

Future policy directions and imperatives in property

Martin Hoffman, Secretary, Department of Finance, Services and Innovation

Thank you for having me.

Today I want to talk about future policy directions and imperatives in eConveyancing.

A customer-centric approach.

It is often said that buying a house is considered the biggest and by most accounts the best investment anyone can make.

Perhaps more than anything else, property rights are a hallmark of our modern economy. With titles—and the laws that support them—we can look beyond our homes as being solely for shelter, but also security for credit to start or expand a business.

Of course, banks lend money because of the low risk resulting from a state guarantee of title in securing property loans. And that is what makes the economy go around.

The total value of property recorded in the Torrens Registers in Australia is more than \$6 trillion. Well above the Australian stockmarket, which has a total market capitalisation of around \$1.5 trillion.

The land title system also reaches across legal and banking professions.

And right now, substantial structural changes are taking place in Australia's land title systems.

'Land registries' are considered a new and exciting 'asset class' among our investors.

And this is happening fast. With big players entering.

In 2017, the NSW Government moved to a private operator of our land registry. First State Super and other superannuation funds paid \$2.6 billion for the right to operate the registry for 35 years.

Now Macquarie Group's MIRA and Canada's Public Sector Pension Investment Board operate SA's registry. And big names are lining up for Victoria's and WA's registries, both of which are likely to move to private operators this year.

All this means rules governing our land title system must be relevant to these changing circumstances. As we move to regulator/operator models overseeing registries, the regulatory component must keep up with the changing market.

For the eConveyancing reform, I believe this means two important things: we must update our regulatory oversight regime; and facilitate a more competitive while secure market of electronic lodgment network providers—known as ELNOs.

I will cover these two issues shortly but let me start by explaining our vision for NSW's digital economy and how eConveyancing is central to this.

People often ask what we want with the eConveyancing reform? What does my Minister—Minister Dominello, want? What does the NSW Government want? That is, what's the strategic picture here?

It is this.

We want to make NSW's land title system meet a rapidly changing world.

New technology is driving more rapid change than ever before. Technological change is now at a 'hyperbolic rate'. That is, the 'pace of change' itself is accelerating each year.

People today expect to manage their lives around technology. Greater access, fewer errors, more transparency.

And eConveyancing delivers this. It is better for the customer.

eConveyancing eliminates most risks associated with human error, such as misplaced or incorrectly signed documents. This removes the up to '1 in 30 transactions' that go horribly wrong.

These are the ones where the removalist truck is parked outside but you can't move into your home because a name is spelt incorrectly. With eConveyancing, you update the system online, and then you can start unpacking that truck.

eConveyancing brings greater integrity to the system. It brings a much greater level of quality assurance than for paper transactions. All conveyancers and lawyers in NSW will be audited over a three year period to ensure the correct steps are being taken. This is one reason NSW Law Cover is so supportive of this reform.

The improvement in integrity is perhaps best measured in comparing the payouts from our Torrens Assurance Fund since electronic lodgments commenced in 2013.

Since 2013, the NSW Registrar General paid around \$2.1 million for errors made in paper transactions, and \$7.3 million for fraud.

In comparison, during the same period, not one single payment has been made on any of the 360,345 electronic lodgments. This is a credit to ARNECC and PEXA.

Of course, 'hacking' is often raised with digital reforms. To this end, the current sole ELNO, PEXA, is required to ensure best practice cyber security. This means things like regular penetration testing to check for 'hacking risks'.

We will absolutely require the same standards for future ELNOs.

Another reason we are so behind this reform is we don't want our legal and conveyancing industry to be left behind.

Digital change is happening in every industry because it's good for business. Those out in front are reaping rewards. This reform provides a framework and time to support an orderly industry transition from paper to digital.

Recently we asked KPMG to facilitate several sessions with conveyancers and lawyers from across NSW to tell us about their experience with eConveyancing over paper. The group compared the two processes and identified some great improvements.

Mostly, they spoke about the extraordinary savings in time—more than four hours for some dealings.

