointment of brokers to perform AML duties occurs at an aggregator agreement level rather than a written agreement between the Bank and individual brokers.

System users

In clause 7.2.3 ARNECC introduces additional requirements to ensure Subscribers screen each of their users, including three-yearly police background checks.

In the ABA’s view, controls and monitoring are far more effective at proactively preventing fraud and dishonesty. Police checks post hiring only uncover past behaviour, with a significant lag time whereas appropriate ongoing monitoring can catch suspicious behaviour within the day. The ABA believes the requirement for on-going police checks is too broad and unnecessary in an environment with multiple controls and segregation of duties. It is appropriate that police checks be conducted upon hiring and on

an as-needed basis. We would welcome the opportunity to review and discuss any evidence that ARNECC has to the contrary.

The ABA submits these checks not be required for ADI's and their subsidiaries.

Timeframe for implementation

The current far-reaching changes in the MPR Draft Version 6, including changes to VOI, will require banks to change control environments, processes and, for some banks, complete system changes.

The ABA does not support the proposed amendments to the rules, however, early estimates for the implementation of the proposed changes to the MPR is 12 to 18 months. The 20-day implementation timeframe proposed by ARNECC is inadequate.

The ABA recommends that all future ARNECC rule changes (particularly in an environment of e-conveyancing) should have a minimum 12 months implementation timeframe following the completion of industry consultations.

Technology

The ABA is of the opinion that the ARNECC proposal fails to address technological solutions within the MPR, and that ARNECC's position to remain technology 'neutral' is in conflict with the introduction and expansion of electronic conveyancing across the country.

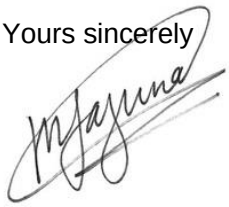
For example, financial institutions are moving towards the execution of mortgages electronically for certain customer sets in states where acceptable to do so mortgage documents can be delivered and executed electronically, without the need for witnessing. The ABA questions how this will be able to continue to be promoted and expanded if face-to-face VOI is mandated and alternative avenues are ignored.

The ABA recommends ARNECC takes the use of technology into account in this proposal, as the MPR would almost certainly require further updates in the near future, also leading to customers questioning the purpose of e-conveyancing in its entirety.

Conclusion

The ABA would be willing to discuss the feedback in this letter and the accompanying attachment with ARNECC and to engage in further consultation on a revised draft of the MPR in due course. The attachment should be read in conjunction with this letter.

Yours sincerely



Martijn Laguna
Policy Consultant
Martijn.Laguna@ausbanking.org.au

About the ABA

The Australian Banking Association advocates for a strong, competitive and innovative banking industry that delivers excellent and equitable outcomes for customers.

We promote and encourage policies that improve banking services for all Australians, through advocacy, research, policy expertise and thought leadership.

Australian Banking Association

Appendix 1

No	Rule	Rule Name	Issue	The ABA recommends /requests
1)	Rule 2.1 (Definitions)	Identity agent	The definition of identity agent has changed to mean a person 'appointed in writing… to act as the Subscriber or mortgagee's agent'.Currently, brokers on some occasions perform and evidence identity checks (including VOI checks) on behalf of financial institutions. The proposed change will require each individual broker who conducts VOI on behalf of a Financial Institution to be appointed in writing. Has ARNECC considered the practicality of effecting these appointments with reference to the aggregator network? Schedule 9 is unnecessarily duplicative of existing forms used across the member banks and will create excessive administration. It's also not clear as to whether brokers are being asked to certify as an 'authorised witness' as they are unlikely to meet the requirements of various state legislation for certifying documents.	The ABA does not support the proposed amendments as currently drafted. The ABA seeks to clarify if ARNECC's intention is for Financial Institutions to capture Brokers as Identity Agents and the rationale for doing so. The ABA believes that the mechanism for appointing brokers as Identity Agents should mirror that employed by ADI's where the appointment of brokers to perform AML duties occurs at an aggregator agreement level rather than a written agreement between the Bank and individual brokers.
2)	Rule 2.1 (Definitions)	Identity agent	Satisfying the requirement of an appointment "in writing" To the extent that ABA members will be appointing an Identity Agent "in writing", ABA members will conduct, in accordance with their own governance and operational requirements, procurement processes in connection with the appointment of an Identity Agent. Whether an appointment of an Identity Agent will be "in writing" in the traditional sense, will be a matter of commercial negotiations between parties, as part of the tender and procurement process. An Identity Agent may refuse to provide the Identity Agent Certification in the form requested by ARNECC.	The ABA requests that ARNECC provide ABA members with a reasonable period of time to conduct, assess and undertake their own procurement processes in connection with the appointment of an Identity Agent. A competitive tender and procurement process can take between 6 to 12 months to formalise. The ABA seeks to clarify if a Panel Law Firm (which has executed a separate Client Authorisation Form with a Subscriber) satisfies the requirement of an appointment as an Identity Agent in writing? A Client Authorisation Form allows a Panel Law Firm to "do anything else necessary to complete the Conveyancing Transaction", which can include acting as

