



19 September 2019

Ms Anne Larkins
Dench McClean Carlson
Level 5, 99 Queen Street
Melbourne VIC 3000

By email: alarkins@dmcca.com.au

Dear Ms Larkins

Review of the Intergovernmental Agreement for an Electronic Conveyancing National Law – Draft Final Report.

The Australian Banking Association (ABA) appreciates the opportunity to provide feedback on the Review of the Intergovernmental Agreement for an Electronic Conveyancing National Law (IGA) – Draft Final Report (draft report).

The ABA welcomes the IGA review and is in general, supportive of its findings, draft recommendations and the draft options for improvement.

Overview

In particular, we are pleased to see that the report emphasises the need for national consistency in the regulation of eConveyancing. As the draft report notes, the IGA was developed against the background of the National Partnership Agreement to deliver a seamless national economy, with the goals of:

- Creating a seamless national economy, reducing costs incurred by business in complying with unnecessary and inconsistent regulation across jurisdictions
- Enhancing Australia's longer-term growth, improving workforce participation and overall labour mobility; and,
- Expanding Australia's productive capacity over the medium-term through competition reform, enabling stronger economic growth

The IGA was created in the context of achieving goals for improving the national economy. The need for the ongoing development of eConveyancing regulation should therefore proceed within a nationally consistent framework.

The ABA endorses the objectives outlined in the draft report – namely to:

- Support the national take up of eConveyancing
- Explore and promote consistent business practises nationally
- Promote consistent governance frameworks and (where possible) regulation nationally
- Measure and report efficiencies realised due to consistent processes¹

More specifically, the ABA endorses the following draft recommendations which further these goals and objectives:

¹Draft Report, chapter 4, paragraph 4.108



- Recommendation 1, regarding the potential for the Council of Financial Regulators (CFR) and the ACCC to develop minimum conditions for safe and effective competition for eConveyancing
- Recommendation 2, on the establishment of a new national body to develop a forward national agenda
- Recommendation 3, on the category one approval process for applicant Electronic Lodgement Network Operators (ELNOs)
- Recommendation 4, on the involvement of national financial regulators in approving the payments system for eConveyancing
- Recommendation 6, on the development of a national agenda and roadmap through consultation with stakeholders to identify and prioritise issues for examination to improve efficiency and national consistency where possible
- Recommendation 7, on the documentation of the regulatory framework for financial payments and settlement
- Recommendation 8, on Australian Registrars' National Electronic Conveyancing Council (ARNECC) engagement with other regulators on national issues

The final report would be significantly enhanced if key responsibilities, resourcing and funding for progression of each recommendation were clearly set out and a timeframe established for their implementation. The ABA notes that the draft report flags an intention to develop a 'high-level plan' to implement the recommended changes following feedback. In our view, such a plan should be included in the final report.

National consistency

The key objective of a national framework should be to deliver a simple and consistent consumer experience, which is both cost effective and efficient for all participants.

The ABA sees a national framework as a matter of high priority to address the risk of a fragmented approach to e-Conveyancing across states. A fragmented approach would be strongly at odds with the objective of the IGA for a nationally consistent approach to e-Conveyancing.

The property market is a cornerstone of the Australian economy and, as the draft report states, it needs to be fully understood that:

“The Electronic Lodgements Networks (ELNs) provide the systems by which financial transactions deal with the major (and sometimes only) asset of many Australians. Failed transactions in this environment [...] have significant impact. The eConveyancing systems manage transactions for an Australian property market that has a capitalisation value of approximately \$6-\$7T. It is very important that Australians have confidence in these systems that governments have either licensed or mandated².”

The ABA submits that a state by state push without national government arrangements and national regulatory frameworks should be avoided.

Recommendation 1

The ABA endorses Recommendation 1 that appropriate national regulators i.e. the CFR and ACCC be requested to develop the minimum national conditions for safe and effective competition for eConveyancing leveraging off the work done in relation to competition in clearing and settlement of equities. If it is found not to be the role of CFR and ACCC, then there is still a need for a national body with such authority.

