

Your Ref:

Quote in reply: Property and Development Law Section:

11 May 2010

Mr Bill Grant
Secretary-General
Law Council of Australia
GPO Box 1989
Canberra ACT 2601

Dear Mr Grant

NECO ADVOCACY FOR CONVEYANCER PRACTICE IN QUEENSLAND

The Queensland Law Society was surprised and disappointed to see that Mr Simon Libbis, as Executive Director of the National Electronic Conveyancing Office, has made a submission to the National Legal Profession Reform Taskforce and the National Licensing System for Specified Occupations Taskforce calling for, amongst other things:

“Licensing of conveyancers, or at least recognition of conveyancers licensed elsewhere, in the ACT and Queensland would remove an unnecessary source of uncertainty for transacting parties in those jurisdictions. Mutual recognition of licensed conveyancers in all jurisdictions would further reduce uncertainty and increase cost efficiency in using NECS.”

This is a position which is not only incorrect but one with which the QLS strongly disagrees.

This call is all the more disappointing as Mr Libbis’ letter provides:

“A recent forum of statutory and market professional indemnity insurers and legal practitioner and licensed conveyancer regulators from all States and Territories identified a number of key issues needing to be addressed nationally if NECS is to achieve its maximum potential. The forum supported a submission being made to the national Reform taskforces in relation to these issues.”

The QLS and its captive insurer Lexon had representatives at that forum and advised that there was no consensus view at the meeting of the need for particular regulatory reform nor any resolution or request made to NECO to advocate on any particular issues. QLS has never requested NECO to raise any issues with the National Regulation Taskforce on its behalf.

Conveyancers in Queensland

Parliament in Queensland imposed a restriction on admission as a conveyancer in this jurisdiction in 1938 providing that there should be no further such admissions from 1 January 1940 (excluding, of course, those already undertaking a course of articles for such an admission). That position has continued here for 70 years now.

The issue of practice and mutual recognition of conveyancers in Queensland was extensively litigated during the 1990's. In the litigation following an application for registration as a conveyancer under the *Mutual Recognition Act 1992* from a Mr Sande to the Supreme Court, His Honour Justice Freyberg said¹:

“This court is not in my judgment a local registration authority within the meaning of the act; there is no evidence before me to justify a conclusion that there is an occupation of conveyancer (within the meaning of "occupation" in the *Mutual Recognition Act 1992*) presently in existence in Queensland; and there is no evidence sufficient to enable me to conclude that substantial equivalence can be achieved between any such occupation and that of a land broker in South Australia (even assuming the latter is an occupation).”

There is presently no admitting authority and no registration authority for conveyancers in Queensland and it is properly a matter for the Queensland State Government to maintain that position or resile from it.

Efficiency and Certainty

NECS as an online settlement system will not be hampered or in any way impeded by the maintenance of the current position with respect to conveyancers operating in Queensland. The NECS system will not affect the formation or terms of property sale contracts formed under Queensland State law. It will not affect the various searches or inquiries which are prudently made of local authorities as a part of due diligence in a sale transaction. It will not affect buyers and vendors rights to terminate agreements due to defects, non-performance or contractual discretion.

It is an extreme oversimplification to state that merely effecting a settlement is the essence of conveyancing practice. It is incorrect to state that conveyancing practice in some way will be lessened unless conveyancers operate in Queensland through the NECS system.

Despite the introduction of NECS Queensland conveyancing will remain the application of Queensland law to a Queensland sale of Queensland real property. The current position with regard to conveyancers in Queensland has not brought about uncertainty in this or any other jurisdiction and will neither hamper nor impede the operation of NECS in any way.

Consumer Issues

Presently Queenslanders enjoy very competitively priced conveyancing services from law firms given the complexity of the area, the responsibility practitioners undertake and the volume of work involved. In fact Queenslanders enjoy some of the best value conveyancing services anywhere in the nation.

The issue of concern for the Queensland Law Society is that should conveyancers commence practice in Queensland without the exact same standards required of legal practitioners for:

¹ See page 21, Freyberg J in *Re Sande* [1995] QSC 031

- Professional responsibility, including fiduciary duties to their clients, and access to a complaints and discipline body equivalent to our Legal Services Commission;
- Professional indemnity insurance equivalent to the \$2 million policy coverage, with run off cover, extended by Lexon Insurance;
- Fidelity fund coverage and professional obligations to contribute to make good very large claims;
- Client disclosure and fee regulation, including taxation of bills by the Courts;
- Admission requirements to ensure practitioners are highly trained before they commence practice;
- Registration requirements to ensure practitioners are fit and proper individuals and remain so; and
- Oversight by the Court of professional conduct and standards;

levels of consumer protection for consumers of conveyancing services in Queensland would be lower than they currently are. That can not be a desirable result.

-- 000 --

I would be pleased if you might pass this letter on to the Law Council's representatives on the National Electronic Conveyancing Development Limited Board and NECS National Project Team and request that they not support any position or resolution which would call for the operation of conveyancers in Queensland on the basis of the abovementioned reasons.

Yours faithfully



Peter Eardley
President