No	Rule	Rule Name	Issue	The ABA recommends /requests
				Identity Agent to complete verification of identity on behalf of a Subscriber. The ABA seeks to clarify if these changes are adopted by ARNECC, is a Subscriber required to keep a record of the written appointment and for how long to meet compliance requirements? The ABA also holds that a distinction should be made between users who have read/write access to an ELN versus those who are consumers of the information without the ability to make changes on the ELN. Users with read only access can therefore be informed of the status of a transaction, which improves the customer experience.
3)	Rule 2.1 (Definitions)	Subscriber's systems	For ADI's and Financial Institutions, the application of this new definition is too broad and may capture technology systems that are completely segregated and are not used in any electronic conveyancing transaction.	The ABA requests that the definition of "Subscriber's Systems" be limited specifically to those technology systems that are used by Authorised Users to conduct an electronic conveyancing transaction in accordance with the Electronic Conveyancing National Law.
4)	Rule 4.3.1. (a)	Character	Suspension or termination of a subscriber in one jurisdiction (now or at any time in the past) constitutes a breach of the participation rules in other jurisdictions and could result in suspension or termination of the subscriber in other jurisdictions. Resolution of the issue, which led to the original suspension, does not remove the breach under the participation rules in other jurisdictions. Suspension or termination in a jurisdiction can relate to an issue peculiar to that jurisdiction. It is inappropriate that such an issue could lead to suspension or termination in another jurisdiction.	The ABA does not support the proposed amendments as currently drafted. The ABA recommends that the new language drafted be removed, reverting to the language from version 5. If a version of the new language is retained it should be modified to remove any disqualification arising from:

No	Rule	Rule Name	Issue	The ABA recommends /requests
				○ an issue which has subsequently been resolved (e.g. the disciplinary action was discontinued or found to be unjustified) ○ an issue not relevant to the particular jurisdiction (e.g. an issue arising under the differing requirements of another jurisdiction).
5)	Rule 4.3.1. (a)	Character	It is unclear how a Subscriber is to comply with these requirements. For Insolvency Events or disqualification under the Corporations Act, a Subscriber can conduct relevant searches. For conviction and other indictable offences, a Subscriber can conduct police checks. For items (v), (vi) and (vii) (e.g. any refusal of application to subscribe to ELN, or any current suspension order or termination orders), how can a Subscriber make any relevant searches or enquiries, particularly if there are no central registers kept by ARNECC. For item (iv), this should be amended to refer to any disciplinary action of any government authority or agency or regulator, that is not contested by a Subscriber (in good faith) or is not stayed by the relevant authority.	The ABA does not support the amendments proposed by ARNECC without an appropriate register in place to identify individuals subject to a suspension or termination order. At present, there is no public information available to a Subscriber to conduct searches and checks to satisfy itself that an individual is not subject to the matters listed in Rule 4.3.1(c). There are no public registers available to enable a Subscriber to make relevant enquiries as to whether individuals are subject to the matters listed in Rule 4.3.1(c) in any Jurisdiction. If such a register is not made available by ARNECC, the ABA recommends that the new language drafted be removed, reverting to the language from version 5.
6)	Rule 4.3.1(c)	Character	For Rule 4.3.1(c), the reference to “directors and officers” should be limited to only those “directors and officers” who have been authorised by a Subscriber to use the ELN. The wording is inappropriately broad. An individual can effectively be banned from these rules because of the suspension or termination of a Subscriber with which they were previously linked, despite the individual not holding a relevant role with that Subscriber at the time	The ABA does not support the amendments proposed by ARNECC. The ABA recommends ARNECC narrows down the definition to “those directors and officers who have been authorised by a Subscriber to use the ELN”. The ABA also recommends the exclusion from the scope of the rule individuals who were not

