26 August 2021

Mr Michael Tidball
Chief Executive Officer
Law Council of Australia
DX 5719 Canberra

By email: john.farrell@lawcouncil.asn.au

Dear Michael,

Consultation Draft Model Participation Rules (Version 7)

The Law Society of NSW appreciates the opportunity to provide comments for a Law Council submission in response to the Consultation Draft of version 7 of the Model Participation Rules ("Draft MPRs"). The Law Society's Property Law Committee has contributed to this submission.

General comments
We are broadly supportive of the changes made in the Draft MPRs to support interoperability. An opportunity to comment on the associated changes expected to be made in the *Electronic Conveyancing National Law* would also be welcome.

Detailed comments
Please find enclosed a table based on the Explanatory Notes table issued by ARNECC for version 7, with a column added to include our comments. We generally support the changes, except where there is a comment in the table. We have also added three new rows to the table, labelled 1a, 15a and 25a, with further suggested amendments for consideration by ARNECC.

Thank you for the opportunity to comment. If you have any questions in relation to this submission, please contact Gabrielle Lea, Policy Lawyer on (02) 9926 0375 or email: gabrielle.lea@lawsociety.com.au.

Yours sincerely,

Juliana Warner
President

Encl.

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Law Council
OF AUSTRALIA
CONSTITUENT BODY

Model Participation Rules (MPR) Consultation Draft 7 – Comments from NSW Law Society

#	Rule	Amendments	Explanatory Notes	Comments
MPR 2.1 – Definitions				
1a		Associated Financial Transaction		We suggest the addition of a definition for Associated Financial Transaction along the following lines: "**Associated Financial Transaction** has the meaning given to it in the ECNL." This would support our suggested extension of MPR 7.5.1, referred to in item 15a, that Associated Financial Transactions should be digitally signed, to support the proposed extension of section 12 in the Electronic Conveyancing National Law ("ECNL").
2.	Conveyancing Transaction	Amended definition of Conveyancing Transaction to include Interoperable Conveyancing Transactions.	Interoperable Conveyancing Transactions are relevant in the same provisions in the MPR asConveyancing Transactions. The definition in the next draft of Version 7 of the Model Operating Requirements (MOR) will be amended for consistency (i.e. amended to 'may include').	We support amending the definition to mirror the definition in the ECNL. We agree there should be consistency between the MOR and the MPR.
3.	Electronic Workspace	Amended definition of Electronic Workspace to include Interoperable Electronic Workspace.	Interoperable Electronic Workspaces are relevant in the same provisions in the MPR as ElectronicWorkspaces. The definition in the next draft of Version 7 of the MOR will be amended for consistency.	We agree there should be consistency between the MOR and the MPR.
4.	InformationFees	Replaced 'the ELN' with 'an ELN'.	The definition in the next draft of Version 7 of the MOR will be amended for consistency.	We agree there should be consistency between the MOR and the MPR.

#	Rule	Amendments	Explanatory Notes	Comments
5.	Interoperability	Added definition of Interoperability.	The substance of this definition will be housed in the ECNL. Broadly speaking, it is anticipated that Interoperability will be defined in the ECNL as the interworking of ELNs in a way that allows: • Subscribers using different ELNs to complete a Conveyancing Transaction; and • the preparation of documents using data from different ELNs. This term is only used in the definition of Interoperable Conveyancing Transaction in the MPR.	As noted in our comments on the draft MOR, we support the definition being housed in the ECNL. We suggest that the ECNL definition should incorporate financial settlement. If the definition is based on the adjacent Explanatory Note, we suggest the first dot point be expanded to read "Subscribers using different ELNs to complete a Conveyancing Transaction **(including financial settlement)**." We look forward to the opportunity to make further comment on reviewing the draft ECNL definition of Interoperability.
6.	Interoperable Conveyancing Transaction	Added definition of Interoperable Conveyancing Transaction.	This definition extends the existing definition of Conveyancing Transaction to Conveyancing Transactions conducted by means of Interoperability. This term is used in the MPR in the definitions of Conveyancing Transaction, Interoperable Electronic Workspace and Interoperable Lodgment Case.	Supported, subject to reviewing the definition of Interoperability.
7.	Interoperable Electronic Workspace	Added definition of Interoperable Electronic Workspace.	This definition extends the existing definition of Electronic Workplace to a shared Electronic Workspace containing at least one Interoperable Conveyancing Transaction. Note the possibility of a combination of Lodgment Cases (e.g. one containing a Priority Notice) and Interoperable Lodgment Cases (e.g. one containing a discharge/release, transfer and mortgage) in a single Electronic Workspace. The term is only used in the MPR in the definition of Electronic Workspace. The definition in the next draft of Version 7 of the MOR will be amended for consistency (i.e. addition of the word 'and').	Supported, subject to reviewing the definition of Interoperability.
10.	Lodgment Case	Amended definition of Lodgment Case to include Interoperable Lodgment Case.	Interoperable Lodgment Cases are relevant in the same provisions in the MPR as Lodgment Cases. The definition in the next draft of Version 7 of the MOR will be amended for consistency.	We support the draft, and we support consistency between the MPR and the MOR.

#	Rule	Amendments	Explanatory Notes	Comments
MPR 7.8 – Revoking Authority				
15a	7.5.1			We suggest that MPR 7.5.1 be expanded, along the following lines as shown in bold: 7.5.1 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. Section 12 of the ECNL is about "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. In our view, 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. We also consider this change is necessary to support trust account authorisation and reliance.

#	Rule	Amendments	Explanatory Notes	Comments
Schedule 4 – Client Authorisation				
25a	Client Authorisation Form			We suggest an additional express authorisation in the Client Authorisation Form ("CAF"), along the following lines: to effect lodgment and, where applicable, settlement of the Conveyancing Transaction through Interoperability between two or more ELNs The CAF is one of the main points of interaction between Subscriber and Client and the fact that a transaction may be completed via interoperability, depending upon the choice of ELNO of other parties in the transaction, should in our view be express in the authority given to the Subscriber.