Another huge benefit is solicitors and conveyancers no longer need to attend settlement physically.

This is why take-up of eConveyancing in places like Broken Hill in NSW is strong—before, settling a transaction might involve a four-hour drive. Sydney lawyers also appreciate not having to get across a busy city to settle, when they can do it at their desk. Any way of taking cars off our roads has got to be a good thing.

Apparently, these sessions also revealed lawyers general disposition towards a nice glass of wine. I gather one lawyer said “now you can settle in the pub”. And another: “I signed off the other day in Hawaii”.

Enabling technical change was a key reason the NSW Government moved to a private operator in 2017.

This new regulator-operator model for the land title system in NSW is the first in the world.

This change was a substantial reform, intended to improve the integrity of the system with a focus on the customer—the conveyancer, solicitor and surveyor who interact with the land title registry, and the people of NSW who benefit from a stable, accurate and accessible system.

And as so often happens, the other States are now following NSW.

Beyond this, with the rise of relevant technology, a shift to a private operator also presents an opportunity to transform titling systems to operate even better in the public interest.

Private operators bring new technology and innovation.

Our expectations in NSW with this new arrangement are very clear. Invest in technology and bring NSW’s land title system into the 21st century.

In NSW, we are also looking at the full end-to-end conveyancing cycle.

eConveyancing only deals with *part* of the sale of land process. That is, the ‘end phase’.

Lawyers, conveyancers, and the banking industry have told us they want to conduct their conveyancing digitally, from start to finish.

NSW is looking at new ways for contracts and deeds to be electronically signed and witnessed, and for disclosure to be made electronically. The Minister will shortly announce changes that help remove these barriers to a fully digital transaction.

More broadly, NSW has a huge digital transformation agenda.

In 2017, Minister Dominello launched the Digital Government Strategy, which puts the customer at the centre of everything we do. It also means being smarter with the data we hold to improve decision making, and becoming digital in government.

To this end, we are streamlining customer's experience with government services through Service NSW, with one point of contact for the customer for a range of government services.

Service NSW now manages more than 1,000 transactions from across 40 partner agencies, and continually maintains a customer satisfaction rating of 97 per cent.

NSW has also developed the Easy to do Business Program, which has reduced the time to start some businesses from 18 months to around 90 days.

The NSW Government is on track to meet its state priority of delivering 70% of services digitally by 2019.

We should recognise the success of the eConveyancing reform so far.

Getting this far with this reform has not been easy.

Huge credit goes to all state and territory governments driving reform. Establishing the eConveyancing National Law and of course the regulations and commercial environment that derive from it with the input of multiple jurisdictions deserves great recognition.

This is a COAG reform and we all know the COAG highway is 'littered with wrecks'.

That's because COAG projects are hard. You need a commitment to keep going because you have multiple jurisdictions having to agree on big complex issues. So often they don't—and Australia is worse for it.

But eConveyancing is an example of a COAG success.

This success can be seen in take-up statistics.

In NSW, in 2014, only about 4 per cent of transactions were being done electronically, despite the lodgement operator capacity to digitalise around 70 per cent of all documents.

Now for each of the last two months around 42 per cent of all possible lodgments were electronic.

We are getting close to that critical point where what has until now been considered 'a new practice' that 'I'll do one day' is becoming 'normalized'.

To this end, I think the NSW mandated timeframes have been a great help.

To conduct an eLodgment, you need all parties to do electronic transactions. And with an opt-in model, firms are less likely to commit to a reform without knowing other parties would also be doing this.

NSW was in a situation where the potential benefits from this reform could have been in limbo for years.

NSW mandates were developed with the Australian Bankers Association, the NSW Law Society, the NSW branch of the Australian Institute of Conveyancers and the Mortgage and Finance Association.

They were timed to deliver some quick wins to get some momentum. Refinances and stand-alone mortgages were first mandated in March last year with the full support of the banks.

The NSW timeframes provided much more time for the lawyers and conveyancers to prepare for the more complex dealings.

