



01 October 2019

Independent Pricing and Regulatory Tribunal NSW
PO Box K35
Haymarket Post Shop NSW 1240

By email: Jennifer_Vincent@ipart.nsw.gov.au

Dear Jennifer

Review of the pricing framework for electronic conveyancing services in NSW

The Australian Banking Association (**ABA**) welcomes the opportunity to comment on the Independent Pricing and Regulatory Tribunal NSW (**IPART**) Review of the pricing framework for electronic conveyancing services in NSW (**Review**).

Nationally consistent electronic conveyancing is a critical piece of infrastructure for the Australian economy and the ABA has previously responded to the Review of the Intergovernmental Agreement (IGA) for an Electronic Conveyancing National Law (by Dean McClean Carlson) and the report on Interoperability between Electronic Lodgement Network Operators (ELNOs) (by Dr Rob Nicholls). Copies of the two most recent ABA submissions to these two reports are attached, which should be read as part of this submission.

National Consistency

The most important issue for the ABA is that Australia adopts a nationally consistent approach to eConveyancing as it will drive competition, choice and price efficiency. These issues are explored in detail in the attached submissions.

The ABA is pleased to see that on a number of occasions the Review also supports a single national approach.

The ABA supports IPART recommendation 1, and endorses ongoing monitoring of the eConveyancing market at least every two years. This monitoring should happen through a national regulator, such as the ACCC.

For the same reason of national consistency, the ABA also endorses IPART recommendation 2 and 3:

- Recommendation 2: the ABA supports modelling the competition framework for eConveyancing on the national model used for competition in the Australian equities clearing and settlement market, as developed by the Council of Financial Regulators and the ACCC.
- Recommendation 3: the ABA supports a review of the Model Operating Requirements (MORs) by a national eConveyancing regulator, due to the continuous evolution and development in the eConveyancing market across Australia.

The ABA also supports and agrees with the statement the Review makes on pricing:

“Existing price regulatory framework should remain in place while competition develops. We found no compelling evidence to support moving away from the existing regulatory framework.”¹

The ABA holds that there should be continued oversight of the pricing framework at a national level.

¹See executive summary of the IPART Review



Interoperability

The ABA supports a competitive, nationally consistent eConveyancing market with interoperability between ELNOs.

The ABA does not support IPART recommendation 4 as currently drafted. Considerable work has already been completed on national interoperability as detailed in the June 2019 draft report, titled *Interoperability between ELNOs²*, written by the independent chair of the working groups, Dr Rob Nicholls.

The IPART Review states in Recommendation 4 that:

“A direct connection between the two current ELNOs be implemented as soon as possible to promote competition.”

While this may be the appropriate outcome, there is no agreement on an interoperability model by the NSW working groups. The ABA submits that the recommended national course of action suggested in Dr Nicholls’ report should be followed to determine the interoperability model suitable for Australia. The ABA would be a willing partner in that technical work.

The ABA is strongly supportive of and welcomes the statement in the IPART Review:

“We found that implementing interoperability has substantial potential to promote competition. It would allow users to choose their preferred ELNO and open up the network effects in the eConveyancing market.³”

The ABA would like the current work on the high-level design of national interoperability models to continue; such that users can ultimately choose their preferred ELNO operating within that nationally consistent framework. However, costs should be minimised, if there isn’t a nationally consistent approach it may result in increased costs for all participants, negating the benefits of a competitive environment.

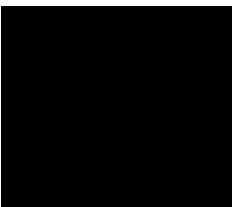
On ELNO transfer pricing, the IPART Review states:

“However, the ELNO that is responsible for lodgement (or third party fees) would bear more costs. Therefore, if this model were adopted, a cost-reflective transfer price should be set to ensure the costs are shared between the lodging and non-lodging ELNO.⁴”

The ABA supports this approach. However, under the different models of interoperability as put forward by IPART, there is yet to be clarity on the cost impact to banks as users of an eConveyancing system. None of the models proposed, currently include any of these potential costs that would be incurred by banks. These costs need to be recognised and considered in the transfer pricing model.

