



Ref: 915898

16 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 Law

1. I refer to the Review of the Intergovernmental Agreement for Electronic Conveyancing National Law Draft Report (“the Draft Report”) released for consultation on 26 July 2019.
2. The Law Society (“the Society”) has considered the Draft Report and provides comment below with respect to competition between electronic lodgement network operators and funding for the proposed oversight body. The Society’s submission has been informed by its Property Committee.

Competition between electronic lodgement network operators

3. The Society notes there is presently only one electronic lodgement network operator (ELNO) firmly established in the marketplace. The only other approved ELNO is preparing to make offerings available in the marketplace.
4. The Society further notes the recommendation contained in the Draft Report for a two-year moratorium with respect to any further approvals for ELNO’s; and the reason given for the moratorium is to enable national regulators within this time to develop minimum conditions and interoperability models.
5. The Society takes the view that any such moratorium will not be conducive to competition and is likely to only serve to strengthen the position of the first and currently the only operating network entrant in the market place. It remains to be seen if the second licensee is able to establish itself within the marketplace within this time. The ability to do so may turn upon interoperability. The Society notes a recent report commissioned by the Minister for Consumer Affairs in New South Wales identifies the available models for interoperability and the manner in which these can be implemented.
6. The Society is concerned that any moratorium may only serve to create the creation of a duopoly (assuming the second licensee can quickly and successfully make offerings available to subscribers) which in the future will make it even harder for other licensees to establish themselves in the marketplace.

7. It is noted that the Australian Consumer and Competition Commission (ACCC) has announced its intention to immediately conduct an inquiry as to the extent of competition in the ELNO marketplace including the availability of interoperability to facilitate competition.
8. The Society suggests it is within the remit of the Australian Registrars' National Electronic Conveyancing Council (ARNECC), as the current regulator, to attach conditions to the grant of any licences such as to require new ELNO's to subscribe to and contribute to the development of the systems, resources, funding and protocols necessary for interoperability to be in place. Further, the current licensees could be required by the current regulator to address this issue without waiting for the outcome of the ACCC inquiry.
9. The Society notes ARNECC has the ability to set minimum conditions and has done so with respect to the two approved ELNO's. Therefore, a moratorium to allow such conditions to be formulated and developed is considered unnecessary.
10. The Society does not support the recommendation of a moratorium on the issue of licences to new ELNO's. Competition between ELNO's will serve to stimulate development, investment, marketing and pricing. A two-year moratorium may remove any incentive for such efforts.

Funding

11. The Society notes the recommendation contained in the Draft Report that a new corporate body be established, presumably to succeed the role of ARNECC in overseeing the National Electronic Conveyancing Law.
12. It is further noted the funding for this entity to function and to deliver regulation, skills and resources is recommended to be raised from "property buyers and sellers, with State and Territory Governments continuing their contributions and with ELNO's, and perhaps subscribers meeting the direct costs attributed to oversight of their operations".
13. The Society is concerned that under such proposal the contributions, whether these be by Governments or the ELNO's and mortgagees, will eventually be passed on to buyers and sellers. Consequently, this will add to the cost the consumer will be asked to carry in any conveyancing transaction.
14. In addition, the Society notes State Governments have not reduced the fees levied in the land registry for the lodgement of transactions this is notwithstanding that the intermediary of an ELNO would appear to make this process far more efficient compared to the processing of paper lodgements, including the consequential cost of staffing levels to conduct the service.
15. Furthermore, the availability of electronic lodgements has made it far more efficient for financial institutions to conduct dealings upon the Land Registries, and especially so, where these are single transactions (for example the discharge of an existing mortgage or the registration of a new mortgage granted by a customer as part of a refinance arrangement).
16. The Society understands that the Commonwealth Bank is one of the owners of PEXA; and up until November 2018 a majority share was owned by four State Governments and the major four banks, amongst others.
17. The Society questions whether potential conflicts of interests with respect to financial institutions needs to be considered. In any event, the Society questions whether financial institutions should be

allowed the benefit of the efficiency created by ELNO's, while passing on to the consumer the cost of funding the regulator.

18. The Society suggests, instead, that it would be fitting for State and Territory Governments to appropriate a portion of the registration fees collected in the Registry toward the operation of a new corporate body (given that registration fees currently levied in the land registries are already collected for the services it is proposed to provide).

Yours sincerely

A handwritten signature in black ink, consisting of a series of fluid, overlapping strokes that form a stylized, elongated shape.

Stephen Hodder

CHIEF EXECUTIVE

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cc: Law Council of Australia