That is, industry has had a year and a half to prepare for moving to all stand-alone transfers and caveats since the mandate was announced, which in NSW must be electronic on 1 July 2018.

And they will have another year until all mainstream documents moving to electronic by July 2019.

High take up has occurred before reaching the mandate dates. Eg. >20% of transfers in NSW are already electronic. Taking it up before the mandate because its good reform, not because have to.

The existing regulatory framework has established the necessary legal settings and rules.

However, seven years on from signing the Intergovernmental Agreement, the current regulatory regime needs updating for what is a different industry.

I think ARNECC has done a great job getting the legal framework in place.

But we now must look at ways to strengthen the oversight of eConveyancing.

The ongoing success of this reform will rely on having strong regulatory controls over private operators. Let me just cover a few of these.

Firstly, separate regulation and ownership is vital in any regulatory regime. ARNECC still includes members who represent shareholder states. While I appreciate each member state has 'walls' between their ARNECC representative and shareholder, it is vital the regulator is independent. This needs to be sorted soon. Perceptions matter.

To this end, it has always been NSW's intention to remove itself as a shareholder from PEXA once PEXA was sufficiently established. We think that time is now. We will look to exit PEXA via its upcoming IPO or trade sale.

The NSW public service director on the board has already resigned and we advised PEXA the role should be filled by a skills-based independent appointment.

Secondly, the regulator must be transparent and stable, support innovation—and be well resourced.

ARNECC remains a committee of state officials with no authority beyond that of its members, whose powers depend on legislation in their own state and who are also running their own registries.

ARNECC as it is does not have the resources to make timely decisions in a rapidly changing market where sizeable commercial investment is at stake.

Thirdly, given their historical role, the individual RGs and ARNECC understandably have been focused on protecting the integrity of the titling system. While that must remain a paramount concern, regulatory priorities must now include promoting effective and sustainable competition along the chain of supply of titling services.

The NSW Government is a strong promoter of competition in electronic lodgment services. The regulatory framework needs to build in appropriate safeguards to protect and promote vigorous competition, to require equivalent access to key standards and inputs required to complete, and to ensure users have real choice between ELNOs.

This must be done while maintaining the security and stability of the underlying system, separate to the performance and longevity of any given ELNO.

When it comes to strengthening regulatory oversight of ELNOs we can learn from the new state based regulator operator models for registries.

To this end, in NSW our regulator, the Office of the Registrar General, has strong powers.

Now, there is a much greater focus on holding the operator to account over performance. We have powers enshrined in legislation that allow the Registrar General to impose penalties on the registry operator if it doesn't meet its KPIs. And penalties increase a lot for repeated KPI offences.

Mistakes are at the expense of the private operator, not the tax-payer or users – while titles are still ultimately backed by the TAF and state guarantee.

Having an independent, credible, stable and well maintained regulatory framework gives confidence to the users of the system that their interests are served by a strong regulator to ensure operators are not able to exploit consumers.

Government also has important lessons from recent inquiries into Australia's financial sector.

It appears trust in our financial institutions are at all-time lows. But as they say, 'never waste a bad report'. We can all learn, particularly regulators, from this—and take steps to avoid repeat mistakes.

The Banking Royal Commission highlights that the regulator must have a clear objective—that they regulate for the customers, and not for operators. And, the regulator must be sufficiently resourced.

Having strong, stable regulation is good for operators. And I know PEXA and other potential ELNOs are calling for this. Operators benefit from regulatory stability – and the knowledge their investment can expect a fair risk-weighted return without unwarranted government intervention.

ARNECC—or at least Registrar Generals—should still have a role focusing on coordinating national requirements for electronic lodgment, representing views of land registries.

The Intergovernmental Agreement requires a review of the regulatory arrangements no later than this year. NSW have been active calling for this review for some time.

To this end my Minister has written to his colleagues from all jurisdictions inviting them to a ministerial forum with CEOs from current and potential operators, and other industry bodies, to hear their views on regulatory reform first hand.

