

30 August 2019

Ms Anne Larkins
Director
Dench McClean Carlson

By email: alarkins@dmcca.com.au

Dear Ms Larkins

Review of the Intergovernmental Agreement for an Electronic Conveyancing National Law

Thank you for the opportunity to provide feedback on the Draft Final Report dated 26 July 2019.

Lawcover is the professional indemnity insurer of private law practices in New South Wales and certain national law firms, and our focus is in those parts of the draft report that touch on risk, liability and insurance, as follows:

Risk and Liability – Paragraphs 4.114 – 4.131 of the Draft Final Report

- Lawcover supports the development of guiding principles on the management of risk and concurs that the obligation to minimise any risk to homeowners should be paramount.
- Lawcover also proposes that the following should also be guiding principles:
 - That there should be no additional risk to landowners generally as a consequence of the electronic environment; and
 - That there should be no additional risk to legal practitioners and conveyancers as a consequence of the electronic environment.
- Lawcover supports the development of a robust risk management framework that includes financial settlement as well as title risk, and also addresses additional risks posed by an interoperable environment with more than one ELNO.
- Lawcover supports the inclusion in the Model Operating Rules of:
 - Minimum requirements for insurance of ELNOs;
 - Minimum mandatory residential guarantee by ELNOs;
 - Minimum required ELNO security requirements.

Cybersecurity – Paragraphs 4.132 – 4.150 of the Draft Final Report

- Lawcover supports the development of minimum standards for land and financial information security that is fit-for-purpose for ELNOs and subscribers, but notes that any such minimum standards will need to be reviewed frequently as the nature of cyber threats is constantly evolving.

- Lawcover is also supportive of the achievement of a higher level of cybersecurity for subscribers with additional professional training in cybersecurity. Any certification process should be proportionate, given the multifaceted technical and human-factor risks which cybersecurity can present.

Auditing and monitoring – Paragraphs 4.165 – 4.179 of the Draft Final Report

- Lawcover supports the formation of a risk and compliance committee comprising ARNECC and external experts from the finance and the practitioner sector, and would welcome the opportunity to contribute to the work of this committee.
- Lawcover concurs with the objectives for a risk and compliance committee set out in paragraph 4.179, namely:
 - Advising ARNECC and other regulators on the effectiveness of the risk management framework;
 - Developing a national audit program and receiving the audit reports;
 - Developing a risk management, identification and mitigation strategy that is refreshed annually;
 - Supporting provision of accurate, relevant and timely information about risk;
 - Examining previous decisions to see how risk was managed as part of making those decision;
 - Oversight of insurance programs to ensure appropriate coverage;
 - Monitoring the business continuity processes;
 - Developing and maintaining an appropriate risk culture that is embedded through the environment;
 - Contributing to the development of a performance improvement plan;
 - Developing agreed metrics and thresholds for regulator action for ELNOs and subscribers; and
 - Providing advice on industry education requirements.

Finally, Lawcover is supportive of the establishment of a stakeholder committee and would appreciate the opportunity to continue to take part in ongoing consultation processes where appropriate.

Yours sincerely



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