

**Submission  
No 15**

**INQUIRY INTO ELECTRONIC CONVEYANCING  
(ADOPTION OF NATIONAL LAW) AMENDMENT BILL  
2022**

**Organisation:** Dench McClean Carlson Pty Ltd

**Date Received:** 11 March 2022

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The Honorable Mark Banasiak MLC  
Chair  
Inquiry into Electronic Conveyancing (Adoption of National Law)  
Amendment Bill 2022

Dear Mr Banasiak

## **Interoperability and increased risk for homeowners**

Dench McClean Carlson was commissioned to complete a review of the Intergovernmental Agreement for an Electronic Conveyancing National Law. Our final Report was published in late 2019 and is available on the ARRNEC website and our own website.

The question of interoperability was widely canvassed with all stakeholders over a twelve month period.

We concluded that although interoperability offered benefits for industry there was very little (or no) benefit for homeowners and it increased the risk that homeowners could lose the entire value of their home sale with no agreed redress available. We further noted that most of the industry benefits, particularly those pertaining to user experience, could be achieved without ELN interoperability and its additional risks.

The Report's conclusion under risk is as follows:

### *Extract from the Report – Risk*

*1.39 There is a clear and current risk that citizens could lose the total sale price of their house in eConveyancing through the use of unverified bank account numbers. There are multiple instances of unapplied and misapplied payments in the system now.*

*1.40 Next year the number of eConveyancing settlements will be higher as nearly all property sales in NSW, Victoria and WA will be completed via eConveyancing.*

*1.41 In large losses to date PEXA has assisted the property sellers and worked to ameliorate their loss, and we commend that effort. This is unlikely to occur in an interoperable environment with two ELNOs involved in any settlement, unless the regulatory settings require them to cooperate to reduce the adverse impact on the settlement affected and any linked settlements. We note that there are a number of ways to reduce this risk. It is possible that a suitable way forward can be found. It will require the assistance of the financial institutions, the financial regulators, the registrars, the revenue offices, the ELNOs and possibly the insurers.*

We noted that eConveyancing is first and foremost a government mandated or licence system, and it is of paramount importance that it does not impose additional risk on homeowners in what is for most their major life investment.

The second reading speech acknowledges that the regulatory requirements for the financial payment and settlement systems in eConveyancing are not clear, but there is no discussion or information on how consumers will be protected. Registrars have no role in financial regulation. The ACCC has no role in consumer protection for financial systems.

We suggest the Committee should look carefully at the potential impact on homeowners if interoperability is pushed through without minimum safe conditions developed and mandated by a financial regulator, to protect homeowners and the Australian property market.

Electronic Conveyancing has reduced many of the risks that were present in the manual system but it has introduced others. The most significant risk is the loss of all proceeds from the property sale and the loss of the property by the transfer to another party. There are consequential losses as subsequent linked sales also fail. We are advised one in five property sales are linked and these complexities do not appear to have been addressed

It would benefit the Committee deliberations if it were to seek a briefing on failed transactions that have occurred. It would appear the weakest link in the system is the reliance on a single bank account number with no verification of the name attached to the bank account.

Fraudsters hack emails between lawyers/conveyancer and homeowners and alter the bank account numbers. People miss key long numbers into computer systems. The current electronic conveyancing system does not guarantee to help any homeowner, although as noted to date PEXA has stood behind failed transactions until matters can be resolved. It is under no compulsion to do so and if two different ELNOs are involved it could not be expected to step in when matters could take years to resolve.

The NSW Government's technology report into interoperability reported that the risk of repudiation of a transaction increased with interoperability, leaving the homeowner with nowhere to go.

We note insurance was discussed in some working groups but we understand the risk appears to be uninsurable.

An integral part of most electronic conveyancing transactions is the financial settlement however registrars have no role in financial settlement. Specifying the data standards for interoperability will not mitigate the risk of loss of settlement monies. The data standards may be fine, but cyber security in any environment is only as strong as its weakest link. It is likely the weakest link will remain with the way the system collects data (via email or manual input often from small business – conveyancers and lawyers) rather than the manner in which the ELNO platforms operate.

The second reading speech talks about an industry code but it is not likely the banks will stand behind failed transaction especially if there is no insurance coverage.

We do not think it acceptable that a homeowner can lose their home because they are forced to use a system with insufficient safeguards.

ELN Interoperability creates additional risk with no significant benefits for homeowners. We submit government regulation should prioritise homeowners ahead of businesses. No further risk to homeowners should be accepted and the existing risks should be mitigated.

In the interim, competition can continue with two separate ELNOs in operation and a third considering its position.

We proposed minimum safe conditions for the introduction of interoperability in our Report and would recommend they be carefully considered.

In the Committee's deliberations perhaps it could consider what Committee members' own expectations would be if the value of their property was lost in a failed/fraudulent transaction and no immediate remedy was available.

We are happy for this submission to be made public and we are happy to speak with Committee members.

Anne Larkins  
Director

David O'Brien  
Senior Consultant