



29<sup>th</sup> March 2019

M/s A. Larkins  
Dench McClean Carlson  
Level 5,  
99 Queen St,  
**MELBOURNE. 3000**

Dear Anne,

**Re: Review of IGA – Issues Paper**

I refer to the Issues Paper prepared by your taskforce in relation to the Review of the Inter-Governmental Agreement (IGA) for an Electronic Conveyancing National Law.

The Paper is a comprehensive and thorough investigation of the current position. The Paper provides a good basis for discussion on the best way to enable other ELNOs to operate in the marketplace.

The Australian Institute of Conveyancers (Vic Division) (AICVic) has been involved with the development of Electronic Conveyancing for over 20 years, firstly as a stakeholder with Electronic Conveyancing Victoria, then with the National Electronic Conveyancing Office. Over the past few years we have been working with the Victorian Government to provide input into all facets of electronic settlements, culminating in reaching the mandated regime on 1<sup>st</sup> October 2018. It was always anticipated that the ELNO would be government owned but this proved impossible to achieve when the enormity of the cost was clear.

The Conveyancing industry in Victoria has just completed a large and significant change to the way settlements are handled. Forward thinking Conveyancers have managed to manoeuvre their way through the miasma and have emerged stronger and more efficient. Bearing that in mind, it is difficult to anticipate how the Conveyancing industry will embrace another significant change to their operations.

AICVic's attitude has always been to educate members and non-members to ensure that they keep abreast of changes. However, introducing new ELNOs into the marketplace without clear answers to the questions of regulation, rules, risks, costs, etc. will have a negative result. The time should be taken to make a thorough investigation into these issues before asking the industry to decide on one option or the other.

On behalf of the AICVic, I make the following comments :

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### ***Governance Bodies***

Our preference would be for a new national Regulator to oversee the area (Preliminary Option 3). However, we understand the limitations that a national Regulator would have in trying to direct Registries and Revenue Offices in each jurisdiction. Therefore, Preliminary Option 2 may be the next alternative. A new body to assist ARNECC with the regulatory and governance matters. It would need to be thoroughly resourced with the skills required to provide expert advice to ARNECC and be able to operate in a much more timely manner.

We also agree that such a body should have the ability to work on issues identified by stakeholders as being of importance to them and communicate with them regularly to ensure the industry is informed and on board.

### ***Funding a Regulator***

Of the 4 main options set out in 6.18, we believe the ‘User Pays’ option to be the fairest and a small charge per transaction would not be unreasonable. However, some seed money would need to be contributed by someone to establish such a Regulator.

### ***Industry Wide Competition***

The threat to Conveyancing practitioners in allowing ELNOs to establish Conveyancing businesses or services cannot be overestimated.

The changes to the MORs Version 5 have unsettled conveyancers who are not convinced that the changes will prevent ELNOs from competing with them.

We agree with 6.27 that ‘the rules in the MOR for ELNOs operating in a wider market need to be reviewed by a qualified economic Regulator **in the near future** to ensure that they are clear and there is no abuse of market power. Enforcement powers and procedures would need to be developed.’

### ***A Competitive ELNO market***

The objectives set out in 6.33 are important. We also agree that any decision to adopt an interoperability model should be delayed until the risks, liabilities and costs are properly identified and agreed between ELNOs and the governments. Otherwise you are asking the industry to make a decision on the briefest of information.

Looking at the Options, due to the push for competition, Option 1 will not be contemplated.

Option 2 – Multiple Independent ELNs – If Subscribers were required to learn two or more systems, we believe that there would be a push back from the industry. It would have to be established what, in fact, that would mean. It may be easy to learn about a competing workspace. However, each ELNO would do things a little differently, with the potential to cause confusion and mistakes.

In addition, each ELNO would need to connect to the banks. Given the difficulties Subscribers have experienced with the banks in getting to the point of becoming efficient in the PEXA space, it might be a bridge (and cost) too far for connections to be achieved easily.

Options 3 & 4 – Multiple Interoperable ELNs. - Whilst we agree that interoperability is the way forward, a decision to adopt a model should not be made until the risks, liabilities and costs are properly identified and agreed between ELNOs and governments.

3.

After considering the Options in Appendix 11, we prefer Preliminary Option 4 : Multiple interoperable ELNs using infrastructure ELN over Preliminary Option 3b: Multiple Interoperable ELNs (intermediated). But again, these options need to be fleshed out in considerable detail and put forward to the industry to enable them to make a more informed decision.

If you have any queries, don't hesitate to contact me on 0419 885 008.

Yours faithfully,

**Jill Ludwell OAM, CPC**  
**Chief Executive Officer**