

REVIEW OF THE INTERGOVERNMENTAL AGREEMENT FOR AN ELECTRONIC CONVEYANCING NATIONAL LAW: GOVERNANCE ARRANGEMENTS

PURPOSE OF THIS DOCUMENT

The purpose of this document is to set out the governance arrangements for the review (IGA Review) of the Intergovernmental Agreement for an Electronic Conveyancing National Law (IGA).

THE INTERGOVERNMENTAL AGREEMENT

The IGA came into effect in December 2011. The parties to the IGA are the States of New South Wales, Victoria, Queensland, Western Australia, South Australia, Tasmania and Northern Territory. The Australian Capital Territory has not executed the IGA.

The objective of the IGA is to establish a framework to facilitate the implementation and ongoing management of the regulatory framework for national electronic conveyancing including to: enact and manage the Electronic Conveyancing National Law (ECNL); and provide for the formation, composition and operation of the Australian Registrars' National Electronic Conveyancing Council (ARNECC). Under the IGA the parties agree to:

- cooperate on the implementation and management of national electronic conveyancing;
- use best endeavours to ensure that national electronic conveyancing is implemented in their jurisdiction;
- work collaboratively to ensure that business practices are consistent, where possible;
- collaborate in good faith to ensure that all stakeholders continue to be consulted in an effective manner in connection with the implementation and operation of the regulatory framework for national electronic conveyancing; and
- each jurisdiction agrees to implement the Australian Registrars' Model Operating Requirements and Australian Registrars' Model Participation Rules (and any amendments made to them) as the operating requirements and participation rules applicable in that jurisdiction.

The IGA can be amended from time to time by a unanimous decision of all the parties. Amendments to the IGA are to be made in writing and executed by all Parties and must include that date on which the amendment will come into force.

The IGA is also required to be reviewed after it has operated for seven years, or at such earlier time as may be agreed between the Parties. The IGA provides that the Parties will review the Agreement's operation and terms, including the operation and terms of the ECNL.

IGA REVIEW GOVERNANCE PRINCIPLES

Since the establishment the IGA in 2011 and the implementation of the ECNL from 2012 the national electronic conveyancing market has changed significantly. Some of the key changes include, but are not limited to:

- Accelerated take-up of electronic conveyancing;
- Technology advances;
- Two entities seeking to become ELNOs;
- The trend to privatise/commercialise land registries; and
- The proposed trade sale or IPO of PEXA Ltd.

When considering this rapidly changing market, it is important that the regulatory framework is robust enough to promote confidence and integrity in real property transactions while being flexible enough to support the continued growth and development of the ELNO market. This includes the ability of ELNOs to enter the market and adopt new and innovative ways of doing business.

What is the intended Outcome?

The IGA Review will identify and consider the emerging issues, risks and challenges facing national electronic conveyancing over the next 5 to 10 years and determine if they are able to be appropriately managed under the current regulatory framework. After consultation and consideration of the regulatory framework the IGA Review will deliver a detailed report with recommendations as to how the national electronic conveyancing regulatory framework should evolve to ensure efficient and effective regulation of the ELNO market into the future.

When the IGA Review Report is delivered, all the Parties to the IGA will determine next steps.

Who are the relevant Stakeholders?

The IGA Review is commissioned with the unanimous agreement of all the Parties to the IGA. ARNECC has responsibility for ensuring that the IGA Review is undertaken and establishing an appropriate governance framework.

When complete, all the Parties to the IGA will consider the IGA Review Report, including the recommendations made, with a view to making determinations as to the future of the regulatory framework for the ELNO market.

To ensure the IGA Review considers all options, perspectives and possibilities, engagement with and input from stakeholders who are directly impacted by the regulatory framework will have an opportunity to input into the IGA Review. Key stakeholders and bodies that are on ARNECC's stakeholder list will automatically be consulted. Any entity or person seeking to have input into the IGA Review should contact the consultants commissioned to undertake the work directly.

Who will undertake the IGA Review?

The IGA Review will be undertaken by Dench McClean Carlson procured through the NSW Office of the Registrar General, acting as an agent for ARNECC. NSW has procured the IGA Review only because ARNECC, as a council of state/territory delegates, does not have the powers to procure such a IGA Review. ARNECC has used this procurement model using a constituent jurisdiction many times in the past.

A review secretariat has been made available alongside the ARNECC secretariat in Western Australia to support the independent review team as appropriate.

The IGA Review will be overseen by ARNECC members who will report through to the Parties to the IGA (relevant Ministers).

ARNECC will have an oversight role only and will not interfere with the conduct of the IGA Review to ensure that the IGA Review is independent and impartial.

Who will fund the IGA Review?

All jurisdictions party to the IGA will contribute to the cost of the IGA Review.

ACCOUNTABILITY

Involvement of Parties to the IGA

Parties to the IGA will be updated as to the progress of the IGA Review by way of consistent briefings delivered by the representative ARNECC member in the respective jurisdiction. Parties to the IGA may also request an independent briefing from the IGA Review team at any time.

Level of Reporting Required

An Issues Paper to be delivered as part of stage 1 of the IGA Review process will be made available to stakeholders for submissions and the Parties to the IGA.

The final IGA Review report will be delivered to the Parties to the IGA by the representative ARNECC member in the respective jurisdiction as soon as possible after completion of the IGA Review.

TRANSPARENCY

How much transparency is required?

The IGA Review is to be as transparent as possible to all stakeholders.

All submissions to the IGA Review will be published on the ARNECC website unless requested otherwise by the party making the submission.

The Stage 1 Issues paper will be published on the ARNECC website.

