



AUSTRALIAN INSTITUTE OF CONVEYANCERS

Australian Institute of Conveyancers Incorporated
Shane Jacob – AIC National President
E Shane@aicnational.com.au
W www.aicnational.com.au

19 September 2019

Anne Larkins
Director, Dench McClean Carlson
5/99 Queen Street, Melbourne
Email: alarkins@dmcca.com.au

Dear Anne,

Re: Review of the Intergovernmental Agreement (IGA) for an Electronic Conveyancing National Law – Draft Final Report by Dench McClean Carlson

The Australian Institute of Conveyancers (AIC) would like to acknowledge the considerable effort and comprehensive nature of the Draft Report prepared by “the consultant” Dench McClean Carlson (DMC).

DMC has demonstrated a high degree of achievement in keeping with the “review scope” of the Intergovernmental Agreement. Furthermore, the AIC has, for the most part agreed with DMC’s “findings”, observations of the “regulatory framework”, “options for improvement” and “recommendations” for moving forward.

In reviewing the Report the AIC has noted the many achievements, most notably, the creation of an effective settlement and lodgement platform delivered by PEXA as well as the commencement of a workable regulatory framework for both subscribers and ELNO’s to adhere to. The enormity of the work thus far by the many various stakeholders, in having contributed to the realisation of the COAG agreement, is a testament to a shared vision and support for ARNECC.

The AIC has identified the following aspects we would like to highlight as having significant importance for additional feedback;

ARNECC resourcing

Notwithstanding ARNECC’s many achievements and those of the many stakeholders, the matter of an under resourced ARNECC would appear to be a common thread throughout the Report.

The role assigned to ARNECC under the IGA in facilitating the implementation and ongoing management of the regulatory framework appears to have either been underestimated or highly ambitious.

In facilitating additional support for ARNECC, the AIC has welcomed recommendations and options for improvements contained within the Report in particular, the establishment of a “Stakeholder Committee Group” (Draft recommendation 2).

The opportunity to establish a “Group” was originally foreshadowed as a potential function of ARNECC within the IGA (Part 7.4), however, disappointingly no such group was ever formed other than the Electronic Conveyancing Group (ECG) established by the AIC which has now disbanded having achieved a great deal.

The creation of a “Stakeholder Committee Group” consisting of various professional bodies, agencies and industry expertise would serve as an invaluable resource for the ongoing improvement of the national regulatory framework. Furthermore, the creation of a “Group” would inject much needed relevant and meaningful participation of stakeholders who have for the most part been excluded from the development and conception phases of regulatory frameworks.

Possible Models

The current situation, whereby ARNECC have not been assigned recognition and legitimacy as a Federal body, exposes an inadequacy in the ongoing management and development of the national regulatory framework.

Having achieved a relative high level of regulatory maturity, further consideration must be given to the future of regulation and governance in particular the model that will best serve the national context.

The three “possible models” along with two stakeholder suggestions noted in the Report (Part 7.15) for regulation, management and governance, should be given priority of investigation.

It would be beneficial that a newly formed “Stakeholder Committee Group” be tasked with investigation into “possible models”, with the hope that a decision, supported by appropriate resourcing can be agreed upon.

Interoperability

The AIC is highly supportive of comments (Recommendation 1) within the Report pertaining to “interoperability”, in particular a call for the appropriate regulators to review the outcomes identified by the Working Groups in the NSW interoperability process.

The AIC has previously advocated that any progress toward a final interoperable solution, in the event a preferred model is identified, will require a significant independent cost benefit analysis.

While the matter of facilitating competition in the ELNO marketplace is broadly considered desirable, it remains paramount that the integrity of the land titles registries are not compromised and that furthermore, subscribers should not be exposed to a situation whereby the ecosystem is less efficient, prone to greater risk, more costly and counterproductive to the intentions of a single platform.

Vertical competition

The AIC strongly asserts that insufficient attention has been given, in particular by ARNECC, to the concerns regarding vertical competition otherwise known as “downstream services”. The absence of appropriate robust regulation exposes a situation that could easily be exploited, limits competition and provides for poor consumer outcomes.

The necessity to ensure independence in the settlement process whereby currently a single party subscriber could potentially be the lender, the ELNO and the conveyancer creates a situation that has been underestimated and misunderstood by ARNECC.

The Report adequately notes partitioner feedback (Part 5.242) on this subject, in particular comments supported by the AIC by the ACCC:

- *The ACCC agrees that vertical integration by ELNOs into related parts of the supply chain has the potential to raise concerns in this industry. We agree with the need identified at paragraph 6.27 for rules that are clear and ensure no abuses of market power.*
- *The ACCC’s preferred regulatory structure is complete vertical separation between an ELNO and downstream providers, as it removes the incentive to discriminate on both price and non-price terms. However, if an ELNO is permitted to vertically integrate to offer downstream services such as conveyancing services, then it is necessary to have in place robust functional separation requirements or ring fencing.*

The AIC advocates that the matter of “vertical competition” and/or “downstream services” be addressed by ARNECC in close consultation with industry groups without further delay.

Once again the AIC would like to congratulate DMC on the completion of the Review and the subsequent Report detailing the progress and potential future of establishing a framework to facilitate the implementation and ongoing management of a regulatory framework for national electronic conveyancing.

The AIC has welcomed the opportunity to provide key stakeholder participation and feedback. It is our hope that feedback will continue to be sought and that we can collectively contribute to the ongoing success of electronic conveyancing across all of Australia.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Shane Jacob', with a small mark at the end of the signature.

Shane Jacob – AIC National President

cc:
Jean Villani, Chair ARNECC
chair@arnecc.gov.au