Thank you again for the opportunity to provide comments on this Review. Please contact me at martijn.laguna@ausbanking.org.au if you have any questions or require further information.

Yours sincerely



Martijn Laguna
martijn.laguna@ausbanking.org.au

³ See executive summary of the IPART Review

⁴ See executive summary of the IPART Review



Australian Banking Association

Encl.: 1. ABA Submission to the Interoperability between Electronic Lodgement Network Operators
Draft Report by Dr Rob Nicholls

<https://www.ausbanking.org.au/submission/interoperability-between-elnos-econveyancing/>

2. ABA submission to the Review of the Intergovernmental Agreement for an Electronic
Conveyancing National Law - Draft Final Report (by Dean McClean Carlson)

<https://www.ausbanking.org.au/submission/review-of-the-intergovernmental-agreement-for-an-electronic-conveyancing-national-law/>



Australian Banking Association

08 July 2019

Mr Rob Nicholls
Independent Chair
Interoperability Working Groups
c/o Gilbert + Tobin Lawyers
L35, Tower Two, International Towers Sydney
200 Barangaroo Avenue, Barangaroo NSW 2000

By email: rob@nichollsmmc.com cc. ealmond@gtlaw.com.au

Dear Mr Nicholls

Interoperability between ELNOs - Draft Report - 10 June 2019 (Draft Report by the Independent Chair of the Interoperability Working Groups)

The Australian Banking Association (ABA) appreciates the opportunity to provide feedback on the Draft Report, *Interoperability between ELNOs* (Draft Report), which summarises the discussions and outcomes of the two industry working groups on interoperability between ELNs, established by the NSW Government and chaired by yourself.

The ABA welcomes the review of the specific issues around interoperability between ELNOs in a competitive eConveyancing market. The banks who participated in the NSW working groups appreciated the opportunity for discussion and the progress made on the topics to date.

Key Points

This submission makes the following key points:

1. National framework - As we have noted on many previous occasions, any model for interoperability among ELNOs should fit within a nationally consistent framework for eConveyancing.
2. Cost efficiency – The draft report contains a relatively superficial consideration of the costs of interoperability for stakeholders including consumers, the banking sector and other participants, in relation to the facilitation of interoperability and the different models that are under consideration. The final report and suggested next steps would benefit from a more in-depth consideration of the costs to all participants of each model.
3. Risks – Similarly, the draft report does not, in our view, adequately assess the risks of a multi-ELNO interoperable environment for consumers, financial institutions and to the reputation of the eConveyancing system generally.
4. Models and design – Many substantive issues, including the interoperability model need further design discussion, at a use case level. As an example, of the model options canvassed in the draft report for interoperability, the ABA supports further investigation of the ‘infrastructure’ model as it potentially has lower costs, risks and complexity.
5. Next steps - Both costs and risks could be better considered through a continued process of stakeholder meetings in which ABA members would be prepared to participate. From the perspective of ABA members, the industry can, with more time, undertake more in-depth assessment of various options. If the next steps explicitly involve analysis of the



costs, risks and complexity on various choice points in interoperability design, options can be developed which lower those costs, risks and complexity.

6. Timelines – The matters outlined above will take time to properly address. We note that the timeline to implement interoperability is still unclear. We reiterate that a timeframe that provides for implementation of a multi-ELNO environment prior to the end of 2019 is unrealistic.

National consistency

The ABA has taken the opportunity to submit responses to a number of reviews in relation to eConveyancing over the past six months. These included: NSW Office of the Registrar General, *Directions Paper on proposed eConveyancing interoperability regime*, 6 February 2019, and IPART, *Review of the pricing framework for eConveyancing in NSW*, March 2019, and *Review of the IGA for an eConveyancing National Law*, Dench McClean Carlson, 13 February 2019.

Consistent with its previous submissions, the ABA supports a national approach to eConveyancing and this includes a national regime for interoperability.

