

Your Ref: Mr John McIntyre

Quote in reply: Property and Development Law Section:21000345/19

6 April 2010

Mr John McIntyre
Law Council of Australia Nominee Director
National Electronic Conveyancing Development Company
Law Council of Australia
19 Torrens Street
Braddon ACT 2612

By Email: [REDACTED]

Dear Mr McIntyre

NATIONAL ELECTRONIC CONVEYANCING SYSTEM – QUEENSLAND LAW SOCIETY VIEWS

We write in regards to the Queensland Law Society's (QLS) involvement in the development of the National Electronic Conveyancing System (NECS).

1. Background

The Society has been heavily involved in the dialogue in the formation of NECS. We have undertaken both oral and written advocacy on issues relating to NECS. Representatives from the QLS have attended and contributed to all National Electronic Conveyancing Office (NECO) hosted stakeholder events, both interstate and in Queensland. We have also made significant submissions to the National Project Team (NPT) papers and the consultation requests issued by Clayton Utz, through our Law Council of Australia representative, Mr Murray McCutcheon.

2. Purpose of submission

The purpose of this correspondence is to highlight the concerns that the Queensland Law Society has with the NECS model proposed by NECO which, have not been recognised to date. The content of this present submission is simply a restatement of all the major issues we have raised in relation to NECS. We **enclose** our previous submissions for your reference.

3. The role of certifiers

As stated in our previous submissions, the Society does not support the proposal to include contractor certifiers and non-industry practitioner employees of a legal practice subscriber being appointed as Certifiers. We understand that the NPT paper entitled, 'Operational Roles Revisited' proposes new arrangements for independent mortgage processors that are neither legal nor conveyancing practices and limits all Certifiers to being employees of the Subscriber they are acting for. We agree with the proposal to limit Certifiers to being employees of the Subscriber.

4. Client identity verification

We understand that the Land Registries have proposed the contemporary Gold Standard for client identity verification as the general requirement for NECS. While we understand that, the goal of the Gold Standard is to verify that the client is the person who has the right to deal with the property, the Society contends that this standard will be unduly burdensome on legal practitioners, resulting in increased liability and insurance premiums for the profession. We note that the standard that is adopted must work within remote and regional areas. We suggest that a standard that is analogous to the anti-money laundering requirements be adopted.

5. Instrument Certifications

The Society opposes any certification process that would require a legal practitioner to certify that the transaction or the instruments comply with all legislation. This would introduce a certification process not currently given and would constitute an unacceptable increase in the liability for legal practitioners.

Furthermore, we understand that lending institutions have proposed that solicitors be required to certify the mortgage transaction is correct and legally compliant on behalf of mortgagors. The Society strongly opposes this proposal as it has significant implications for legal practitioners. For example, it will undoubtedly result in increased liability, an increase in claims against practitioners, confusion in the profession as to the level of certification and finally a possible increase in insurance premiums.

The Society advocates the approach taken in Victoria. Here, the lending institution holds the paper mortgage signed by all parties and then the lending institution certifies that the mortgage is correctly executed. This is also appropriate given the onus currently placed on mortgagees to ensure the identity of their mortgagor under the *Land Title Act 1994* (Qld) and the consequences flowing to the mortgagee if this does not occur.

6. Digital signature certification (DSC)

We consider that when deciding the DSC system to be adopted, careful consideration should be given to adopting a standard which has already been developed. For example, it may be beneficial that the DSC system be consistent with the proposed Federal Government standards, soon to be implemented by the Australian Taxation Office.

The Society believes that the DSC system most appropriately adapted to achieving these objectives and the objectives of NECS is the combined organisation and individual DSC model. We note the key features of this model include prescribed identity verification checks by Subscribers for child certificates and authorisation checks by NECS individual certificates.

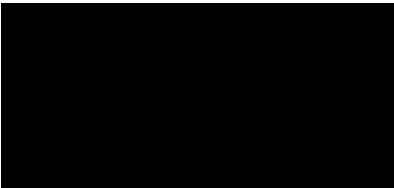
7. NECS first resort separate compensation fund

We support the proposal to create a first resort separate compensation fund to handle claims with respect to NECS. We envisage that this fund will only cover claimants who have suffered a loss directly related to NECS. Compensation for all other claimable losses should be derived from the sources that are currently available.

In order to gain contributions to this fund, we suggest that each NECS transaction should attract a small levy. Payment for this levy should be equally divided between all NECS users including financial institutions and legal firms representing their clients. This levy method will ensure guaranteed monetary support for the first resort separate compensation fund.

If you have any questions regarding the contents of this letter, please do not hesitate to contact our Policy Solicitor, Binny De Saram on [REDACTED] or [REDACTED].

Yours faithfully



Peter Eardley
President

Cc: *Mr Bill Grant*
Secretary-General, Law Council of Australia
19 Torrens Street, Braddon ACT 2612

