



10 April 2019

Ms Anne Larkins
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Dear Ms Larkins

Review of the Intergovernmental Agreement for an Electronic Conveyancing National Law – Issues Paper

The Australian Banking Association (**ABA**) appreciates the opportunity to comment on the *Review of the Intergovernmental Agreement for an Electronic Conveyancing National Law Issues Paper (Issues Paper)* and the extension of time granted to us to make a submission.

With the active participation of its members, the ABA provides analysis, advice and advocacy for the banking industry and contributes to the development of public policy on banking and other financial services. The ABA works with government, regulators and other stakeholders to improve public awareness and understanding of the industry's contribution to the economy and community, and to ensure Australia's banking customers continue to benefit from a stable, competitive and accessible banking industry.

The ABA welcomes the review, which provides an important opportunity to assess whether the Intergovernmental Agreement (**IGA**) has met its objectives of establishing a framework to facilitate the implementation and ongoing management of a regulatory framework for national electronic conveyancing (**eConveyancing**).

The ABA supports the important work underway to implement a national eConveyancing platform, that ultimately should seek to drive a more efficient and effective process for consumers. As a general comment, the ABA notes, that while the Issues Paper comprehensively considers the impact of eConveyancing from an industry and government perspective, greater consideration should be given to the consumer outcome. If the intent of the IGA is to establish a national system for the benefit of consumers, the focus of ongoing work should be improvements to make their experience simple, consistent and cost effective.

This submission focuses on two issues – regulatory and governance arrangements, and competition and interoperability. We note that banks have participated in other processes conducted by the Review which collected feedback on a broader set of issues, such as the survey.

The ABA's submission makes the following key points:

- A national supervisory body with sufficient authority to mandate national eConveyancing standards should be established to support a robust national governance framework. A national framework should be progressed as a matter of priority to address the risk of a fragmented approach to the implementation of eConveyancing across states and should precede initiatives to strengthen competition in the system.
- ABA members would welcome the establishment of a competitive market for Electronic Lodgement Network Operators (ELNOs) provided it can be shown this will result in better cost and service outcomes for consumers. An effective system for true interoperability



(interoperability for all participants) is essential for a market that has two or more ELNOs. A model for a multi-ELNO market should be developed at the national level.

1. Regulatory and governance arrangements

The ABA supports the development of a national regulatory and governance eConveyancing framework. The key objective of a national framework should be to deliver a simple and consistent consumer experience, which is both cost effective and operationally efficient for all participants. The ABA sees progress towards a national framework as a matter of priority to address the risk of a fragmented approach to the implementation of eConveyancing across states. This outcome would be at odds with the objective of the IGA for a nationally consistent approach to eConveyancing.

It has been the experience of our member banks that the Australian Registrars' National Electronic Conveyancing Council (ARNECC) approach to implementing a national system using guidelines has not always been effective. In particular, despite ARNECC's objective to encourage national consistency, the individual state land titles offices have implemented differing business practices such as state-based variations to National Mortgage Form documentation. State-based variations to the National Mortgage Form drives inefficiency in the eConveyancing system, and the ABA submits that a focused outcome from the IGA review should be to identify options for a standardised approach to the National Mortgage Form.

The ABA would strongly recommend a supervisory body that has the authority to mandate the standards for implementing a national eConveyancing system. Given the limitations of the existing governance arrangements, the ABA does not support the status quo as outlined in Option 1 of the issues paper. While Options 2 (a new body to advise ARNECC) and 3 (a new national regulator) may support the establishment of a national system, the ABA submits that a better approach would be the appointment of a national supervisory body rather than a regulator. A national supervisory body should have limited, but sufficient authority to mandate standards for implementation and drive the establishment of a national system. This body should also have the authority and resources to resolve efficiency and business process issues across jurisdictions.

Given the movement towards a multi-ELNO environment, and the additional complexity associated with this, strengthened national governance arrangements are essential. As outlined further in our submission, the new governance arrangements should precede initiatives to strengthen competition in the system.

In terms of the options for funding a regulator or supervisory body, the ABA submits that funding should be a joint investment from governments, state revenue offices, land titles registries and their private operators; all of which have benefited from digitisation of the system with increased efficiencies and lower costs in their transaction processing environments. We note that financial institutions have already made significant investments in eConveyancing systems and had provided seed funding for PEXA. Funding of a regulator or supervisory body should not fall on financial institutions or consumers.

2. Competition and interoperability

ABA members would welcome the establishment of a competitive market for ELNOs provided it can be shown this will result in better cost and service outcomes for consumers. However, an effective system for interoperability is essential for a market that has two or more ELNOs.

A competitive ELNO market is likely to increase market resilience and interoperability and could be an effective lever to ensure benefits of competition are realised, while simultaneously mitigating potential adverse implications such as market fragmentation and increased operational costs for participants.

