

Dear Anne and Cameron

I refer to the abovementioned paper prepared by you and note that submissions were requested by 29 March 2019. Apologies for leaving this so last minute.

Thank you very much for the thorough and clear paper presented to date.

Below I have made some comments on areas that we think should be more strongly stressed in the paper, all of which relate to proper oversight and anti-competitive protection from potential abuse of market position.

I note that you have already included various references in the paper in relation to these matters, including under paragraphs titled "Competition" on pages 19 and page 24, together with discussion at paragraphs 5.28, 5.29, 5.91 and 6.24-6.27, amongst others.

It is our preference that stronger attention to, and recommendations on, are presented in the paper on these issues before it is finalised.

It is my understanding that to date, and as noted in your paper, much/all of the focus of ARNECC has been on the technical and security aspects of the framework, with little attention given to competition, conflict of interest and ownership considerations.

In summary, the points we think should be given stronger attention and recommendations are:

- If we (conveyancing and legal industry collectively) are forced to use eConveyancing platform(s) to complete property dealings, then those eConveyancing platforms (**and** any related entities – to be defined as broadly as possible) must be restricted in full from competing with Conveyancers and Legal Practitioners in any manner (including VOI and eContracts), including being restricted from being registered as Conveyancers or Legal Practitioners, or obtaining any benefit or consideration from any conveyancing or legal practitioner activities.
- We must not rely only on the "Separation" requirements within the MOR, referred to at paragraph 5.91 of your paper. Ultimately, if there are consistent eventual shareholders (even through related parties), following such processes as set out in the Separation requirements, will have **NO** impact in restricting a monopoly/duopoly from anti-competitive behaviours. They can just fund a separate entity to partake in such vertically integrated services, and still share in the ultimate profits.
- We must not rely on general anti-competitive laws to try and stop such behaviours. By then it is too late, too costly and too uncertain. There must be specific, legislated restrictions imposed.
- Oversight must be by a body experienced in enforcing such legislation, and properly funded and resourced to act quickly on any missteps.

To provide some further background to the above points, I note:

1. By being forced to use such a platform, we have no option but to deliver such entities a very significant profit, which can be reinvested by those platforms (either within their own entity or a related entity) to provide additional vertically integrated services, including competing with conveyancers and lawyers.
2. Indeed, my understanding is that this intention was made particularly clear in the PEXA draft prospectus that was released as part of the proposed sale of PEXA, which I'm sure you

have access to. If my understanding is correct, they focussed extensively on vertically integrated services as future growth areas, and showed that they were using operating cash flows from their existing more limited role (to which they should be restricted) to fund R&D and working capital into these vertically integrated services.

3. Even if their draft prospectus did not include such intentions or representations, PEXA and future competitors are 'for-profit' entities, and so it's appropriate from their perspective to seek out all avenues to make as much return to their shareholders as possible.
4. If Governments are forcing us to use such platforms, then they are effectively guaranteeing the funding of those platforms to eventually compete with us and drive out competition. Consumers will be disadvantaged through less choice, higher prices, less protection, less checks and balances and more conflicts of interest.
5. Conveyancers are typically smaller operations with limited time to investigate these types of issues, and then address concerns and provide feedback. To date, I expect that most Conveyancers in Australia are unaware that PEXA (or their related entity) could be a conveyancer or lawyer and directly compete with them now or in the future. If this was made better known, it is my expectation that there would be a very, very strong resistance to mandating eConveyancing and using PEXA.

There are a number of ways to deal with these problems, the best of which would have been to keep such a critical, now partially and eventually fully mandated piece of infrastructure government owned.

However, that horse has bolted, and so the Governments now need to ensure these for-profit entities are sufficiently regulated to not drive out competition, not drive up costs, and not reduce independent representation for consumers dealing in property.

Yours sincerely, Anonymous