A summary of the final IGA Review report with the recommendations will be published on the ARNECC website.

How does someone provide feedback into the IGA Review?

Feedback into the IGA Review will be welcome at any time during the process in writing addressed to the ARNECC Chair or directly to the Reviewer.

The contact details for the Reviewer are:

Anne Larkins
Director
Dench McClean Carlson
alarkins@dmcca.com.au

Other feedback directly to ARNECC can be emailed to chair@arnecc.gov.au.

BACKGROUND

In July 2008 the Council of Australian Governments (COAG) agreed that there should be a new single national electronic system for the settling of real property transactions in all Australian States and Territories. This single national electronic conveyancing facility would provide a convenient electronic way for legal practitioners, conveyancers, financial institutions and mortgage processors to:

- Prepare dealings and related instruments to register change in land ownership and interests;
- Settle financial transactions, including the ability to pay disbursements, duties and tax;
- Comply with State or Territory Revenue Office requirements;
- Lodge their dealings and instruments with the relevant State or Territory Land Registry; and
- Receive confirmation of the lodgement of dealings and instruments.

It was further agreed by COAG that a company with a skills-based board of directors should be formed to create, implement and operate the proposed national electronic conveyancing system, building on the work that had already been done in this area by other organisations. It was decided that the company should be a company limited by guarantee, in which membership should be open to all Australian States and Territories.

In March 2009 COAG released the National Partnership Agreement to Deliver a Seamless National Economy and Implementation Plan (COAG Agreement) which included creation of a single electronic system for completing real property transactions and lodging land title dealings for registration in Australia. Under the Implementation Plan National E-Conveyancing was to have commenced by the end of 2012.

In January 2012 COAG approved the formation of a Business Regulation and Competition Working Group (BRCWG) E-Conveyancing Sub Group to oversee the Implementation of National E-Conveyancing. The Sub Group was to make recommendations concerning the implementation of national electronic conveyancing, changes to National E-Conveyancing Development Limited (NECDL) to allow it to operate a national electronic conveyancing system and to allow for the participation of all States and Territories in NECDL. The Sub Group was to also oversee the introduction of national legislation necessary to enable national electronic conveyancing and report to COAG on progress with the implementation of national electronic conveyancing.

On 14 January 2010 New South Wales, Victoria and Queensland established the company NECDL to create the National E-Conveyancing System.

The founding members of NECDL entered into a Members Agreement in relation to NECDL to regulate their rights and obligations as Members under NECDL's constitution and applicable law. The parties acknowledged that the participation of all States and Territories would be required for the implementation and operation of national electronic conveyancing.

At its April 2010 meeting COAG agreed that NECDL was to create, implement and operate the national electronic conveyancing system.

NECDL's constitution was amended in September 2010 to enable NECDL to create, implement and operate the national electronic conveyancing system and to enable South Australia, Tasmania, Western Australia, the Australian Capital Territory and the Northern Territory to become members of NECDL. In October 2010 Western Australia became a member of NECDL.

In February 2011 the members of NECDL agreed and resolved to convert the company from a company limited by guarantee to a company limited by shares and adopted a new constitution to facilitate this.

In August 2011 the Australian and New Zealand Banking Group, Commonwealth Bank of Australia, National Investment Capital Limited and Westpac Banking Corporation (Bank Shareholders), subject to the approval of the Australian Competition and Consumer Commission, subscribed for shares in NECDL and entered a Shareholders' Deed with the State of New South Wales, Victoria, Queensland and Western Australia (State Shareholders) and NECDL. The shareholders agreed that it was the intention of the State Shareholders to maintain a majority shareholding in NECDL during the development of the national electronic conveyancing system. NECDL changed its name to Property Exchange Australia Limited (PEXA Ltd).

The object of NECDL was "to create and operate a system to provide an efficient, competitive system to settle property transactions, lodge instruments with Land Registries and pay associated duty and tax obligations electronically, without increasing the cost of such services to the community or excluding any current market participant from operating in the new electronic environment.

To facilitate the creation of national electronic conveyancing a legislative basis for electronic conveyancing was required. It was agreed that the legislative elements of the required national electronic conveyancing legal framework would be implemented under the Electronic Conveyancing National Law, the subject of an Intergovernmental Agreement.

In 2011 an agreement between the States and Territories was formed to provide governance for the development, implementation and management of the regulatory framework for national electronic conveyancing including legislation to facilitate national electronic conveyancing. This agreement is referred to as the Electronic Conveyancing National Law Agreement 2011. The total value of property recorded in Australian Land Registries is estimated to be \$6 trillion. Each year an estimated \$600 billion of property changes hands in around 750,000 transactions. Traditionally these transactions had been affected in person, at a face to face meeting between the parties, involving the exchange of bank cheques and physical land registry documents.

The necessary legal reforms to implement the Electronic Conveyancing National Law including the Model Operating Requirements and Model Participation Rules commenced in NSW in November 2012. Less than a year later Australia's first national electronic conveyancing system commenced operating in Victoria and NSW. In 2013 the national electronic conveyancing system and supporting legislation rolled out in Queensland and in 2014 in WA and then a short time after South Australia.

National electronic conveyancing has been operational for almost 5 years with more than 40% of Land Registry document lodgements occurring through the ELN provided by PEXA Ltd. PEXA Ltd is currently Australia's only ELNO. Two new potential market entrants have passed the first assessment required to become an ELNO and they are now working toward their approvals to operate an ELN in each jurisdiction. At least one of the ELNOs has indicated it intends to start operating in two states before the end of the year.