No	Rule	Rule Name	Issue	The ABA recommends /requests
			the issue which lead to the suspension or termination occurred	holding a relevant role with that other subscriber at the time the issue which lead to the suspension or termination occurred
7)	Rule 4.3.2	Character	An ADI is deemed to comply with Rule 4.3.1(a) unless there is evidence to the contrary. We assume this has been included to clarify the burden of proof but does not do so. Who determines whether there is evidence to the contrary? Is the onus or burden of proof on a Registrar seeking to terminate a Subscriber? Should there be a "reasonable steps" defence for Subscribers who have made relevant enquiries on to the matters listed in Rule 4.3.1(a)?	The ABA does not support the proposed amendments as currently drafted. The ABA requests the wording of the Participation Rules should be modified by ARNECC to address these questions and be clear as to how Rule 4.3 is to be tested.
8)	Rule 4.5	Business names	The PEXA Subscriber Registration Forms permits an ADI to use "Business Unit". The Business Unit field should only be completed if a Subscriber needs to differentiate between departments.	The ABA does not support the proposed amendments as currently drafted. The use of "Business Unit" is currently permitted by PEXA for complex organisations (such as ADI's) to differentiate between different departments and functions. The use of "Business Unit" should not result in an ADI being required to register the "Business Unit" as a Legal Business Name.
9)	Rule 5.6	Subscriber as Attorney	Whilst there are not many instances of Subscribers as an attorney at present, there is a concern that its removal will reduce the ability for Financial Institutions to change their operating model to insource settlement processing for other entities (which would have relied on a Client Authorisation – Attorney). Limiting this capability will potentially impact future mergers and/or acquisition from transacting electronically and instead via Paper	The ABA does not support the proposed amendments to remove.

No	Rule	Rule Name	Issue	The ABA recommends /requests
10)	Rule 6.3(a)	Client authorisation	It is unclear whether Client Authorisations entered into prior to these changes will be in "substantial compliance" with the modified form. Where a Subscriber has already executed a Client Authorisation in the form specified in the Participation Rules at that time, the proposed change in the specified form should not mean the existing form needs to be replaced. The ABA notes that the VOI requirements need to be satisfied each time a Client Authorisation is executed. Requiring the replacement of a number of Client Authorisations would impose a significant burden on Subscribers.	Paragraph 6.3(a) should be modified to make it clear that Client Authorisations substantially in the form specified by the Participation Rules at the time the Client Authorisations were executed remain valid and do not need to be replaced.
11)	Rule 6.3(f)	Client authorisation	In relation to Caveats, Priority Notices and extensions or withdrawals of Priority Notices that are signed by Clients that are corporations to which the Corporations Act 2001 (Cth) applies, and provided the relevant documents are executed in accordance with the requirements of s.127 of the Act, a Subscriber currently relies on the 'indoor management rule' statutory assumptions available under the Act and does not make further enquiries or take further actions to verify authority Would a Subscriber have to change that process in relation to documentation signed by corporations governed by the Corporations Act 2001 (Cth) and make further enquiries to verify authority of the Person providing instructions? That is, in circumstances where a Subscriber is required to verify authority of a Person acting on behalf of Client that is a corporation, it will be required to obtain copies of constitutions and board minutes and board resolutions, which is not the current practice due to the availability of the statutory assumptions referred to above. These documents could also be executed under POA. Would the Representative need to obtain a copy of the POA and obtain other ID to verify authority?	The ABA requests ARNECC to make clear whether subscribers can continue to rely on the "indoor management rule".