We believe a competitive ELNO market is vital.

Competition among ELNOs was a principle of the reform from the start and we're not backing away from that.

We are pleased ASX and InfoTrack are taking steps to become a second ELNO.

And I understand all states have also just approved Purcell Partners Pty Ltd (known as 'LexTech') to move past stage 1 as a possible ELNO. This means LexTech is now evaluating further their approach and can start building a platform.

And we know other players are considering becoming ELNOs.

Our position is clear. We want more electronic lodgement network providers. They increase competition. This brings better services and price competitions. And this reduces NSW's dependency on a single lodgement provider.

I know some conveyancers and lawyers are worried the mandates have created a monopoly for PEXA and a financial windfall for the banking industry, while undermining independent conveyancers.

I would like to address that point directly.

Firstly, the rules governing this reform have made it possible from the start that more than one ELNO can operate.

That is, for the last five years any business could have applied to be an ELNO.

The reality is until now it was not commercially viable to compete with the existing lodgment platform.

The mandates have made it commercial for new operators.

By encouraging lawyers and conveyancers to more quickly move digital, the timeframes have created a more commercially viable market for new ELNOs to invest in new platforms and compete with PEXA as alternative lodgement platforms.

Any new ELNO will compete on quality of service and price, giving existing users of PEXA a choice of providers. This means—if a new ELNO has a cheaper, better product, then lawyers and conveyancers will be able to move between operators.

Our regulators will need to make sure all operators provide competitive services—and do not vertically integrate where it would be anti-competitive. Vertical separation applies to all participants, not just PEXA, not just concession operators.

Of course, ultimately, we must regulate a competitive market well. This includes maintaining overall system stability and resilience, even in the event of an ELNO failure or withdrawal that happens in a competitive market setting.

I do think we are at a point in this reform where we all need to adjust our mindsets.

ARNECC, the Registrar Generals and PEXA have needed to work closely together to build this reform from the start and in the absence of any other operators.

If you think about it, each Registrar General has brought to this reform hundreds of years of legal, process and intellectual knowledge of how conveyancing and title registration, based on the Torrens system, works.

Over the past seven years, Registrars General, state revenue offices and PEXA have transformed this centuries-old-paper-system and all its legal underpinnings into an electronic one.

PEXA itself has in many ways defied the odds to make this reform work. I know PEXA CEO Marcus Price has been told many times before ‘you won’t get this to work, it’s too hard’.

But he has.

Credit goes to PEXA shareholders for investing heavily early. I know their shareholders have yet to get a return. This requires a belief and hard work. And I congratulate PEXA for that.

But now we have new operators emerging. All of us must refine our approach. New entrants bring new ideas, and can solve problems by seeing things incumbents may miss.

This goes to all of us involved in this reform.

I have heard about the recent complaints from developers about PEXA’s system adding complexity when it comes to selling residential apartments as it does not allow bulk signatures.

I understand this problem may be a combination of PEXA and the relevant regulatory rules guiding signatures. From NSW’s perspective – we want this addressed quickly, and certainly will be doing our bit.

We need to make sure the system solves these sort of problems quickly and not let other distractions get in the way.

This is an example of the potential benefits of ELNO competition as well. That is, in this case, developers could go to an alternative ELNO if not happy with their current provider.

I am not saying it is all easy.

Indeed, with more ELNOs comes the very challenging question of whether and how do they inter-operate, particularly when a transaction involves multiple parties.

Today is not the day to address that problem of interoperability. But I would like to flag that the solution has to come from a level of understanding of each other's position.

The government and private operators should aim to continue to transform our property sector into the world's most high performing one—most secure, most accessible, most innovative and competitive.

I find this whole area of reform fascinating and of vital importance. If we can solve the challenges together, drawing on expertise from PEXA and the new ideas from potential new ELNOs, from the new private titling operators, from the various industries involved, and always putting the customer interest at the centre - we can play a part in setting up a strong future for Australia's property sector and the overall national interest.

Thank you.