Most of our members, as with many other financial institutions, operate nationally. Any fragmentation of eConveyancing regulation or procedure across jurisdictions will increase complexity and reduce efficiency. Member banks' operational and technology teams are national, not state-based. Product terms and conditions, including privacy considerations, are predominantly national. ELNO participation agreements are likewise national. All of these – teams, customer terms and conditions and participation agreements – would need to be revamped for interoperability. Where there are differences by state, maintaining varying processes for different jurisdictions increases operational risks and costs, including the likelihood of consumers being impacted negatively. Moving to a new house is a major life event for most people, and the incidence of any failure results in reputational impacts for all industry participants, including banks, practitioners, and land registries.

Currently the eConveyancing system based on PEXA is underpinned to a large extent by a contractual framework involving three sets of bi-lateral agreements: between PEXA and financial institutions; between PEXA and practitioners; and between practitioners and the financial institutions holding practitioners' trust accounts. It is difficult to see how this contractual framework can be scaled up to a multi-ELNO model. We therefore suggest this contractual framework may need to be partially replaced or supplemented by an overall regulatory framework which is more detailed and has a stronger legislative backing than that created by the existing Model Operating Requirements and Model Participation Rules. (We note this concern was also expressed by practitioner Working Group participants – see page 41 of the draft report.) The fact that it would be difficult to implement such an overall regulatory framework in NSW alone while retaining the contractual/MOR/MPR framework in other states illustrates the importance of a national rather than state-based approach to interoperability.

Without national design standards and a national rollout schedule, it is probable the model for interoperability 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. State variation, broadly speaking, adds around 10 to 15 per cent to costs.

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 relate 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 to make the necessary investment may be difficult to secure.

We note that the draft report recognises, in Chapter 13, the need for a national framework: “This Chapter sets out my recommendations as Independent Chair on the next steps to move the discussion from both a framework for interoperability to how to implement interoperability, and from a New South Wales context to a national one”. (p. 101)

We agree that this is a critical consideration. ABA members consider that a more seamless rollout of interoperability across ARNECC jurisdictions is more likely to be achieved if ARNECC jurisdictions are fully engaged in the process of development of any model adopted for NSW.

The objective is to establish a process whereby consensus could be achieved on a national model (including a revised national regulatory framework, if needed) prior to its rollout in NSW. That would increase the likelihood of national consistency being maintained as interoperability was adopted in other jurisdictions and lessen the likelihood of significant differences emerging in systems as they are rolled out. We note that this view is shared by ARNECC¹.

Similarly, the ACCC noted, in its letter of 13 February 2019, that:

“The ACCC considers that in the long term it may be preferable for there to be consistency in the application of interoperability mechanisms across the industry nationally, for greater efficiency and to avoid duplication of processes.”²

ABA members maintain that the issue of national consistency can’t be separated from the other themes – cost, security, and liability – because a lack of national consistency could adversely affect some or all of these areas.

Again, our members are of the view the process of developing solutions for ELNO competition and interoperability should involve all ARNECC jurisdictions to increase the probability that ultimately, a nationally consistent model can be adopted.

Cost efficiency

It is not clear if 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 and at least 2 models discussed in the working groups would require financial institutions to build and maintain payment pipes to all operating ELNOs, regardless of whether the financial institution utilises that ELNO for eConveyancing. There are potential interoperable models which may not result in incremental payment infrastructure. Discussion of these models in future working groups should involve payment architects with the intention of reducing costs and risks in the payment environment.

Without national design standards and “use case” details, it is probable that the system design would be different for NSW than for other states. Each instance would need design, build, testing and maintenance phases. Therefore, an interoperability system, which is not designed nationally and concurrently, will result in costs, complexity and risks increasing with each build. And, known issues for one design may not receive enough time and resources. Once an interoperable model is active, there needs to be maintenance and testing of the system controls as well as change

¹ ARNECC letter to the Hon. Victor Dominello, 11 February 2019, p. 2

² ACCC letter to Jeremy Cox, 13 February 2019

management for operational teams. So, a state-based model means that maintenance and change management is also a significant impost of time and costs for each release.

The ABA members are therefore of the opinion that the impact of any interoperability regime on the financial institutions needs to be assessed in depth. The current working group discussions have been at a high level and based on the ELNO and practitioner (conveyancers, lawyers) viewpoint and have not as yet addressed the costs for the financial institutions.