No	Rule	Rule Name	Issue	The ABA recommends /requests
12)	Rule 6.5	Verification of Identity - general	The proposed changes to Rule 6.5.2 specifies that the Verification of Identity Standard must be applied, which is a substantial departure from the reasonable steps approach accepted today. The impact for a Subscriber and its Customers will be far reaching. There will be material impacts on customer experience that should be tested and analysed first. The face-to-face interview requirement can pose difficulties for customers in regional and remote locations, vulnerable customers (including with impairments and disabilities) and overseas customers. (See comments on Schedule 8.2). The prescriptive requirements remove flexibility to take advantage of technological developments (e.g. video conferencing). We note that there have been recent advances in facial biometrics and that both the ATO and Australia Post have recently released digital identity tools (See comments Schedule 8.2). The strict adherence to the VOI standard could also interfere with the increased use of electronic signing of documents, which has been one of the initiatives supported by the e-conveyancing regime.	The ABA strongly opposes the proposed requirement that the Verification of Identity Standard be followed unless is “cannot be applied”. As the mandating of the VOI standard is not explained, the ABA seeks to understand the reasons why ARNECC are no longer supportive of reasonable steps. The ABA considers the application of this standard to be unduly onerous, and not proportionate to the risks involved with the potential consequences of fraudulent transactions. It is ABA’s view that the ADI’s and credit providers (non-ADI subsidiaries) who are requires to maintain robust risk-based AML/CTF programs should be exempted from the requirement to comply with the VOI Standard and instead continue to be required to take reasonable steps to verify the identity of the party.
13)	Rule 6.5.1.(b)iii	Verification of Identity - transferees	A subscriber who is or is representing a transferee of a mortgage will need to identify the mortgagor, even where the mortgagor has previously been identified. A transfer of mortgage is a transaction only involving the transferor and transferee; the mortgagor is not a party to the transaction. Complying with this requirement would pose considerable practical difficulties (particularly in the context of a bulk transfer of mortgages) as the mortgagor would have no incentive to attend an interview or provide the required documentation and may see an opportunity to negotiate concessions from the transferor or transferee.	The ABA strongly opposes the proposed modifications to require the verification of the identity of mortgagors when mortgages are being transferred. We are aware that there are existing requirements to this effect in some jurisdictions, but these requirements should not be extended to all participating jurisdictions.

No	Rule	Rule Name	Issue	The ABA recommends /requests
			Existing mortgage documentation typically does not require a mortgagor to attend an interview or provide documentation in order to allow the transferee to comply with this requirement. Could ARNECC explain why the mortgagor's identity need to be rechecked where the mortgage has already been registered? It is unclear what issue this requirement is seeking to address. The VOI requirement for mortgagors is to ensure that mortgages are only registered on title where they have been executed by or on behalf of the registered proprietor. Can ARNECC please explain why in the case of a transfer of mortgage (i.e., paragraphs (b)(iii) and (b)(iv)), a Subscriber can either apply the VOI Standard or verify in some other way that constitutes the taking of reasonable steps? Why is the option to conduct VOI in "some other way" available for a transfer of mortgage – but not for a mortgage or an amendment or a variation of a mortgage? Can ARNECC also confirm what the definition of an amendment or variation of the mortgage is?	The ABA is considering contacting the relevant authorities in the jurisdictions where these requirements currently exist with a view to those requirements being removed. The ABA also seeks clarification of the questions as posed.
14)	Rule 6.5.1.(b) iii	Verification of Identity – transfer of mortgage	Mortgage securitisations are an important source of funding for Australian banks and non-bank lenders. We note that in Australia mortgage securitisations typically entail equitable assignments of mortgages with the result that a legal transfer of the mortgage is not required. Circumstances can however arise in which the registered mortgagee is required to transfer securitised mortgages in bulk to the securitisation trustee or custodian. This new identification requirement would make the completion of such a bulk transfer extremely difficult. This may in turn require a restructuring of	It appears ARNECC has not taken into account the effects this rule may have on the Australian securitisation market. The ABA strongly opposes the proposed modifications to require the verification of the identity of mortgagors when mortgages are being transferred.