While recognising the potential benefits to the community of a competitive ELNO market, there are however, complex issues, risks and costs associated with transitioning from the current single-ELNO market. It is our view that there is a need for in-depth analysis with participants to develop national interoperability options that deliver simple, consistent and cost-effective consumer outcomes. We have concerns around the development of multiple and/or complex interoperability models across jurisdictions increasing complexity, inefficiencies and costs.



While our submission does not comment on the merits of each option for competition outlined in the Issues Paper, we have identified a number of themes which require consideration to ensure a competitive market for ELNOs, and positive consumer outcomes:

- National consistency – an approach that fosters, to the greatest extent possible, a uniform regulatory approach among all Australian jurisdictions.
- Cost efficiency – reducing the costs of land transactions and thereby benefitting customers and other stakeholders.
- Security and confidence – maintaining the integrity of the conveyancing system and minimising risks of fraud etc; and
- Clarity on adjudication – clear rules around liability in the event of loss.

These matters are to some extent inter-connected, in that failing to achieve one will detrimentally impact the others, and we address each in more detail below.

2.1 National consistency

Most of our members, as with many other financial institutions, operate nationally. Any fragmentation to a national eConveyancing system will increase complexity and reduce efficiency. Member banks' operational and technology teams are national, not state-based. Where there are differences by state, maintaining varying processes for different jurisdictions increases operational risks and costs, including the likelihood of consumers being impacted through missed settlements. Moving to a new house is a major life event for most people, and the incidence of any failures result in reputational impacts for all industry participants, including banks, practitioners, and land registries. State variation adds around 10 to 15 percent in costs.

Without national design standards, it is probable that the model would be different across the states. Every different model introduced would require additional work to design, build and test. Therefore, if interoperability is not designed nationally and concurrently, the costs will scale with each build.

Having a nationally consistent model agreed upfront provides greater certainty for industry participants around committing to the necessary investments to support the changes. Investments may relate to capital investments in systems and processes, but also relates to investment in the time of key resources (e.g. payments experts) in working with other industry participants to define and agree workable industry solutions. If this effort and investment is likely to be duplicated for every jurisdiction, a commitment may be difficult to secure.

2.2 Cost efficiency and complexity

It is not clear that the proposed environment will definitively result in reduced costs and complexity for consumers. If a multi-ELNO market results in duplication of existing infrastructure, or a complex new environment in a central hub (e.g. a "new payments" environment), it is possible that the total cost of the system would increase, with the subsequent likelihood that consumers end up bearing the impact of these increased costs of complexity.

Transitioning to a multi-ELNO framework could be costly for ABA members. For example, a solution requiring new business rules and controls and, most importantly, new payment gateways or pipes, is costly. E-settlement payment gateways are bespoke and not standardised as are other payment gateways. One major bank reported spending more than \$10 million to build their eConveyancing payment solution. The new framework could require financial institutions to build and maintain payment pipes to all operating ELNOs. If it does, the costs increase substantially and there is a likelihood that some of these costs could be passed on to the consumer.

2.3 Security and Payments

Key considerations around security and payments will need to be addressed to ensure a robust multi-ELNO environment.



In a multi-ELNO environment, it is even more important that we – as an industry – develop payment standards for eConveyancing, as was originally started with the existing system. A challenge will be to define how funds will be confirmed in real-time. Today the PEXA system awaits confirmation in real-time from all banks providing funds, that funds are available in the source account before the transaction proceeds. In the multi-ELNO model, if one of the parties to the transaction is using a bank account associated with a different ELNO, it is not clear how this real-time confirmation will be achieved.

Currently, banks accept payment instructions as accurate in the eConveyancing ecosystem and process them. In a multi-ELNO environment, particularly with interoperability, there may be use cases where payment instructions should be validated before processing them. Catering for different platforms does not necessarily mean reducing them to the lowest common denominator. It means working through individual use cases to ensure appropriate processing of payments.

Banks may synchronise their software release cycle to ensure security protocols and functionality match an ELNO's release cycle. In a multi-ELNO, interoperable world, synchronisation of releases should be coordinated across all market participants. Otherwise, banks will need to synchronise their releases with multiple ELNOs or, alternatively, risk security breaches. Where a security release is not synchronised across ELNOs and the entire ecosystem of banking and conveyancer practice management software, the risk of an end-customer's funds being appropriated increases. In a multi-ELNO interoperable market, the supervisory body/regulator has a responsibility for security audits as no single participant can see the entire ecosystem. While in a single ELNO market, security could be audited by ELNO participants, an audit of the ecosystem would be insufficient if done only by ELNO participants.

2.4 Adjudication / liability

In order to address the heightened risk and security issues associated with a multi-ELNO environment, significant effort is required to define the minimum standards for the network. These minimum standards will need to extend significantly beyond the existing Model Operating Requirements (MOR) and Model Participation Rules (MPR) framework and needs to incorporate clear mechanisms for identifying and resolving liability for issues that may arise. It is unlikely that any insurer would be willing to participate in this domain without very specific and pre-agreed clarity on possible outcomes in every situation.

Thank you for the opportunity to make this submission. Please do not hesitate to contact us if you wish to discuss any of the matters we have raised.

Yours sincerely

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