There is significant engagement and discussions still required with financial institutions to ensure that all stakeholder views are considered in the development of the interoperability model. There are many issues that need to be resolved with experts. For instance, not only are the ELNO models unresolved, but business rules on which ELNO is responsible for TACs, the operation of linked settlements and the selection of the Lodging ELNO need more design work at the use case level.

It will be important to clearly outline estimated costs for the different interoperability models, for instance in the form of an industry analysis. It is proposed that further working group discussions with financial institutions take place to enable in-depth and technical conversations. This would also allow for leveraging the work completed on payments and other industry-wide programs (e.g. National Payments Platform (NPP)).

In the absence of these specific costings, upon initial consideration the infrastructure model looks favourable to ABA members. The infrastructure model will be more efficient to implement, requiring less industry effort and, because payment pipelines don't have to be replicated, it will require less time and lower cost to build. The whole idea of competition in the eConveyancing market is to achieve better and more cost effective outcomes for consumers. A complex, costly and untested model would obviously be antithetical to this goal.

Risks

The Draft Report focuses for a large part on the circumstances of ELNOs and practitioners. We have already stated that the cost analysis for the financial sector has not been part of the working group discussion to the extent necessary to form a detailed view of the costs related to support eConveyancing and interoperability between ELNOs. A detailed view on the technical, IT architecture issues is for the same reason insufficiently explored.

Key considerations around security and payments will need to be addressed to ensure a robust multi-ELNO environment. IT security for PEXA is currently addressed through the Participation Agreements it enters into with financial institutions. These agreements require periodic audits of PEXA's security arrangements by independent experts. IT security governance framework and controls required to maintain the integrity of the system are not currently addressed in the draft report. An overall regulatory framework in place of the current largely contractual arrangements may be required.

Whilst NSW carries a very large portion of the eConveyancing transactions carried out in Australia, the security of the NSW system will ultimately depend upon how it is interconnected with other state systems. For the security of the NSW system, it will be ultimately preferable for a national, robust and well thought through regime, agreed by all states so that risk is minimised, well managed and spread fairly

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. Financial settlement risks are significant to the Australian property owner and in magnitude significant to the Australian economy. Consequently, these risks need far more attention. 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 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, in a multi-ELNO environment an audit of the ecosystem would be insufficient if undertaken by the ELNO participants only.

In conclusion, the ABA members are of the opinion that further risk and cost analysis needs to be done over the coming period and we agree with an earlier view expressed in our submission to the IGA Issues Paper:

“We do not believe that any decision to adopt an interoperability model should be made until the risks, liabilities and costs are properly identified and agreed upon between the ELNOs and the governments.”

Timeline

The timeline to implement a national, competitive eConveyancing framework and interoperability model is still unclear.

The timeline set by the NSW Government for establishing a regulatory framework for mandating ELN interoperability leaves insufficient time for:

- a. Stakeholders to properly consider proposals and participate meaningfully in the development of the framework;
- b. If necessary, for ABA members to implement systems and controls to ensure a secure multi-ELNO environment; and
- c. The involvement of other jurisdictions and the ARNECC in the development of an appropriate model for interoperability between ELNs.

We have already stated in a previous submission that the reasons behind the urgency with which the NSW Government is proceeding are based on perceptions of potential poor outcomes for consumers and entrenchment of the existing monopoly (i.e. PEXA).

The approach is not, however, weighed against the risks to consumers of a rushed approach. These risks are at least twofold:

1. The risk that the regulatory approach will not be secure, cost effective, and underpinned by an appropriate system for allocation of liability.

Failure here would undermine confidence in the system and would likely have significant reputational and actual impacts for all industry participants, including the NSW Government. If a major problem would occur in the areas of risk we have mentioned, it could have potential catastrophic consequences for the system as a whole, especially with NSW being by far the largest market for property transactions in Australia.

2. The risk that major participants, such as ABA members, will not have enough time to put systems in place to facilitate the new regime.

Typically, design, build and testing time of a system like this is more than twelve months. Experience shows that, without enough time for these processes, functionality often

fails. Failure would undermine confidence in the system, result in more settlements on paper and potentially mean increases in fraud and delayed settlements for consumers.