² Draft Report, Chapter 1, paragraph 1.8



As per our previous comment regarding the high-level plan, another thing that could be clarified in Recommendation 1, is to whom it is addressed. For example, is the request for the national regulators to develop the minimum conditions to come from ARNECC, or is the request made directly to those national regulators?

Recommendation 2

We note that the draft report finds that ARNECC has only partially met its objective of ongoing management of the regulatory framework for eConveyancing, and states that:

“The existing governance and regulatory arrangements for the land titling components of eConveyancing are fit-for-purpose [...], but the regulatory arrangements for financial payments and settlement, for the collection of duties and taxes and for market regulation need to be defined and explicitly stated³.”

This finding drives a number of the draft report’s recommendations - in particular Recommendation 2 to establish a new corporate body to provide nationally focused skills and resources.

The ABA strongly endorses Recommendation 2 and the need for a national body. As per our previous submissions on the IGA Issues Paper⁴ and the Interoperability Working Group’s Draft Report, the ABA supports the development of a national regulatory and governance eConveyancing framework.

In our view this should be a federal/national supervisory body, which has limited but sufficient authority to mandate the standards for implementing and drive the establishment of a national eConveyancing system and reports to ARNECC. This body should have, as the draft report states, resources and skills relevant to the wider regulatory environment beyond land titling. It should also have the authority and resources to resolve efficiency and business process issues across jurisdictions.

In our view, the final report should also recommend that the remit of the body include:

- Change management in the industry for any significant program that goes live, for instance eConveyancing mandates, national mortgage form (NMF) changes.
- Technology expertise, to deal with platforms like interoperability, payment, security, stress testing of ELNOs.
- Industry progression and development, e.g. eConveyancing, ELNO competition, interoperability and further innovations, but also business process efficiencies to achieve continuous improvement.

Given the movement to a competitive, multi-ELNO environment, and the additional complexity associated with this, strengthened national government arrangements are essential. A separate national supervisory body will further this goal.

Next steps

The ABA supports Recommendation 6 - development of a national agenda and roadmap through consultation with stakeholders to identify and prioritise issues for examination to improve efficiency and national consistency. We also broadly endorse the suggested options for improvement, in particular option 2, which states:

“Consider establishment of a stakeholder committee with ARNECC members, stakeholder representatives nominated by industry including financial institutions and other regulators as appropriate, and agree an ongoing consultation process to develop a proactive agenda for eConveyancing improvement.”

The final report will benefit by making clear which entity is responsible for progressing this recommendation and setting out a timeframe for its implementation. This could be done via the ‘high-level plan’ referred to above. The ABA would be willing to participate in this continuing process of

³ Draft Report, Chapter 1, paragraph 1.7

⁴ [IGA Issues Paper](#) - submission



Australian Banking Association

stakeholder consultation and meetings. The ABA is eager to ensure that there is an ongoing program of consultation for the advent of ELNO competition.

While recognising the potential benefits to the community of a competitive ELNO market, there are complex issues, risks and costs associated with transitioning from the current single ELNO market that need to be addressed by all governments. In our view, ongoing in-depth engagement with participants is necessary to develop national competition and interoperability options that deliver simple, consistent, safe, and cost-effective consumer outcomes.

A competitive ELNO market is an example of an area where a nationally consistent approach is absolutely critical. Without national design standards and a national rollout schedule, there is a real risk that unnecessary complexity, inefficiency and higher costs and risks will be the result. This would not be a good result for consumers and would be antithetical to the goals of the IGA and the National Partnership Agreement to deliver a seamless national economy.

The ABA looks forward to working with you through this consultation process. Please contact me at martijn.laguna@ausbanking.org.au if you have any questions or require further information.

Thank you again for the opportunity to provide comments on this draft report.

Yours sincerely

Martijn Laguna

02 8298 0419
martijn.laguna@ausbanking.org.au