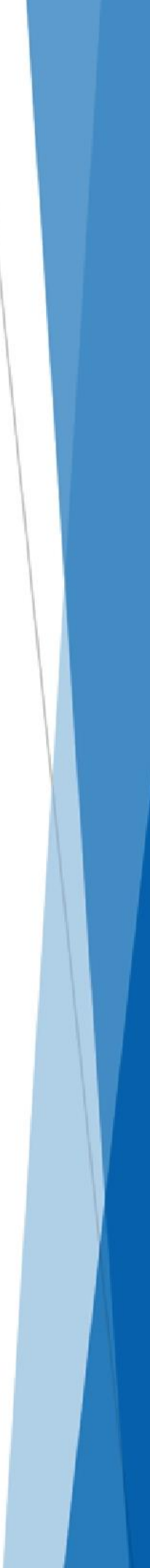# CONSULTATION DRAFT 7.2 OF THE MODEL OPERATING REQUIREMENTS

Australian Registrars National Electronic Conveyancing Council

31 October 2023

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Key recommendations

The ABA recommends the following:

1. The Australian Registrars National Electronic Conveyancing Council (**ARNECC**) not commit to timeframes for the interoperability program until matters relating to scope, functionality and payment and settlement flows are adequately addressed or there is an agreed plan to address these issues.

2. Inclusion of a provision in the Model Operating Requirements (**MOR**) to require Electronic Lodgment Network Operators (**ELNOs**) to complete updates to their integration with subscribers before going live with interoperability.

3. Inclusion of 'functionality' in section 5.7.7 of the MOR to ensure all ELNOs commit to a minimum level of functionality, and at a minimum their current offering available for a non-interoperable transaction.

4. Schedule 8 of the MOR extend to scope, functionality, financial flows, and minimum requirements relating to testing of functionality.

5. The MOR make provision for innovation and dispute resolution relating to innovation and genuine IP matters between ELNOs.

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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.

ABA submission to draft 7.2 of the Model Operating Requirements

Overview

The Australian Banking Association (**ABA**) welcomes the opportunity to comment on the consultation draft 7.2 of the Australian Registrars National Electronic Conveyancing Council's (**ARNECC**) Model Operating Requirements (**MOR**).

The ABA acknowledges the work of ARNECC to date in developing the interoperability program. We continue to support the intention of interoperability on the basis that eConveyancing transactions under interoperability are substantively like those under a non-interoperable framework.

However, the ABA has significant concerns that the interoperability program will be impacted by the failure to resolve issues relating to the scope, functionality, innovation and payment and settlement flows of the program. Banks do not support any material reduction to existing levels of functionality and customer and user experience under an interoperable framework. A reduction to existing functionality will introduce unacceptable risk to banks, including a significantly heightened risk of delayed or missed settlements, diminished customer and user experience, added complexity within banks' processes and systems, and greater administration costs.

Specifically, the ABA considers the remit of the MOR, and by extension ARNECC, should be broadened to extend to matters relating to banks as critical subscribers of interoperability, including requirements relating to mandatory bank and subscriber testing (rather than Electronic Lodgment Network Operator (**ELNO**) to ELNO testing), minimum or baseline requirements relating to functionality and greater certainty relating to financial flows.

While the ABA has previously raised these issues with ARNECC in its response to ARNECC's scope consultation, we note ARNECC's response that it "considers that it is more appropriate for banks to have these discussions with each ELNO separately." The ABA respectfully disagrees with this view and considers it is either within, or should be within, the purview of ARNECC to properly design and set requirements relating to scope, functionality, and testing of interoperability, to deliver a successful interoperability program.

We reiterate our position that failure to do so is contrary to the principle of interoperability and reduces or eliminate incentive for any subscriber, including banks, to participate in an interoperable transaction.

Comments on the MOR

The ABA makes the following comments in relation to the MOR, which we consider will support the intention of the interoperability program. While these comments will not address the extent of banks' concerns with the interoperability program, their resolution will demonstrate ARNECC's commitment to the delivery of interoperability for all users, including subscribers and customers.

Section 5.2.2 – Release timeframes

Section 5.2.2 of the MOR section obliges an ELNO to, on or before prescribed dates, design, build and test all technical and functional capability relating to each of the three releases. The interface of interoperability with banks' systems is critical to enabling an interoperable transaction to occur successfully. However, the provision does not include any explicit requirement relating to testing with banks. While testing to date has been occurring with ELNOs and banks on a good faith basis, the ABA requests it be made an explicit requirement to carry out testing with a subscriber, such as bank, and implement further testing where initial tests fail or do not reflect real-life scenarios (e.g. where ELNOs are staging a transaction or 'hand-holding' a transaction through to completion).