No	Rule	Rule Name	Issue	The ABA recommends /requests
			standard securitisation documentation with consequences for the Australian mortgage securitisation market.	
15)	Rule 6.5.1(b)	Verification of Identity	The drafting in Rule 6.5.1(b)(ii) and Rule 6.5.1(b)(iv) is confusing; it refers to the mortgagee taking reasonable steps to verify the identity of each mortgagor or their agent. This is inconsistent with Rule 6.5.2, which states that the Subscriber must apply the VOI Standard, not take reasonable steps to verify the identity of each mortgagor. For example, a Subscriber Panel Law Firm (acting for a Subscriber as mortgagee) is not required to take reasonable steps to verify the identity of each mortgagor or their agent if a Subscriber Panel Law Firm is reasonably satisfied that the mortgagee it represents has taken reasonable steps to verify the identity of each mortgagor. However, Rule 6.5.2 does not permit a Subscriber (as Mortgagee) to take reasonable steps, it must apply the VOI Standard.	The ABA holds that to the extent the requirement to use the VOI Standard remains, modifications are required to address this inconsistency.
16)	Rule 6.5.2 (b)	Verification of Identity	It is unclear under what circumstances ARNECC suggests VOI cannot be applied and reasonable steps are allowed. The wording "reasonably satisfied that the Verification of Identity Standard cannot be applied" would not cover a situation in which the standard can be applied, but only at significant cost (e.g., flying a staff member to or a customer from a remote location so that there can be a face-to-face interview). It is unclear how a bank would evidence that it is 'reasonably satisfied that the VOI standard cannot be applied'.	The ABA requests ARNECC in a second round of consultation to publish revised draft rules such that it clearly defines the circumstances under which reasonable steps are allowed. To the extent that Subscribers are generally required to use the VOI Standard, the ABA submits that the circumstances in which an alternative "reasonable steps" approach may be taken should be substantially broadened.
17)	Rule 6.5	Verification of Identity	Clarity is required around the use of an Identity Verifier and the requirement to VOI the Identity Verifier.	The ABA would welcome an explanation of the following. If there is an instance where an Identity Verifier is used, what is the expectation to store and later evidence the VOI?

Australian Banking Association

No	Rule	Rule Name	Issue	The ABA recommends /requests
18)	Rule 6.6(d)	Supporting Evidence	It is unclear what constitutes “evidence” that the VOI Standard “cannot be applied”.	Please refer to the ABA’s previous comments around: ○ Why the reasonable steps requirement should be retained? ○ The wording of the “cannot be applied” exception. To the extent the “cannot be applied” exception is still relevant, the ABA believes it should be sufficient for the Subscriber to record the circumstances which led to it concluding that the VOI standard “cannot be applied”.
19)	Rule 7.2.1	Users – training requirements	This imposes a new requirement that all staff, including agents and contractors accessing any IT system have received cyber security awareness training. As this requirement currently stands, onboarding of all new staff would need to be restructured so that almost the first thing they receive is cyber security awareness training. ADI’s already conduct multiple cyber-security awareness training modules. Is there an assurance that this is sufficient?	The ABA seeks clarity as to what level of cyber security training is required and recommends this requirement be modified to allow reasonable time for new staff to receive training.
20)	Rule 7.2.1(c)	Users – training requirements	The reference to “directors, officers, employees etc.” is too broad.	The ABA recommends this reference be narrowed down to those individuals who are authorised by the Subscriber to have access to the ELN, not every director or employee.
21)	Rule 7.2.3(c)	Users – Police background checks	Under this new rule, a Subscriber is required to conduct a police check for each of its Users (i.e. principal, officer, director, employee, agent or contractor of a Subscriber that is authorised by a Subscriber to access and use the ELN on behalf of a Subscriber) every three years.	The ABA does not support the proposed amendments as currently drafted. Overall, the ABA notes that the requirement for on-going police checks is too broad and unnecessary in an environment with multiple controls and segregation of duties.