The next steps, as listed in the Draft report in Chapter 13, are all valid pieces of work that need to be undertaken. The estimation that the design work can be finalised by the last quarter of this calendar year is ambitious, in particular if an industry analysis is going to be considered as additional work, as deemed necessary by the ABA members.

As context, the banking industry took more than 2 years to be functional on PEXA for both settlement and payments. The rollout approach by many banks was a stepped approach, focusing on standalone and refinances. Similar large projects like NPP have also been multi-year, with standards, testing and phased rollouts coordinated across the industry.

The ABA submits that the final report should endorse the view that a national model should be agreed upon through ARNECC, with analysis of risks, costs and complexity and a view on a national rollout approach prior to rollout of the model in NSW. The industry should continue to work towards more market resilience, furthering interoperability and other design elements of the system at a national level.

Other issues

In addition to the above we offer the following detailed comments on the draft report:

1. Interchange fees – The “interchange fee” payable to the Lodging ELNO (for handling the lodgement of dealing and the financial settlement) probably needs to be the same whichever is the Lodging ELNO as it is important that financial institution participants know the applicable fees in advance. In other words, the fees payable by them should not depend on the identity of the Lodging ELNO. (We note the precontractual disclosure requirements of section 16 and 17 of the National Credit Code. Also, to the extent that FIs wish to recover from borrowers fees paid to a third party (like an ELNO), section 32 of the NCC limits the amount which can be recovered to the amount paid to the third party.)
2. TACs – The report does not deal with responsibility for TACs. The solution may be making all ELNOs involved in the transaction(s) responsible for TACs in relation to titles in which their subscribers have an interest (e.g., purchaser’s and incoming mortgagee’s ELNOs to be responsible for TACs in relation to the property being purchased/mortgaged). Will the fact that this could in some cases double the number of TACs throw up any technical or cost issues?
3. Page 31, first bullet point – The alternative set out in this bullet point potentially raises AML/CFT Act issues for financial institutions. Importantly, the current PEXA trust account registration process allows the financial institution to check and confirm that they have previously identified the persons who are being given the ability to authorise financial transactions using PEXA.
4. Page 32 – We suggest a business rule that if any of the ELNOs involved in the transaction go offline, the transaction cannot proceed. Thought needs to be given to what happens where there is a chain of linked settlements. In what circumstances should settlements earlier in the chain proceed despite the chain being “broken” as a result of an ELNO involved in a transaction further down the chain going offline?
5. Pages 35 and 36, “Changes in the Lodging ELNO” – The possibility of there being multiple or last-minute changes in the Lodging ELNO appears to be understated. A third bullet point should be added to deal with the possibility of two or more settlements being linked. Linkages between settlements could be broken due to a number of reasons including delays with funds required for settlements in the chain.



Australian Banking Association

6. Page 39, “Authorisation for the Lodging ELNO” – This section does not deal with the fact that financial institution participation agreements currently appoint PEXA as their agent for the limited purpose of receiving, generating and transmitting to the financial institution instructions regarding funds going into or coming out of the financial settlement. This agency model needs modification for a situation in which instructions regarding an account with a financial institution will be transmitted through or generated by an ELNO with which the financial institution has no contractual relationship. “Generated by” is a reference to the fact that settlements are done on a net basis, so the Lodging ELNO has a role in netting off transactions and generating the instructions required for the net financial flows.
7. Page 42, “Trust Account Registration Form”, second bullet point – The description of the options facing practitioners is incorrect. Given the mandated use of electronic lodgement for an increasing range of dealings, practitioners have no practical alternative agreeing to whatever is set out in the Trust Account Registration Form. If they do not accept what is in the Trust Account Registration Form they would cease to be practitioners capable of handling conveyancing work. We suggest there should be a standardised Trust Account Registration Form for all ELNOs. Modifying the Operating Requirements or Participation Rules to mandate a standardised form requires the involvement of ARNECC.

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.

Thank you again for the opportunity to provide comments on this report and the progress achieved through the working groups.

Yours sincerely

Jerome Davidson
Policy Director

02 82980419
jerome.davidson@ausbanking.org.au



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