The ABA has previously raised with ARNECC that the proposed timeframes for the delivery of the interoperability program are prematurely set. The ABA considers that the scope that has been shared with members will not maintain the current level of service or functionality that is required to complete an eConveyancing transaction for a customer under a non-interoperable framework. The ABA does not support formalisation of timeframes in the MOR until matters relating to scope and functionality have been

adequately addressed with banks and other subscribers. In our view, further releases should only be implemented once all functionality that is currently available via each ELNO for a non-interoperability transaction is built, and pilot transactions have been successfully conducted to test those functionalities.

Section 5.5 – Integration

The requirements relating to integration in section 5.5 of the MOR do not make any provision for how future integration will work under an interoperable framework. Currently, banks have integration with individual ELNOs, which drives internal bank processes and workflow relating to settlements and customers. The ABA recommends ARNECC include a provision in the MOR to require ELNOs to complete updates to their integration with subscribers before going live with interoperability. Current levels of integration, key integration points and scope of work should also be maintained and adopted in an interoperable transaction that is identical to a non-interoperable transaction.

Section 5.7.7 – Standard of performance

Section 5.7.7 of the MOR requires an ELNO to interoperate with all ELNOs on an equivalent basis and ensure that the standard of performance of its Electronic Lodgment Network (**ELN**) is equivalent to the performance of its ELN in an interoperable and non-interoperable workspace. *Equivalent basis*, for the purposes of section 5.7, is defined as using the same processes and systems in implementing interoperability. However, this section does not make explicit reference to the level of functionality for a subscriber.

In our view, use of the same processes and systems is not sufficient to enable a successful interoperability transaction to take place unless functionality is included. Subscribers should be able to expect the same user interface and experience, which are reliant on functionality, regardless of whether it is a non-interoperable or interoperable transaction. Any reduction in existing levels of functionality will impact on settlement timelines and may increase the incidence of failed or delayed settlements, reducing certainty for all parties involved in the transaction, particularly the customer.

The ABA requests that functionality is included in section 5.7.7 to ensure all ELNOs commit to a minimum level of functionality, and at a minimum their current offering available for a non-interoperable transaction, to allow customers true choice across platforms and ensure subscribers and financial institutions can operate the same process across all types of transactions and continue to meet requirements to settle on time for the benefit of customers.

Schedule 8 – Interoperability Agreement Matters

The ABA notes Schedule 8 of the MOR does not extend to scope, functionality, financial flows, or minimum requirements relating to testing of functionality. There is also no reference to obligations of an ELNO when an error occurs (such as incorrectly entering financial line items into the settlement schedule), including what is to occur when an error is made by an ELNO or a subscriber, and how the ELNO will either assist in rectifying the error (including addressing liability) or work with the subscriber to resolve the error.

The ABA requests these matters be addressed and included within the Schedule.

We note that while Schedule 8 refers to 'claims management' in relation to the equitable management of the subscriber, client and third-party claims, which could potentially address the above errors. However, what is meant by 'claims' is not made clear in the Schedule.

Other issues

Innovation

The MOR does not set any requirements relating to innovation and the need for ELNOs to interact with one another in relation to interoperability improvements. Given experience to date with two ELNOs and reluctance from ELNOs to share key data points that are required for functionality, and therefore interoperability, we are not confident of the present or future success of the interoperability program.

Current experience indicates that most innovation changes also require changes to processes and systems for all parties involved in the transaction. For example, if there is a new functionality being built by one ELNO, how will all the ELNOs be made aware of the functionality to make it available on all platforms if required? While this could potentially be addressed by section 6.1 of the MOR, section 6.1 does not address how ELNOs will interact with one another when there is a new functionality.

At a minimum, the MOR should specify how ELNOs will engage and interact to ensure that the innovation benefits both an interoperable and non-interoperable transaction and require ELNOs to participate in any processes for dispute resolution and resolution of genuine IP concerns. Failure to address these issues will exacerbate existing issues and make it unviable for any further entrants to participate in interoperability.

Definition of 'test plan'

Sections 6.1 and 6.2 of the MOR refer to a 'test plan'. The MOR defines test plan as a plan acceptable to the Registrar for the testing of the ELN. This means the Registrar can accept a test plan even if there is no explicit provision for testing with a subscriber, like a bank. The ABA requests the Registrar consider how an ELNO will test its systems with a bank, acknowledging that insufficient testing with banks will increase the likelihood of failed transactions and settlements.

Use of the term 'promptly'

We note the MOR refers to matters or actions being carried out 'promptly'. The ABA acknowledges the term promplty implies fast action while balancing potential issues that may limit pace with which a matter is addressed, or an action occurs, offering flexibility. However, the document appears to have an overreliance on 'promptness', rather than set timing. ARNECC may wish to consider being more specific, particularly as it relates to addressing adverse findings from Service Organisation Controls 2 Type 2 (**SOC 2 Type 2**) reports (for example, section 7.3.2(b) refers to promptly taking any action required to ensure the ELNO's controls and processes are effective and rectify any identified weaknesses in the SOC 2 Type 2 report or such other report approved by the Registrar in writing).