No	Rule	Rule Name	Issue	The ABA recommends /requests
				Police checks are conducted upon hiring and revisited on an individual basis but not for all users. Controls and monitoring are far more effective at proactively preventing fraud and dishonesty. Police checks posts hiring only uncover past behaviour, with a significant lag time, whereas appropriate ongoing monitoring can catch suspicious behaviour within the day. The ABA submits these checks not be required for ADI's and their subsidiaries where controls and monitoring can be evidenced. Should this requirement however be retained, the ABA recommends that the scope be narrowed as per existing rules to apply only to PEXA Users that hold a digital certificate.
22)	Rule 7.2.3	Users – insolvency events	The definition of "Insolvency Event" is too broad as it covers anyone who: ○ "is, or states they are, unable to pay all the Person's debts as and when they become due and payable" ○ has entered into an arrangement or composition with creditors. What this means is subscribers cannot employ as Users many people who have in the past been in financial difficulty (including "hardship" as defined in the National Credit Code), even where this financial difficulty did not result in bankruptcy and the issue was subsequently resolved or the debt repaid. Lenders know well that financial difficulties of this type can occur as a result of unanticipated life events such as the breakdown of a marriage, the loss of employment or a natural disaster and do not	The ABA holds that either: ○ the reference to "Insolvency Events" should be removed; or ○ the wording should be narrowed to only preclude the employment of undischarged bankrupts. The ABA requests ARNECC in a second round of consultation to publish the revised draft rules such that it narrows down the definition of insolvency events.

No	Rule	Rule Name	Issue	The ABA recommends /requests
			necessarily mean the affected individual is untrustworthy or of bad character.	
23)	Rule 7.2.4	Users	This rule creates an exception where a User is a legal practitioner; they are deemed to comply with Rule 7.2.3(b) unless there is evidence to the contrary.	Will ARNECC consider expanding these exceptions to Bank Managers (as defined in Schedule 8) and Directors of a Subscriber? Please refer to our previous comments about onus of proof and the meaning of the words "evidence to the contrary".
24)	Rule 7.5.5	Digital Certificates	Keeping Digital Certificates safe and secure.	The ABA recommends the obligations and rules imposed on Subscriber should be no more onerous that the existing processes and protocols adopted by ADI's. Digital certificates are crucial to ADI's and are therefore handled with considerable care.
25)	Rule 7.7.1	Notification of Jeopardised Conveyancing Transactions	Does the ELNO or the Registrar have a Direct Contact Number where Members can immediately report Conveyancing Transactions that has been Jeopardised? Who is responsible for investigating a suspicious transaction on an ELN? Are there current obligations on Members to report suspicious transaction on an ELN? A Subscriber may be under a court order and may not be able to disclose or notify other parties that they are being investigated.	The procedures surrounding Jeopardised Conveyancing Transactions need to be set out in greater detail. The ABA recommends there needs to be drafting inserted to protect a Subscriber against the risk of tipping off other parties that may be involved in a fraud. The ABA recommends the reference to "The Subscriber must immediately notify" be changed to read: "The Subscriber must immediately notify (only to the extent permitted by law and where practicable to do so) the ELNO and the Registrar".

No	Rule	Rule Name	Issue	The ABA recommends /requests
26)	Rule 9	Restriction, Suspension and Termination	The proposed widening of the requirements around "Character" would dramatically increase the likelihood of circumstances arising in which a Registrar would be permitted to suspend or terminate a Subscriber. This could have dramatic, potentially fatal, consequences for a Subscriber's business.	The ABA holds Rule 9 should be modified to: ○ limit suspensions to a specified time adequate to permit an investigation as to whether the Subscriber should be terminated or until the issue had been remediated ○ set out the procedures which should be followed prior to a termination (e.g. natural justice requirements which allow the Subscriber an opportunity to provide evidence and arguments) ○ set out the applicable appeal mechanisms.
27)	Rule 9	Restriction, Suspension and termination	The ABA notes that the recent report on the Intergovernmental Agreement under which ARNECC was established recommended the modification of the Participation Rules to include potential actions by the Registrar such as warnings and fines of subscribers. The current penalties are limited to suspension or termination, either of which would have drastic and possibly excessive consequences for the relevant subscriber and, in the case of significant lenders, could have significant consequences for the jurisdiction, which suspends or terminates the lender.	The ABA recommends expanding the options available to Registrar to include warnings and fines for subscribers.
28)	Rule 9.1	Restriction, Suspension and Termination	A Subscriber's obligation to comply with any direction of the Registrar must be subject to any applicable law or court order. If restricting any access to the ELN constitutes an offence of "tipping off" under applicable laws, then a Subscriber must be in a position to assess any direction made by the Registrar.	The ABA does not support the proposed amendments as currently drafted. The ABA recommends that ARNECC include sufficient protections for ABA Members where restricting any access to the ELN constitutes an offence of "tipping off" under applicable laws.
29)	Schedule 1	Additional Participation Rules	For South Australia, where there is a transfer of mortgage, the incoming financier must take reasonable steps to establish that the outgoing financier has complied with its obligations to complete VOI	The Model Participation Rules must be applied for all members on a "uniform national basis" and each State and Territory must not impose their own specific State or Territory

No	Rule	Rule Name	Issue	The ABA recommends /requests
			of the mortgagor in accordance with Participation Rules and Land Titles Legislation. In this context, what constitutes taking reasonable steps? If the outgoing financier provides a representation to the incoming financier that it has taken reasonable steps to complete VOI of the mortgagor, is this sufficient to satisfy these rules – or does the incoming financier need to see written evidence or records that the outgoing financier has completed VOI of the mortgagor? Is there a transition period or a grandfathered provision – will these changes only apply to any mortgages or transfers of mortgages taken after a specific date? What about mortgages that were taken before the implementation of the Model Participation Rules?	requirements. The Electronic Conveyancing National Law (ECNL) calls for a uniform national approach to the electronic conveyancing across Australia and each State and Territory must not impose local State or Territory requirements. The ABA holds that the drafting of this rule requires modification to address these points.
30)	Schedule 2	Amendment to Participation Rules	Significant changes require longer implementation periods, particularly when system changes are needed. 20 Business Days' notice is insufficient time to implement the far-reaching changes as proposed in the MPR.	The ABA recommends Schedule 2 be amended to require consultation with subscribers and their associations on the time reasonably required to implement any proposed changes. Based on the currently proposed changes, ADI's will need to update their forms, procedures and systems. This significant change is estimated to take at least 12 months to adequately build and test these changes with the appropriate controls.

No	Rule	Rule Name	Issue	The ABA recommends /requests
31)	Schedule 4.1	Privacy and client information	If a Subscriber (as a Client) provides Personal Information to its Panel Law Firm, the Personal Information is to be used and kept in accordance with Privacy Laws and the Procurement Services Agreement agreed between a Subscriber and the Panel Law Firm.	The ABA holds that the Personal Information provided by a Subscriber to a Panel Law Firm must NOT be used for any other purpose, including a Compliance Examination to be conducted by ARNECC of the relevant Panel Law Firm. If ARNECC requires any Personal Information from a Subscriber, the request should come directly to a Subscriber, not via a Third-Party Service Provider. The ABA recommends that the reference to "for the purpose of a Compliance Examination" must be removed.
32)	Schedule 4.2	Privacy and client information	In the context of a Subscriber (as a Client), it is unclear what Personal Information is required from Staff in order to complete a Conveyancing Transaction.	The ABA requests ARNECC in a second round of consultation to publish the revised draft rules such that it is clear to industry what Personal Information is required. The ABA recommends Rule 4.2 should include an exception relating to any Staff that work with and ELN; their Personal Information is not relevant for the purposes of completing a Conveyancing Transaction. The reference to Client should be limited to Customers or Mortgagors.
33)	Schedule 8.2	Face-to-face regime	At present a customer lodging an application digitally or over the phone may provide certified copies of their photographic identification to satisfy the VOI requirements. Dependent on preferences and circumstances, customers may move through the entire home lending journey without physical banker contact. Mandating a face-to-face in person interview instantly eliminates choice for customers, as they	The ABA does not support the amendments proposed by ARNECC. The ABA does not support the mandating of a face-to-face interview held in person to conduct VOI, as we consider this would remove

No	Rule	Rule Name	Issue	The ABA recommends /requests
			can no longer decide how to navigate the home lending experience in a way that best suits their needs (such as outside of business hours). Furthermore, the ABA questions if ARNECC has considered how the mandating of face-to-face VOI will impact on vulnerable customers, including those with impairments, disabilities or victims of domestic violence. Attending an interview in person may not be a realistic option for these customers and they should not be put at a disadvantage because of this requirement.	flexibility and the ability to take advantage of technological developments. The ABA believes that customer experience for those using these channels will be negatively impacted, as a Financial Institution will no longer be able to facilitate a seamless end-to-end mortgage process. In addition, the ABA considers this approach does not reflect consumer sentiment. Customer choice will be restricted, and over time customers will question the need to use such channels, thus impacting the direct and digital business models. The ABA recommends that ADI's required to maintain robust risk-based AML/CTF programs should be exempted from the requirement to comply with the VOI Standard and instead continue to be required to take reasonable steps to verify the identity of the party. To the extent that compliance with the VOI Standard is to be the general rule, flexibility should be introduced into the standard around issues like the use of: ○ video conferencing ○ technological developments like facial recognition software. The member banks are committed to supporting their customers and strongly believe that regional clients without access to a branch or direct broker network should not be disadvantaged.

No	Rule	Rule Name	Issue	The ABA recommends /requests
				Digital solutions will aid these customers tremendously and also assist lenders satisfy their VOI requirements. It is also out-dated and out of touch when considering the rise of e-conveyancing and electronic loan documentation from lenders.
34)	Schedule 8.2	Face-to-face regime	ABA believes that a physical identification process will also discriminate against smaller players and digital businesses (digital bank, neo bank, digital non-bank lender, Fintech challenger business and online mortgage broker that operate in this space, i.e. their business model is technology driven, not face to face). They may use video conferencing today and/or may rely on a customer providing a certified copy of their photographic identification. The addition of out-dated processes may add a layer of complexity to their technology driven business models, therefore disrupting the customer experience and stymie competition.	The ABA does not support the amendments proposed by ARNECC. To the extent that compliance with the VOI Standard is to be the general rule, flexibility should be introduced into the standard around issues like the use of: ○ video conferencing ○ technological developments like facial recognition software.
35)	Schedule 8.3	Categories of Identification Documents	Under the Banking Code of Practice, banks are obliged to help Indigenous customers meet identity requirements. Banks are accepting community cards which are on the register of the indigenous corporation's website. These cards should be added to the minimum document requirement list without the need for additional documentation. Likewise, for customers who have been impacted by bushfires or other natural disasters, particularly those in an existing property, consideration should be taken into account when they cannot provide the documentation. Even with an identifier declaration, the minimum requirement includes several other documents, all of which must be presented face to face.	The ABA does not support the amendments proposed by ARNECC. If reasonable steps for VOI are followed, then all of these circumstances can be taken into account at the appropriate discretion of the ADI. To the extent that compliance with the VOI Standard is to be the general rule, ARNECC should, prior to release of the MPR version 6, consult with Consumer Advocates, Indigenous Rights Advocates, AUSTRAC, ASIC, the Federal Treasury and ACCC to ensure the rules do not conflict with other government initiatives to support Indigenous, remote communities and vulnerable customers.

No	Rule	Rule Name	Issue	The ABA recommends /requests
				ARNECC must also take into account those impacted by natural disasters. The ABA recommends that ARNECC, prior to release of the second consultation paper, consult with the Bushfire Recovery Taskforce to ensure the Category of Identification Documents – Minimum Documents Requirements do not unduly impact vulnerable members of the community.